

that where the criminal conspiracy is one to which the provisions of section 195 apply, no such consent shall be necessary.<sup>111.</sup>

**2. Sentence.**—Where the accused is charged both under section 109 as well as [section 120B, IPC, 1860](#), and the offence abetted is shown to have been committed as a result of the abetment, the abettor should be punished with the imprisonment provided for the principal offence under [section 109, IPC, 1860](#), and no separate sentence need be recorded under [section 120B IPC, 1860](#).<sup>112.</sup> Where the charge of conspiracy fails, the individual accused could still be convicted for the offences committed by them and sentenced accordingly.<sup>113.</sup> Where no jail term was awarded to the principal accused in a conspiracy and he was let off with fine alone, it was held that substantive sentence of imprisonment awarded to the other accused was wrongful and, therefore, they also were ordered to pay fine only.<sup>114.</sup> Where six of the seven persons accused of criminal conspiracy were acquitted, remaining one accused could not be convicted merely for being the head of the section of the branch where fraud was alleged to have been committed.<sup>115.</sup> Where the appellant-accused was one of the active members of the criminal conspiracy along with other accused and hatched the plan to kill/eliminate the deceased and in furtherance thereof other accused persons successfully killed/eliminated the deceased and it was not the case of the appellant-accused and nor was urged also that his case fell under Section 120(2) so as to be awarded less sentence as prescribed therein, the conviction and award of life sentence as prescribed under [Section 302](#) read with [Section 120B, IPC, 1860](#) was held proper.<sup>116.</sup> The accused pleaded guilty to conspiring to cause a public nuisance. He conspired with others to interfere with a premier division football match by means of extinguishing the floodlights while the match was in progress. The object of doing so was to affect bets placed on the match abroad, which depended on the score at the time when the lights were switched off and the match was abandoned. The plan was not put into effect and the accused and others were arrested before the match was due to take place. The accused would have received substantial reward for his role. He was sentenced to four years' imprisonment. His appeal was dismissed. The Court said that the practice of interfering with such an important sporting fixture was something which should be actively discouraged by severe sentences. The sentence could not be described as manifestly excessive.<sup>117.</sup>

**Law relating to Conspiracy as summarised by the Supreme Court in *State of TN through Superintendent of Police, CBI/SIT v Nalini*, (AIR 1999 SC 2640 [LNIND 1999 SC 1584] : (1999) 5 SCC 253 [LNIND 1999 SC 526] : JT 1999 (4) SC 106 [LNIND 1999 SC 526] : 1999 Cr LJ 3124 ).**

1. Under [Section 120A, IPC, 1860](#), 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 legal act by illegal means overt act is necessary. Offence of criminal conspiracy is 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 had 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 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.

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 chain A enrolling B, B enrolling C, and so on and all will be members of the single conspiracy if they so intend and agree, even though each member knows only the person who enrolled him and the person whom he enrolls. There may be a kind of umbrella-spoke enrolment, where a single person at the centre doing the enrolling and all the other members being 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 whether the 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 role 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 is forced 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 object of conspiracy but also of the agreement. In the charge of conspiracy 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 difficult 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 to Judge Learned Hand that "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 incident 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 other but the conspiracy into effect, is guilty though he intends to take no active part in the crime.

1. Chapter VA (containing sections 120A and 120B) inserted by Act 8 of 1913, section 3.

91. Subs. by Act 26 of 1955, section 117 and Sch., for transportation for life (w.e.f. 1-1-1956).

92. *State (NCT) of Delhi v Navjot Sandhu @ Afsan Guru*, 2005 Cr LJ 3950 : (2005) 11 SCC 600 [LNIND 2005 SC 580] .

93. *State of MP v Sheetla Sahai*, 2009 Cr LJ 4436 : (2009) 8 SCC 617 : (2009) 3 SCC(Cr) 901.

94. *Alim Jan Bibi*, (1937) 1 Cal 484 . It is not necessary that each and every conspirator must have taken part in the commission of the act. *State of HP v Krishanlal Pradhan*, AIR 1987 SC 773 [LNIND 1987 SC 131] : 1987 Cr LJ 709 : (1987) 2 SCC 17 [LNIND 1987 SC 131] . *Govt of NCT of Delhi v Jaspal Singh*, (2003) 10 SCC 586 [LNIND 2003 SC 649] , essential requirements of charge under the section. *Ram Narayan Popli v CBI*, AIR 2003 SC 2748 [LNIND 2003 SC 26] : (2003) 3 SCC 641 [LNIND 2003 SC 26] , statement of ingredients. *Nazir Khan v State of Delhi*, AIR 2003 SC 4427 [LNIND 2003 SC 696] : (2003) 8 SCC 461 [LNIND 2003 SC 696] , statement of ingredients and matters of proof.

