Firozuddin Basheeruddin & Ors vs State Of Kerala on 20 August, 2001

Equivalent citations: AIR 2001 SUPREME COURT 3488, 2001 (7) SCC 596, 2001 AIR SCW 3246, (2001) 6 JT 547 (SC), 2001 (8) SRJ 333, 2002 (1) UJ (SC) 120, 2001 (5) SCALE 335, 2001 SCC(CRI) 1341, 2001 CRILR(SC MAH GUJ) 707, 2001 (6) JT 547, 2001 CRILR(SC&MP) 707, (2001) 3 ALLCRILR 761, (2001) 43 ALLCRIC 673, (2001) 3 CHANDCRIC 27, (2001) 6 SUPREME 247, (2001) 3 ALLCRIR 2163, (2002) SC CR R 365, (2001) 3 EASTCRIC 137, (2001) 3 KER LT 189, (2002) MAD LJ(CRI) 1, (2001) 21 OCR 596, (2001) 4 RECCRIR 20, (2001) 3 CURCRIR 188, (2001) 5 SCALE 335, (2001) 4 CRIMES 162, 2001 (2) ANDHLT(CRI) 342 SC

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Bench: K.T. Thomas, D.P. Mohapatra

CASE NO.:
Appeal (crl.) 357-359 of 1998

PETITIONER:
FIROZUDDIN BASHEERUDDIN & ORS.

Vs.

RESPONDENT:
STATE OF KERALA

DATE OF JUDGMENT: 20/08/2001

BENCH:
K.T. Thomas & D.P. Mohapatra

JUDGMENT:

D.P.MOHAPATRA,J.

These three appeals are directed against the common judgment of the High Court of Kerala dated 17.10.1997 in Criminal Appeal Nos. 167,145 and 218 of 1995. The appellants were accused Nos. 3,4,5,7,9 and 15 in Sessions Case No.66/92 of IV Additional Sessions Court, Ernakulam. Initially 19

persons were arrayed as accused in the case. Three of these accused persons i.e. accused Nos. 8,11 and 14 became approvers pursuant to the pardon granted to them and they have been examined as PWs 1 to 3. Out of the 16 accused persons sent up for trial, eight accused i.e.Nos. 1,2,6,8,10,11,12 and 13 were absconding. The case against them was split up and was refiled as CP No.2/92 on the file of the Chief Judicial Magistrate, Ernakulam. The remaining eight accused persons were tried in Sessions Case No.66/92 for offences punishable under sections 120-B, 302 read with Section 511 IPC, Section 302 read with section 120-B IPC and sections 34,109,143, 148, 201, 201 read with sections 34, 109 and 120-B and section 194 IPC and also under section 27 of the Arms Act.

The learned Additional Sessions Judge by the judgment dated 17.1.1995 found the appellants guilty and sentenced them to undergo imprisonment for life under section 120-B and to undergo a similar sentence under section 302 read with section 120-B and section 34 IPC. The appellants were also found guilty and sentenced to undergo RI for five years under section 201 read with section 120-B and section 34 IPC. The appellants were found not guilty of the offences charged under different sections of the IPC and sections 25 and 27 of the Arms Act. Accused Nos.14 and 16 were found not guilty and were acquitted of all charges.

Against the judgment of the Sessions Court, Accused nos.7 and 9 filed criminal appeal No.145/95, Accused nos.3, 4 and 5 filed Criminal Appeal No.167/95 and Accused no.15 filed Criminal Appeal No.218/95. All the three appeals were dismissed by the High Court by judgment dated 17.10.1997, which is under challenge in these appeals.

The prosecution case, shorn of unnecessary details, may be stated thus :The first accused Abdul Rehman also known as Pakistan Abdul Rehman is a notorious smuggler based at Dubai. He had engaged as his agents for smuggling, amongst others, the deceased Hamza whose cousin he had married and Aboobacker (PW 8) offering them compensation at the rate of Rs.25,000/- per jacket of gold delivered at specified destinations. In one operation that was successfully completed the first accused declined to pay the agents Hamza and Aboobacker the amount promised and after some bargaining paid only Rs.18,000/- per jacket. This conduct on the part of the said accused had created a sore feeling in the minds of the two agents mentioned above. Sometime in 1989 the first accused entrusted one consignment of 1600 gold biscuits to Hamza and Aboobacker for transport to Bombay. These two persons ceased the opportunity to settle scores with the first accused and leaked out the information of smuggling to officials of the Directorate of Revenue Intelligence (DRI). Acting upon the information furnished by Hamza and Aboobacker the DRI officials intercepted at Thalappady the two vehicles in which the contraband gold was being transported from Kanhangad to Bombay and ceased the entire consignment worth about Rs.6.02 crores. As stated by Aboobacker (PW 8) that he and the deceased Hamza got Rs.45 lakhs on 29.3.1989 and a further sum of Rs.48 lakhs after the death of the latter as reward money, the first accused was greatly enraged by the breach of trust committed by Hamza and Aboobacker and threatened to kill them. Thereafter a criminal conspiracy was hatched whose aftermath was the murder of Hamza. According to the prosecution case, Hamza was shot dead at Poinachi while he was returning from Mangalore on the night of 29.4.1989. Kasaragod Police, after getting the telephonic message from K. Moideen Kunhi PW 13 who used to reside nearby Poinachi, swung into action, the Sub - Inspector of Police Raj Mohan T.K. PW -87 who recorded the information in the general diary rushed to the spot and found