95. *Subbaiah*, AIR 1961 SC 1241 [LNIND 1961 SC 95] . See also *Mohd Hussain v KS Dalipsinghji*, AIR 1970 SC 45 [LNIND 1969 SC 147] : (1970) 1 SCR 130 [LNIND 1969 SC 147] . See also *Jagdish Prasad v State of Bihar*, 1990 Cr LJ 366 Pat, conspiracy with railway employees to procure allotment of wagons under cover of fake letters. *State of Rajasthan v Govind Ram Bagdiya*, 2003 Cr LJ 1169 (Raj), the prosecution has to prove the elements of conspiracy. No

proof was forthcoming in this case in the matter of allotment of house of any conspiracy among officials to manipulate the system.

96. *Abdul Kadar v State*, (1963) 65 Bom LR 864 . For an example of a failed prosecution under this section see *State of UP v Pheru Singh*, AIR 1989 SC 1205 : 1989 Cr LJ 1135 . In *Darshan Singh v State of Punjab*, AIR 1983 SC 554 [LNIND 1983 SC 95] : 1983 Cr LJ 985 : (1983) 2 SCC 411 [LNIND 1983 SC 95] , the Supreme Court considered it to be unbelievable that the accused hatched their plot while taking drinks in the presence of a stranger. For proof of conspiracy it often becomes necessary to convert one of the conspirators into an approver witness and this may require corroboration. See *Balwant Kaur v UT Chandigarh*, AIR 1988 SC 139 [LNIND 1987 SC 738] : 1988 Cr LJ 398 . The absence of one of the conspirators at one of their meetings does not by itself rule out his complicity. Conspiracies are hatched under cover of secrecy. They are generally proved by circumstantial evidence, *EK Chandrasenan v State of Kerala*, AIR 1995 SC 1066 [LNIND 1995 SC 88] : 1995 Cr LJ 1445 ; *Aniceto Lobo v State (Goa, Daman and Diu)*, AIR 1994 SC 1613 : 1994 Cr LJ 1582 : 1993 Supp (3) SCC 311 , conspiracy of three persons, one of whom, being bank employee, took out blank drafts, the other forged signatures and third opened accounts in fictitious names to encash the drafts, all of them were held to be equally guilty of the offence.

97. *Esher Singh v State of AP*, AIR 2004 SC 3030 [LNIND 2004 SC 329] : (2004) 11 SCC 585 [LNIND 2004 SC 329] .

98. *Damodar v State of Rajasthan*, AIR 2003 SC 4414 [LNIND 2003 SC 803] : 2003 Cr LJ 5014 : (2004) 12 SCC 336 [LNIND 2003 SC 803] . *R Sai Bharathi v J Jayalalitha*, AIR 2004 SC 692 [LNIND 2003 SC 1023] : 2004 Cr LJ 286 : (2004) 2 SCC 9 [LNIND 2003 SC 1023] , alleged conspiracy was to dispose of by auction the property of a Govt Co at a low price, but the bids made by the alleged conspirators reflected a fair price. Ingredients of the section not made out. *Hardeep Singh Sohal v State of Punjab*, AIR 2004 SC 4716 [LNIND 2004 SC 902] : (2004) 11 SCC 612 [LNIND 2004 SC 1006] conspiracy for murder not proved. Another charge of conspiracy for murder was rejected in *Hem Raj v State of Punjab*, AIR 2003 SC 4259 [LNIND 2003 SC 759] : 2003 Cr LJ 4987 : (2003) 12 SCC 241 [LNIND 2003 SC 759] . *State of HP v Satya Dev Sharma*, (2002) 10 SCC 601 , criminal conspiracy between timber merchants and private landowners and Government officials for falling and misappropriating trees standing on Government land.

99. *State of TN v Nalini*, AIR 1999 SC 2640 [LNIND 1999 SC 1584] : 1999 Cr LJ 3124 . Under TADA (repealed) such confession had the status of evidence. *Ram Singh v State of HP*, AIR 1997 SC 3483 [LNIND 1997 SC 1060] : 1997 AIR SCW 1331 : 1997 Cr LJ 4091 , in a murder by some persons, the accused persons assisted them in causing disappearance of the dead body secretly in furtherance of their conspiracy, their conviction under sections 201-120B was held to be proper. *Subhash Harnarayanji Laddha v State of Maharashtra*, (2006) 12 SCC 545 [LNIND 2006 SC 1088] , conspiracy not proved. *Mallanna v State of Karnataka*, (2007) 8 SCC 523 [LNIND 2007 SC 1526] , conspiracy not proved.