Hamza riddled with bullets and lying bleeding in the drivers seat of the Maruti car. He was immediately rushed to the Government hospital at Kasargod. PW 64 Dr.K.P.Ali who examined the injured found him dead. PW 87 took PW6 Narayanan Nair who was present at the scene of incident to the Police Station and recorded his statement Exh. P22 which was stated as the FIR and Crime No.229/89 was registered. Thereafter Jaya Prakash PW 90, Circle Inspector took charge of the investigation. Subsequently on 1.5.1989 V. Narayanan PW 100 Circle Inspector, Crime Branch took over the investigation. The investigation was also handled by P.E. Bhaskara Kurup Deputy S.P. (PW 101) Special Investigation team. Subsequently the investigation was taken over by Varghese P. Thomas, Dy. Supdt of Police, CBI(PW 107) from PW 101 by order of the DIG CBI dated 19.7.90 who on completion of the investigation filed the chargesheet against 19 accused persons on 7.1.1992. As noticed earlier, after excluding the three accused persons who turned approvers, 16 were sent up for trial and after deleting the 8 absconding accused the remaining eight accused Nos. 3,5,7,9,14,15 and 16 stood the trial.

All the accused persons pleaded not guilty to the charges. They denied their involvement in the case altogether and alleged that they were falsely implicated in the case.

The learned trial Judge in his judgment, which covers 115 pages, has discussed in great detail the entire genesis of the case starting from the time when the deceased had cordial relationship with the accused; the smuggling activities which all of them were jointly carrying out, how differences arose between them over the demand of dues of the deceased and his associate by the principal accused; how they disclosed relevant informations regarding movement of the smuggled gold to different places to the enforcement authorities leading to seizure of the same; the decision taken by the principal accused to eliminate the deceased and his associate since they had proved to be obstacles in smooth running of the business of smuggling of gold; the various steps taken by the accused in carefully planning and organising the operations to kill the deceased and finally the successful execution of the plan culminating in the death of Hamza, the deceased. In para 32 of the judgment, the learned trial Judge formulated the points arising for determination as follows :

1. What was the cause of death of Hamza?

2. Are the accused responsible for the death of Hamza?

3. Was there any criminal conspiracy to cause the death of Hamza, as alleged by the prosecution?

4. Are the accused guilty of the offence u/s.201 IPC?

5. Are the accused guilty of the offence u/s.109 IPC?

6. Are the accused guilty of the offence u/s.143 and 148 of the IPC?

7. Are the accused guilty of the offence u/s.511 r/w.S.302 IPC?

8. Are the accused guilty of the offence u/s.194 IPC?

9. Are the accused guilty of the offence u/s.25 and 27 of the Arms Act?

10. What, if any, are the offences proved against each of the accused?

11. Sentence.

From para 33 onwards the learned trial Judge has discussed in detail each of the points formulated by him. Dealing with points 2 and 3, the learned trial Judge in paragraphs 34 to 135 has closely scrutinised the evidence of PWs 7, 11, 44 and 76 and the corroborating evidence of PWs 16, 53 and after dealing with the contentions raised by the defence counsel for discrediting the evidence of these witnesses, recorded his finding in para 56 to the effect that the prosecution has succeeded in establishing that the gold which was seized in Thappady belonged to A-1.

From para 57 onwards the learned trial Judge has discussed in detail the various steps taken by the accused persons for execution of the plan for elimination of Hamza and PW 8. On this part of the case the learned trial Judge has discussed the evidence of PWs 7, 8, 11 and 44 which was relied upon by the prosecution. He has also discussed the evidence of PW 23 who was a retired Junior Commissioned Officer of the Army who had been hired for killing the deceased and his associate Aboobacker -PW 8 but had failed to carry out the task at the last moment.

In para 60 the learned trial Judge has dealt with at length the contentions raised on behalf of the defence to attack the testimony of PW 23 and has given cogent reasons for not accepting the same. The learned trial Judge has also placed reliance on the documentary evidence i.e. Exhibits P-23, 24, and 25 which were proved to be in the handwriting of the accused persons.

From para 67 the learned trial Judge has discussed the evidence pertaining to the incident on 29th April, 1989. On this aspect of the case the learned trial Judge has considered the evidence of PWs 4, 5 and 6 who were examined by the prosecution as eye-witnesses to the incident. The learned trial Judge has very fairly pointed out the short-comings in the evidence of PWs 4 and 6 regarding identification of the accused persons. Regarding the evidence of PW 5 who identified A-4, A-5 and A-15 in the test identification parade and also in court he has given cogent reasons for accepting the evidence of PW 5 regarding identification of A-4 and A-5. In para 75 of his judgment the learned trial Judge has dealt with the acceptability or otherwise of the test identification parade which was held to identify A-3, A-4, A-5 by witnesses PWs 3, 4, 5, 6, 10 and PW 31. In para 77 the learned trial Judge rejected the contention raised by counsel for the defence that the test identification parade was not properly conducted, as without any basis.

About identification of the car used in committing the murder, the learned trial Judge has discussed from para 79 onwards of the judgment the evidence of PWs 10, 43 and 49 and the entry in the register Exh.P-65, he has also considered the evidence of PWs 21, 22, 25, 27, 28 29, 31, 33, 35, 36, 37, 39, 70, 73 and 94, who referred to the Fiat car, in para 95 of the judgment and the documentary evidence like Exh.P-72 (a) and (b) which contained the registration particulars of the vehicle. The

learned trial Judge declined to accept the contention of the defence counsel that the CBI had deliberately cooked up all the documents to advance the prosecution case. In para 102 of the judgment, the learned trial Judge has accepted the evidence of PW 23, who stated about the reconnaissance of the jeep along with road in front of Hamzas (deceased) house.

After considering the entire evidence, he held that the two vehicles used by the assailants for the murder of Hamza were the Fiat car bearing registration No.KLS 2226 and the jeep bearing No.CRX 1143 which were registered in fictitious names. Relying on the evidence of PWs 21 and 22 the learned trial Judge has observed that the complicity of A10 in the registration of the fiat car in the fictitious names has been duly established. Summing up his observations in para 106 of the judgment, the learned trial Judge held: the connection between A1, A7, A9 and A15 has been proved by the witnesses. Their complicity in various stages of the crime has also been brought out in evidence. The presence of A5 and A6 at the scene of occurrence has been spoken to by PW5. Similarly PW 11 has identified A3 in the jeep on 29.4.1989 at 5.30 PM . The testimony of these witnesses indicates that A3, A4 and A5 had also an active role in the incident.. The learned trial Judge has also taken into consideration the contention raised on behalf of the defence regarding non-examination of certain persons by the prosecution and has rejected the contentions giving cogent reasons. In para 121 of the judgment, the learned trial Judge has recorded the finding that the testimony of PWs 88 and 89 clearly proves that both the Magistrates have duly complied with the requirements of S.306 Cr.P.C in tendering pardon to PWs 1 to 3 and recording the reasons therefor.

The conspiracy angle of the case has been discussed from para 129 onwards of the judgment. Referring to the decisions of this Court like N.M.M.Y.Momin v. State of Maharashtra (AIR 1971 SC 885), S.C.Bahri v. State of Bihar (AIR 1994 SC 2420), Kehar Singh & Ors. Vs. State (Delhi Administration), 1989 Crl.L.J.1, the learned trial Judge observed, and in our view rightly, that it is settled law that criminal conspiracy can be proved by circumstantial evidence. Relying on the provisions of Section 10 of the Evidence Act, the learned trial Judge has held in para 135 of the judgment that the prosecution has succeeded in establishing conspiracy to murder Hamza and that A3, A4, A5, A7, A9 and A15 were responsible for the death of Hamza. On the findings recorded, the learned trial Judge found the said accused persons guilty of the offence under Section 302 read with Section 120-B and Section 34 of the IPC.

In para 136 onwards, the learned trial Judge discussed how the involvement of the accused persons other than those found guilty has not been established by the prosecution as beyond reasonable doubt. The learned trial Judge also discussed about the other charges of evidence other than those for which they have been guilty, as noted above, and held them not guilty of such offences. In para 160 of the judgment, the learned trial Judge held that the prosecution had not succeeded in establishing that the accused were guilty of the offences under Section 24 and 27 of the Arms Act.

Summing up his findings under point no.10, the learned trial Judge found A-3, A-4, A-5, A-7, A-9 and A-15 guilty of the offence under Section 120-B of the IPC; also found that A-3, A-4, A-5, A-7 guilty of offence under Section 302 r/w. Section 120-B and 34 IPC. He also found these accused persons guilty of the offence under Section 201 r/w. Section 120-B and 34 IPC. After hearing the

accused persons regarding the punishment to be imposed, the learned trial Judge sentenced the accused persons guilty and to undergo imprisonment for life u/s.,120-B IPC; similar sentence under Section 302 r/w.Section 120- B and 34 IPC and to undergo RI for five years under Section 201 r/w.Section 120-B and Section 34 IPC.

The High Court, as appears from the discussions in the judgment, has given a fresh look at the entire case, discussed the case of the prosecution, the evidence of the material witnesses, the relevant documents, contents whereof corroborate the oral evidence in the case and has assessed the prosecution evidence on the touch-stone of the genesis of the case and broad probabilities. The High Court has considered at length how Hamza (deceased) and his associate Aboobacker (PW 8) used to handle the movement of smuggled gold in close association with A-1 and members of his gang. How differences arose between them, how the informations given by them about movement of smuggled gold to the authorities of the Directorate of Revenue Intelligence had led to seizure of the consignment of smuggled gold valued at more than Rs.6 crores; suspecting the deceased and PW-8 as betrayers and deciding to eliminate them. The High Court referred to the relevant evidence in this regard like PW-7 wife of the deceased, PW-44 a trader in Kanhangad, PW-76 an officer of the DRI and placed reliance on the documentary evidence like Exhibits P 26, 27, 43, 44, 45. On the discussions of the evidence on the point, the High Court recorded the finding : The plea of issue of estoppel was rightly repelled and we agree with the correctness of the findings and observations in this regard in paragraphs 53 to 56 of the judgment. We also agree that the court below was right in the light of circumstances and the evidence of PWs 7, 8, 44, 53 and 76 that the first accused Pakistan Abdul Rahiman was the owner of the gold that was seized from the two cars from Thalappady and that seizure was made possible as per the advance information, evidenced by Ext.P 27.

Thereafter the High Court has proceeded to consider in detail the evidence of PW 8 regarding the smuggling activities which the deceased and the witness had carried on jointly with accused no.1 and his associates; after seizure of the consignment of gold the threat to life given by A-1 to the deceased and the witness. In this regard the High Court referred to the evidence of PWs 7, 8, 11, 23 and 44 and has taken note of the part of the prosecution case that the deceased had been kept under a sort of surveillance by some people engaged by AI even in his house. The High Court particularly discussed the evidence of PW 23, a retired Junior Commissioned Officer of the Army, who ran a security agency at Bangalore; whose services were hired for a sum of Rs.40,000/- through accused no.15 for eliminating Hamza (deceased) and has also taken note of the said witness PW 23. However, at the last moment he decided not to shoot Hamza(deceased). The High Court has also discussed the evidence of PWs 7, 8, 99 to show the role played by A2 to 9 and 15 and the activities leading to the incident.