100. *R Balkrishna Pillai v State of Kerala*, 1996 Cr LJ 757 (Ker); *Devender Pal Singh v State (NCT) of Delhi*, 2002 Cr LJ 2034 (SC), acquittal of a co-accused on the ground of non-corroboration of the confessional statement did not have the effect of demolishing the prosecution regarding conspiracy *Saju v State of Kerala*, 2001 Cr LJ 102 (SC), no evidence to show that the accused was responsible for pregnancy or insisted upon its termination. The accused and co-accused were fellow workers and seemed to be hired killers. They were seen together at the place of the incident both before and after it. That was held to be not sufficient to prove charge of conspiracy against them. *State of HP v Jai Lal*, AIR 1999 SC 3318 [LNIND 1999 SC 798] : 1999 Cr LJ 4294 State Government scheme of purchasing infected apples from growers and destroying them. Allegations that some of them over charged by inflating weight. But no evidence of

experts about overweight, etc., charge not proved. *Premlata v State of Rajasthan*, 1998 Cr LJ 1430 (Raj), a charge-sheet was not quashed where there was evidence to believe that the two accused persons had conspired to produce a document for fulfilling the eligibility criteria for an appointment. *Central Bureau of Investigation v VC Shukla*, AIR 1998 SC 1406 [LNIND 1998 SC 272] : 1998 Cr LJ 1905 , the prosecution could not prove that one of the two accused was a party to the conspiracy. *Arun Gulab Gawli v State of Maharashtra*, 1998 Cr LJ 4481 (Bom) mere inference cannot invite punishment.

101. *Mohd Amin v CBI*, (2008) 15 SCC 49 [LNIND 2008 SC 2255] : (2009) 3 SCC (Cr) 693.

102. *Soma Chakravarty v State*, AIR 2007 SC 2149 [LNIND 2007 SC 632] : (2007) 5 SCC 403 [LNIND 2007 SC 632] .

103. *T Shankar Prasad v State of AP*, AIR 2004 SC 1242 [LNIND 2004 SC 41] : 2004 Cr LJ 884 : (2004) 3 SCC 753 [LNIND 2004 SC 41] .

104. *Yashpal v State*, AIR 1977 SC 2433 [LNIND 1977 SC 304] : 1978 Cr LJ 189 . See also *Vinod Kumar Jain v State through CBI*, 1991 Cr LJ 669 (Del); *State of Bihar v Simranjit Singh Mann*, 1987 Cr LJ 999 (Pat).

105. *Nirmal Puri (Lt Gen Retd) v UOI*, 2002 Cr LJ 158 (Del).

106. *Iridium India Telecom Ltd v Motorola Incorporated*, AIR 2011 SC 20 [LNIND 2010 SC 1012] : 2010 AIR (SCW) 6738 : JT 2010 (11) SC 492 [LNIND 2010 SC 1012] : (2011) 1 SCC 74 [LNIND 2010 SC 1012] : (2010) 3 SCC(Cr) 1201 : 2010 (11) Scale 417 ; relied on *Standard Chartered Bank v Directorate of Enforcement*, AIR 2005 SC 2622 [LNIND 2005 SC 476] : (2005) 4 SCC 530 [LNIND 2005 SC 476] : 2005 SCC (Cr) 961.

107. *Padam Chand v The State of Bihar*, 2016 Cr LJ 4998 (Pat) : 2016 (3) PLJR 258 .

108. *Sanjiv Rajendra Bhatt v UOI*, 2016 Cr LJ 185 : (2016) 1 SCC 1 [LNIND 2015 SC 596] .

109. *Chandran v State*, AIR 2011 SC 1594 [LNIND 2011 SC 358] : (2011) 5 SCC 161 [LNIND 2011 SC 358] : (2011) 2 SCC(Cr) 551 : (2011) 8 SCR 273 [LNIND 2011 SC 358] ; Also see *Ravinder Singh @ Ravi Pavar v State of Gujarat*, AIR 2013 SC 1915 2013 Cr LJ 1832.

110. *State of Karnataka v Selvi J Jayalalitha*, 2017 (2) Scale 375 [LNIND 2017 SC 72] : 2017 (1) RCR (Criminal) 802.

111. Section 196(2) of Code of Criminal Procedure, 1973.

112. *State of TN v Savithri*, 1976 Cr LJ 37 (Mad).

113. *State of Orissa v Bishnu Charan Muduli*, 1985 Cr LJ 1573 (Ori).

114. *CR Mehta v State of Maharashtra*, 1993 Cr LJ 2863 (Bom). The Court referred to *Rameshwar Dayal v State of UP*, 1971 (3) SCC 924 : 1972 SCC (Cr) 172.