Regarding the question of death of Hamza the High Court took note of the evidence of PWs 4 to 6 of whom PW 4 was declared hostile by the prosecution. PW 5 who was living close-by and reached the place of occurrence on hearing the explosions/gun shots identified A4, A5 and A15 as persons who had taken part in the incident. The High Court has cast a doubt about the acceptability of the evidence of this witness. The shortcomings of evidence of PW-6 were also duly taken note of by the court. The High Court agreed with the findings and observations made in paras 68 to 78 of the judgment of the trial Court regarding the evidence of PWs 4 to 6. Regarding the identification of the

vehicles which were used by the accused persons at different stages of the chain of incidents, the High Court took note of the evidence of PWs10 and 49 who had made the entries in the register Ex.P-65 relating to vehicle KRN 5531, PW 42, 43 and the evidence of PW 101, PW 66 and 93 and PWs 71 and 72 and endorsed the findings recorded by the trial Court in paras 139 to 143 as based on acceptable evidence and circumstances. In para 20 of the judgment the High Court summed up the prosecution case and observed that it had noted that the prosecution had established the background of the incident. The High Court also took note of the elaborate arrangements made by the principal accused through A-2 and A10, purchasing of the fiat car BLD-1034 and its re-registration as KRN 5531 in a fictitious name, the purchase of the jeep KLS 2226 from Kasargod and its re-registration as CRX 1143 also in a fictitious name and A-3 to A-5 who are reportedly from the underworld in Bombay and were hired for the murder; they were identified by PW 5; that after the incident the vehicles were taken to different places; a fiat car was traced at Goa on the information furnished by PW 1 and was seized by PW-101 in Ex.P-96; that the jeep was taken to Bangalore at the instance of A-7 by PW-66 and 93 whose evidence showed the direct involvement of A-7 who paid remuneration for taking the jeep and ultimately the jeep being sold to PWs 71 and 72 as scrap and its engine MO 84 being seized under Ex.P-106. The High Court further observed that the role of PW 23 and Pemmayya played at the instance of A-2 and A-15 was not without significance even if the actual murder was not in contemplation; that the exercise sought through them was to give a signal to the deceased of the impending danger to his life. The High Court concluded :The several items of evidence and circumstances established beyond doubt that there was a criminal conspiracy to murder Hamza at the instance of the first accused, in which A3 to 5, A7, 9 and 15, who stood trial, were involved as co-conspirators. The High Court concluded its judgment with the following observations/findings:

> Criminal conspiracy is not easy to prove. The conspirators invariably deliberate, plan and act in secret over a period of time. It is not necessary that each one of them must have actively participated in the commission of the offence or was involved in it from start to finish. What is important is that they were involved in the conspiracy or in other words, there is a combination by agreement, which may be express or implied and in part implied. The conspiracy arises and the offence is committed as soon as the agreement is made and the offence continues to be committed so long as the combination persists, that is until the conspiratorial agreement is terminated by completion of its performance or by abandonment or frustration. The court has to be satisfied that there is a reasonable ground to believe the existence of the conspiracy and that is a matter for judicial inference from proved facts and circumstances. Once the existence of conspiracy is proved or held to exist, no doubt on relevant evidence, every act, declaration and writing of any one of the conspirators referable to the common intention will be relevant. Hearsay is not excluded if it could be brought within the parameters of Section 10 of the Evidence Act. From the facts and circumstances of this case we have no doubt about the existence of the criminal conspiracy and the participation and involvement of A 3 to 5, A7, A9 and A15 (Firosuddin Basheeruddin @ Firoz, Kashinath Sankar Khare @ Sankar, Nandakumar Gopinath Banker @ Nandu, K.A.Mohammed Shaffi, Kareem Abdul Rahiman @ Abdul Rahiman and P.V.Mohammed Najeeb), besides others (about who it is not

proper to say anything since they had not faced trial). The above conspirators had made the necessary preparations, equipped themselves and successfully achieved the object of the conspiracy by the murder of Hamza. They had also sought the evidence of commission of the offence to disappear and to screen the offenders. The offences under Sections 302, 120B, 201 r/w.34 I.P.C. had been established against A3 to 5, 7, 9 and 15. We uphold their conviction and sentence as awarded on those counts and accordingly dismiss the criminal appeals.

Section 120A of the Indian Penal Code defines Criminal Conspiracy as follows :

When two or more persons agree to do, or cause to be done, (1) an illegal act, (2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy:

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof. Explanation It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object.

Section 120B, which prescribes in sub-section (1) the punishment for criminal conspiracy provides : Whoever is a party to a criminal conspiracy to commit an offence punishable with death, [imprisonment for life] or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in the Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.

Like most crimes, conspiracy requires an act (actus reus) and an accompanying mental state (mens rea). The agreement constitutes the act, and the intention to achieve the unlawful objective of that agreement constitutes the required mental state. In the face of modern organised crime, complex business arrangements in restraint of trade, and subversive political activity, conspiracy law has witnessed expansion in many forms. Conspiracy criminalizes an agreement to commit a crime. All conspirators are liable for crimes committed in furtherance of the conspiracy by any member of the group, regardless of whether liability would be established by the law of complicity. To put it differently, the law punishes conduct that threatens to produce the harm, as well as conduct that has actually produced it. Contrary to the usual rule that an attempt to commit a crime merges with the completed offense, conspirators may be tried and punished for both the conspiracy and the completed crime. The rationale of conspiracy is that the required objective manifestation of disposition to criminality is provided by the act of agreement. Conspiracy is a clandestine activity. Persons generally do not form illegal covenants openly. In the interests of security, a person may carry out his part of a conspiracy without even being informed of the identity of his co-conspirators. Since an agreement of this kind

can rarely be shown by direct proof, it must be inferred from circumstantial evidence of co-operation between the accused. What people do is, of course, evidence of what lies in their minds. To convict a person of conspiracy, the prosecution must show that he agreed with others that together they would accomplish the unlawful object of the conspiracy.

Another major problem which arises in connection with the requirement of an agreement is that of determining the scope of a conspiracy who are the parties and what are their objectives. The determination is critical, since it defines the potential liability of each accused. The law has developed several different models with which to approach the question of scope. One such model is that of a chain, where each party performs a role that aids succeeding parties in accomplishing the criminal objectives of the conspiracy. No matter how diverse the goals of a large criminal organisation, there is but one objective: to promote the furtherance of the enterprise. So far as the mental state is concerned, two elements required by conspiracy are the intent to agree and the intent to promote the unlawful objective of the conspiracy. It is the intention to promote a crime that lends conspiracy its criminal cast.

Conspiracy is not only a substantive crime. It also serves as a basis for holding one person liable for the crimes of others in cases where application of the usual doctrines of complicity would not render that person liable. Thus, one who enters into a conspiratorial relationship is liable for every reasonably foreseeable crime committed by every other member of the conspiracy in furtherance of its objectives, whether or not he knew of the crimes or aided in their commission. The rationale is that criminal acts done in furtherance of a conspiracy may be sufficiently dependent upon the encouragement and support of the group as a whole to warrant treating each member as a causal agent to each act. Under this view, which of the conspirators committed the substantive offence would be less significant in determining the defendants liability than the fact that the crime was performed as a part of a larger division of labor to which the accused had also contributed his efforts.

Regarding admissibility of evidence, loosened standards prevail in a conspiracy trial. Contrary to the usual rule, in conspiracy prosecutions any declaration by one conspirator, made in furtherance of a conspiracy and during its pendency, is admissible against each co- conspirator. Despite the unreliability of hearsay evidence, it is admissible in conspiracy prosecutions. Explaining this rule, Judge Hand said:

Such declarations are admitted upon no doctrine of the law of evidence, but of the substantive law of crime. When men enter into an agreement for an unlawful end, they become ad hoc agents for one another, and have made a partnership in crime. What one does pursuant to their common purpose, all do, and as declarations may be such acts, they are competent against all. (Van Riper v. United States 13 F.2d 961, 967 (2d Cir.1926).

Thus conspirators are liable on an agency theory for statements of co-conspirators, just as they are for the overt acts and crimes committed by their confreres.

Interpreting the provisions in Sections 120A and 120B of the IPC, this Court in the case of Yash Pal Mittal v. State of Punjab (1977) 4 SCC 540 in para 9 at pages 543 & 544, made the following observations :

The offence of criminal conspiracy under Section 120-A is a distinct offence introduced for the first time in 1913 in Chapter V-A of the Penal Code. The very agreement, concert or league is the ingredient of the offence. It is not necessary that all the conspirators must know each and every detail of the conspiracy as long as they are co-conspirators in the main object of the conspiracy. There may be so many devices and techniques adopted to achieve the common goal of the conspiracy and there may be division of performances in the chain of actions with one object to achieve the real end of which every collaborator must be aware and in which each one of them must be interested. There must be unity of object or purpose but there may be plurality of means sometimes even unknown to one another, amongst the conspirators. In achieving the goal several offences may be committed by some of the conspirators even unknown to the others. The only relevant factor is that all means adopted and illegal acts done must be and purported to be in furtherance of the object of the conspiracy even though there may be sometimes misfire or overshooting by some of the conspirators. Even if some steps are resorted to by one or two of the conspirators without the knowledge of the others it will not affect the culpability of those others when they are associated with the object of the conspiracy. The significance of criminal conspiracy under Section 120-A is brought out pithily by this Court in Major E.G.Barsay v. State of Bombay (1962) 2 SCR 195 thus:

The gist of the offence is an agreement to break the law. The parties to such an agreement will be guilty of criminal conspiracy, though the illegal act agreed to be done has not been done. So too, it is not an ingredient of the offence that all the parties should agree to do a single illegal act. It may comprise the commission of a number of acts. Under Section 43 of the Indian Penal Code, an act would be illegal if it is an offence or if it is prohibited by law. Under the first charge the accused are charged with having conspired to do three categories of illegal acts, and the mere fact that all of them could not be convicted separately in respect of each of the offences has no relevancy in considering the question whether the offence of conspiracy has been committed. They are all guilty of the offence of conspiracy to do illegal acts, though for individual offences all of them may not be liable.

We are in respectful agreement with the above observations with regard to the offence of criminal conspiracy.

In the case of Kehar Singh and Others v. State (Delhi Administration, (1988) 3 SCC 609, a bench of three learned Judges in paras 271 to 276 held :

Before considering the other matters against Balbir Singh, it will be useful to consider the concept of criminal conspiracy under Sections 120-A and 120-B of IPC. These provisions have brought the Law of Conspiracy in India in line with the English law by making the overt act unessential when the conspiracy is to commit any punishable offence. The English law on this matter is well settled. The following passage from Russel on Crime (12th edn., Vol.I, p.202) may be usefully noted :

The gist of the offence of conspiracy then lies, not in doing the act, or effecting the purpose for which the conspiracy is formed, nor in attempting to do them, nor in inciting others to the parties. Agreement is essential. Mere knowledge, or even discussion, of the plan is not, per se, enough.

Glanville Williams in the Criminal Law (2nd edn. p.382) explains the proposition with an illustration :

The question arose in an Iowa case, but it was discussed in terms of conspiracy rather than of accessoryship. D, who had a grievance against P, told E that if he would whip P someone would pay his fine. E replied that he did not want anyone to pay his fine, that he had a grievance of his own against P and that he would whip him at the first opportunity. E whipped P. D was acquitted of conspiracy because there was no agreement for concert of action, no agreement to co-operate.

Coleridge,J., while summing up the case to jury in Regina v. Murphy (173 Eng. Reports 508) pertinently states :

I am bound to tell you, that although the common design is the root of the charge, it is not necessary to prove that these two parties came together and actually agreed in terms to have this common design and to pursue it by common means, and so to carry it into execution. This is not necessary, because in many cases of the most clearly established conspiracies there are no means of proving any such thing, and neither law nor common sense requires that it should be proved. If you find that these two persons pursued by their acts the same object, often by the same means, one performing one part of an act, so as to complete it, with a view to the attainment of the object which they were pursuing, you will be at liberty to draw the conclusion that they have been engaged in a conspiracy to effect that object. The question you have to ask yourselves is, Had they this common design, and did they pursue it by these common means the design being unlawful? It will be thus seen that the most important ingredient of the offence of conspiracy is the agreement between two or more persons to do an illegal act. The illegal act may or may not be done in pursuance of agreement, but the very agreement is an offence and is punishable. Reference to Sections 120-A and 120-B IPC would make these aspects clear beyond doubt. Entering into an agreement by two or more persons to do an illegal act or legal act by illegal means is the very quintessence of the offence of conspiracy.

Generally, a conspiracy is hatched in secrecy and it may be difficult to adduce direct evidence of the same. The prosecution will often rely on evidence of acts of various parties to infer that they were done in reference to their common intention. The prosecution will also more often rely upon circumstantial evidence. The conspiracy can be undoubtedly proved by such evidence direct or circumstantial. But the court must enquire whether the two persons are independently pursuing the same end or they have come together in the pursuit of the unlawful object. The former does not render them conspirators, but the latter does. It is, however, essential that the offence of conspiracy requires some kind of physical manifestation of agreement. The express agreement, however, need not be proved. Nor actual meeting of two persons is necessary. Nor it is necessary to prove the actual words of communication. The evidence as to transmission of thoughts sharing the unlawful design may be sufficient. Gerald Orchard of University of Canterbury, New Zealand explains the limited nature of this proposition :

Although it is not in doubt that the offence requires some physical manifestation of agreement, it is important to note the limited nature of this proposition. The law does not require that the act of agreement take any particular form and the fact of agreement may be communicated by words or conduct. Thus, it has been said that it is unnecessary to prove that the parties actually came together and agreed in terms to pursue the unlawful object : there need never have been an express verbal agreement, it being sufficient that there was a tacit understanding between conspirators as to what should be done.

I share this opinion, but hasten to add that the relative acts or conduct of the parties must be conscientious and clear to mark their concurrence as to what should be done. The concurrence cannot be inferred by a group if irrelevant facts artfully arranged so as to give an appearance of coherence. The innocuous, innocent or inadvertent events and incidents should not enter the judicial verdict. We must thus be strictly on our guard.

In the case of State of Maharashtra & Ors. vs. Som Nath Thapa & Ors., (1996) 4 SCC 659, a bench of three learned Judges observed in paras 22 24 :

As in the present case the bomb blast was a result of a chain of actions, it is contended on behalf of the prosecution, on the strength of this Courts decision in Yash Pal Mittal v. State of Punjab which was noted in para 9 of Ajay Aggarwal case (1993)3 SCC 609 that of such a situation there may be division of performances by plurality of means sometimes even unknown to one another; and in achieving the goal several offences may be committed by the conspirators even unknown to the others. All that is relevant is that all means adopted and illegal acts done must be and purported to be in furtherance of the object of the conspiracy, even though there may be sometimes misfire or overshooting by some of the conspirators.

Our attention is pointedly invited by Shri Tulsi to what was stated in para 24 of Ajay Aggarwal case wherein Ramaswamy, J. stated that the law has developed several or different models or techniques to broach the scope of conspiracy. One such model is that of a chain, where each party performs even without knowledge of the other, a role that aides succeeding parties in accomplishing the criminal objectives of the conspiracy. The illustration given was what is done in the process of procuring and distributing narcotics or an illegal foreign drug for sale in different parts of the globe. In such a case, smugglers, middlemen, retailers are privies to a single conspiracy to smuggle and distribute narcotics. The smugglers know that the middlemen must sell to retailers; and the retailers know that the middlemen must buy from importers. Thus the conspirators at one end of the chain know that the unlawful business would not, and could not, stop with their buyers, and those at the other end know that it had not begun with their settlers. The action of each has to be considered as a spoke in the hub there being a rim to bind all the spokes together in a single conspiracy.

The aforesaid decisions, weighty as they are, lead us to conclude that to establish a charge of conspiracy knowledge about indulgence in either an illegal act or a legal act by illegal means is necessary. In some cases, intent of unlawful use being made of the goods or services in question may be inferred from the knowledge itself. This apart, the prosecution has not to establish that a particular unlawful use was intended, so long as the goods or service in question could not be put to any lawful use. Finally, when the ultimate offence consists of a chain of actions, it would not be necessary for the prosecution to establish, to bring home the charge of conspiracy, that each of the conspirators had the knowledge of what the collaborator would do, so long as it is known that the collaborator would put the goods or service to an unlawful use."

This Court in the case of Mehbub Samsuddin Malek & Ors. Vs. State of Gujarat, (1996) 10 SCC 480, holding the conviction of the accused under Section 120-B of the IPC on drawing inference regarding an agreement from the circumstances, observed in para 37:

It was, however, contended by the learned counsel for the appellants that even if the prosecution evidence against Appellant 1 is believed his conviction under Section 120-B cannot be sustained. It was contended that when the bus started from the station Appellant 1 did not know that a communal disturbance had taken place near Mandavi and that a mob of Muslim boys would be standing at the entrance of Rajpura Pole. Thus there was no scope whatsoever for him to hatch a conspiracy with the mob near the entrance of Rajpura Pole. It was also submitted that Appellant 2s getting down from the bus and going near the mob was consistent with his innocence and in all probability he had gone near the mob to say that he was a Muslim and therefore he should not be beaten. He submitted that before an accused can be convicted under Section 120-B the prosecution has to establish an agreement and an agreement requires at least two persons. In this case there is nothing on record to show that there was an agreement between Appellant 1 and any person from that

mob. In our opinion there is no substance in this contention. The prosecution case was that sensing some trouble and seeing a mob of armed Muslim boys standing at the entrance of Rajpura Pole Appellant 1 stopped the bus just opposite Rajpura Pole with a view to facilitate an attack on the passengers by the said mob. In spite of the request of passengers he did not start the bus before the mob and had some discussion with the persons of that mob. Thereafter the mob came near the bus and assaulted the passengers. That was the conspiracy alleged by the prosecution. If really the bus had stopped because of the mob coming in front of it then it was not necessary for him to get down from the bus. He could have disclosed his identify even by remaining in the bus. In view of the evidence of the eyewitnesses, the explanation given by him has to be regarded as false. His conduct is also inconsistent with his innocence. The stopping of the bus at a place where there was no necessity to stop it, his getting down from the bus and going across the road right up to the entrance of the Rajpura Pole and talking to the persons in the said mob leads to an irresistible inference that he not only facilitated the attack on the passengers by stopping the bus just opposite the assembly to attack the passengers. Thus an agreement between him and the said unlawful assembly is satisfactorily established by the prosecution and therefore his conviction under Section 120-B IPC also deserves to be upheld.

In the case of State through Superintendent of Police, CBI/SIT etc.etc. vs. Nalini & Ors. Etc.etc., (1999) 5 SCC 253, discussing the principles governing the Law of Conspiracy in the case under Sections 120-A, 120-B and 302 of IPC, Wadhwa, J., summarised the principles in para 583 as follows :

Some of the broad principles governing the law of conspiracy may be summarized though, as the name implies, a summary cannot be exhaustive of the principles.

1. Under Section 120-A IPC offence of criminal conspiracy is committed when two or more persons agree to do or cause to be done an illegal act or legal act by illegal means. When it is a legal act by illegal means overt act is necessary. Offence of criminal conspiracy is an exception to the general law where intent alone does not constitute crime. It is intention to commit crime and joining hands with persons having the same intention. Not only the intention but there has to be agreement to carry out the object of the intention, which is an offence. The question for consideration in a case is did all the accused have the intention and did they agree that the crime be committed. It would not be enough for the offence of conspiracy when some of the accused merely entertained a wish, howsoever horrendous it may be, that offence be committed.

2. Acts subsequent to the achieving of the object of conspiracy may tend to prove that a particular accused was party to the conspiracy.

Once the object of conspiracy has been achieved, any subsequent act, which may be unlawful, would not make the accused a part of the conspiracy like giving shelter to an absconder.

3. Conspiracy is hatched in private or in secrecy. It is rarely possible to establish a conspiracy by direct evidence. Usually, both the existence of the conspiracy and its objects have to be inferred from the circumstances and the conduct of the accused.

4. Conspirators may for example, be enrolled in a chain A enrolling B, B enrolling C, and so on; and all will be members of a single conspiracy if they so intend and agree, even though each member knows only the person who enrolled him and the person whom he enrols.

There may be a kind of umbrella-spoke enrolment, where a single person at the centre does the enrolling and all the other members are unknown to each other, though they know that there are to be other members. These are theories and in practice it may be difficult to tell which conspiracy in a particular case falls into which category. It may however, even overlap. But then there has to be present mutual interest. Persons may be members of single conspiracy even though each is ignorant of the identity of many others who may have diverse roles to play. It is not a part of the crime of conspiracy that all the conspirators need to agree to play the same or an active role.

5. When two or more persons agree to commit a crime of conspiracy, then regardless of making or considering any plans for its commission, and despite the fact that no step is taken by any such person to carry out their common purpose, a crime is committed by each and every one who joins in the agreement.

There has thus to be two conspirators and there may be more than that. To prove the charge of conspiracy it is not necessary that intended crime was committed or not. If committed it may further help prosecution to prove the charge of conspiracy.

6. It is not necessary that all conspirators should agree to the common purpose at the same time. They may join with other conspirators at any time before the consummation of the intended objective, and all are equally responsible. What part each conspirator is to play may not be known to everyone or the fact as to when a conspirator joined the conspiracy and when he left.

7. A charge of conspiracy may prejudice the accused because it forces them into a joint trial and the court may consider the entire mass of evidence against every accused. Prosecution has to produce evidence not only to show that each of the accused has knowledge of the object of conspiracy but also of the agreement. In the charge of conspiracy the court has to guard itself against the danger of unfairness to the accused. Introduction of evidence against some may result in the conviction of all, which is to be avoided. By means of evidence in conspiracy, which is otherwise inadmissible in the trial of any other substantive offence prosecution tries to implicate the accused not only in the conspiracy itself but also in the substantive crime of the alleged conspirators. There is always difficulty in tracing the precise contribution of each member of the conspiracy but then there has to be cogent and convincing evidence against each one of the accused charged with the offence of conspiracy. As observed by Judge Learned Hand this distinction is important today when many prosecutors seek to sweep within the dragnet of conspiracy all those who have been associated in any degree whatever with the main offenders.

8. As stated above it is the unlawful agreement and not its accomplishment, which is the gist or essence of the crime of conspiracy. Offence of criminal conspiracy is complete even though there is no agreement as to the means by which the purpose is to be accomplished. It is the unlawful agreement which is the gravamen of the crime of conspiracy. The unlawful agreement which amounts to a conspiracy need not be formal or express, but may be inherent in and inferred from the circumstances, especially declarations, acts and conduct of the conspirators. The agreement need not be entered into by all the parties to it at the same time, but may be reached by successive actions evidencing their joining of the conspiracy.

9. It has been said that a criminal conspiracy is a partnership in crime, and that there is in each conspiracy a joint or mutual agency for the prosecution of a common plan. Thus, if two or more persons enter into a conspiracy, any act done by any of them pursuant to the agreement is, in contemplation of law, the act of each of them and they are jointly responsible therefor. This means that everything said, written or done by any of the conspirators in execution or furtherance of the common purpose is deemed to have been said, done or written by each of them. And this joint responsibility extends not only to what is done by any of the conspirators pursuant to the original agreement but also to collateral acts incidental to and growing out of the original purpose A conspirator is not responsible, however, for acts done by a co-

conspirator after termination of the conspiracy. The joinder of a conspiracy by a new member does not create a new conspiracy nor does it change the status of the other conspirators, and the mere fact that conspirators individually or in groups perform different tasks to a common end does not split up a conspiracy into several different conspiracies.

10. A man may join a conspiracy by word or by deed. However, criminal responsibility for a conspiracy requires more than a merely passive attitude towards an existing conspiracy. One who commits an overt act with knowledge of the conspiracy is guilty. And one who tacitly consents to the object of a conspiracy and goes along with other conspirators, actually standing by while the others put the conspiracy into effect, is guilty though he intends to take no active part in the crime.

Interpreting the provisions in Sections 120A and 120B of the IPC, this Court in the case of Saju vs. State of Kerala, (2001) 1 SCC 378 held:

> To prove the charge of criminal conspiracy the prosecution is required to establish that two or more persons had agreed to do or caused to be done, an illegal act or an act which is not legal, by illegal means. It is immaterial whether the illegal act is the ultimate object of such crime or is merely incidental to that object. To attract the applicability of Section 120-B it has to be proved that all the accused had the intention and they had agreed to commit the crime. There is no doubt that conspiracy is hatched in private and in secrecy for which direct evidence would rarely be available. It is also not necessary that each member to a conspiracy must know all the details of the conspiracy. This Court in Yash Pal Mittal v. State of Punjab (1977) 4 SCC 540 held:

(SCC p.543-44, para 9) The offence of criminal conspiracy under Section 120-A is a distinct offence introduced for the first time in 1913 in Chapter V-A of the Penal Code. The very agreement, concert or league is the ingredient of the offence. It is not necessary that all the conspirators must know each and every detail of the conspiracy as long as they are con-conspirators in the main object of the conspiracy. There may be so many devices and techniques adopted to achieve the common goal of the conspiracy and there may be division of performances in the chain of actions with one object to achieve the real end of which every collaborator must be aware and in which each one of them must be interested. There must be unity of object or purpose but there may be plurality of means sometimes even unknown to one another, amongst the conspirators. In achieving the goal several offences may be committed by some of the conspirators even unknown to the others. The only relevant factor is that all means adopted and illegal acts done must be and purported to be in furtherance of the object of the conspiracy even though there may be sometimes misfire or overshooting by some of the conspirators. Even if some steps are resorted to by one or two of the conspirators without the knowledge of the others it will not affect the culpability of those others when they are associated with the object of the conspiracy. The significance of criminal conspiracy under Section 120-A is brought out pithily by this Court in E.G.Barsay v. State of Bombay (1962) 2 SCR 195 (SCR at p.228) thus:

The gist of the offence is an agreement to break the law. The parties to such an agreement will be guilty of criminal conspiracy, though the illegal act agreed to be done has not been done. So too, it is not an ingredient of the offence that all the parties should agree to do a single illegal act. It may comprise the commission of a number of acts. Under Section 43 of the Indian Penal Code, an act would be illegal if it is an offence or if it is prohibited by law. Under the first charge the accused are charged with having conspired to do three categories of illegal acts, and the mere fact that all of them could not be convicted separately in respect of each of the offences has no relevancy in considering the question whether the offence of conspiracy has been committed. They are all guilty of the offence of conspiracy to do illegal acts, though for individual offences all of them may not be liable.

We are in respectful agreement with the above observations with regard to the offence of criminal conspiracy.

It has thus to be established that the accused charged with criminal conspiracy had agreed to pursue a course of conduct which he knew was leading to the commission of a crime by one or more persons to the agreement, of that offence. Besides the fact of agreement the necessary mens rea of the crime is also required to be established.

We have perused the judgments of both the Courts below and considered the entire case on the touch-stone of well recognised principles for judging a case of criminal conspiracy. The prosecution has been able to unfold the case relating to the criminal conspiracy to eliminate Hamza (deceased)

by placing on record the chain of circumstances. We find that both the trial Court and the High Court discussed the relevant evidence on record taking care to exclude the portions not acceptable and /or tenable in law. The courts below have also been fair in discussing the contentions raised on behalf of the defence in some detail and have given cogent reasons for rejecting the same. We do not find that the judgments of the Courts below suffer from any illegality in the approach to the case or any perversity in appreciation of the evidence on record. We have no hesitation to hold that the judgment of the High Court confirming the judgment/order of the trial Court convicting and sentencing the appellants, does not call for any interference. Accordingly the appeals are dismissed.

...J. (K.T.THOMAS) J. (D.P.MOHAPATRA) August 20, 2001