115. *BN Narasimha Rao v Govt of AP*, 1995 Cr LJ 4181 (SC), reversing AP High Court. See also *Sayed Mohd Owais v State of Maharashtra*, 2003 Cr LJ 303 (Bom).

116. *Bilal Hajar v State*, AIR 2018 SC 4780 [LNIND 2018 SC 520] .

117. *R v Chee Kew Ong*, (2001) 1 Cr App R (S) 117 [CA (Crim Div)].

# THE INDIAN PENAL CODE

## 1. CHAPTER V-A CRIMINAL CONSPIRACY

### [s 120A] Definition of criminal conspiracy.

When two or more persons agree to do, or cause to be done,—

- (1) an illegal act, or
- (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.

### COMMENT—

**Criminal conspiracy.**—This chapter has introduced into the criminal law of India a new offence, viz., the offence of criminal conspiracy. It came into existence by the Criminal Law (Amendment) Act, 1913. 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.<sup>2</sup> Law making conspiracy a crime is designed to curb immoderate power to do mischief which is gained by a combination of the means. The encouragement and support which co-conspirators give to one another rendering enterprises possible which, if left to individual effort, would have been impossible, furnish the ground for visiting conspirators and abettors with condign punishment. The conspiracy is held to be continued and renewed as to all its members wherever and whenever any member of the conspiracy acts in furtherance of the common design. Offence of criminal conspiracy has its foundation in an agreement to commit an offence. A conspiracy consists not merely in the intention of two or more, but in the agreement of two or more to do an unlawful act by unlawful means.<sup>3</sup> A criminal conspiracy must be put to action inasmuch as so long a crime is generated in the mind of an accused, it does not become punishable. What is necessary is not thoughts, which may even be criminal in character, often involuntary, but offence would be said to have been committed thereunder only when that take concrete shape of an agreement to do or cause to be done an illegal act or an act which although not illegal by illegal means and then if nothing further is done the agreement would give rise to a criminal conspiracy.<sup>4</sup>

### [s 120A.1] Ingredients.—

The ingredients of this offence are—

- (1) that there must be an agreement between the persons who are alleged to

conspire; and

- (2) that the agreement should be
  - (i) for doing of an illegal act, or
  - (ii) for doing by illegal means an act which may not itself be illegal.<sup>5</sup>  
Meeting of minds of two or more persons for doing or causing to be done an illegal act or an act by illegal means is *sine qua non* of criminal conspiracy.<sup>6</sup>

The most important ingredient of the offence being, the agreement between two or more persons to do an illegal act. In a case where criminal conspiracy is alleged, the court must inquire whether the two persons are independently pursuing the same end or they have come together to pursue the unlawful object. The former does not render them as conspirators but the latter does. For the offence of conspiracy some kind of physical manifestation of agreement is required to be established. The express agreement need not be proved. The evidence as to the transmission of thoughts sharing the unlawful act is not sufficient. A conspiracy is a continuing offence which continues to subsist till it is executed or rescinded or frustrated by choice of necessity. During its subsistence whenever any one of the conspirators does an act or series of acts, he would be held guilty under [section 120-B of the Indian Penal Code, 1860 \(IPC, 1860\)](#).<sup>7</sup>

[s 120A.2] **Elements of Criminal Conspiracy.—**

- (a) an object to be accomplished,
- (b) a plan or scheme embodying means to accomplish that object,
- (c) an agreement or understanding between two or more of the accused persons whereby, they become definitely committed to cooperate for the accomplishment of the object by the means embodied in the agreement, or by any effectual means, and
- (d) in the jurisdiction where the statute required an overt act.<sup>8</sup>

**1. Two or more persons needed.**—To constitute the offence of conspiracy there must be an agreement of two or more persons to do an act which is illegal or which is to be done by illegal means for one cannot conspire with oneself. In *Topandas v State of Bombay*,<sup>9</sup> which has been cited by the Supreme Court with approval in *Haradhan Chakrabarty v UOI*,<sup>10</sup> it was laid down that "two or more persons must be parties to such an agreement and one person alone can never be held guilty of criminal conspiracy for the simple reason that one cannot conspire with oneself." The question of a single person being convicted for an offence of conspiracy was considered in *Bimbadhar Pradhan v The State of Orissa*,<sup>11, 12</sup> and held that It is not essential that more than one person should be convicted of the offence of criminal conspiracy. It is enough if the court is in a position to find that two or more persons were actually concerned in the criminal conspiracy. In the Red fort Attack Case<sup>13</sup> the Supreme Court found that it was nothing but a well-planned conspiracy, in which apart from sole appellant, some others were also involved and convicted the sole appellant for criminal conspiracy.<sup>14</sup> Under the common law since husband and wife constitute one person there cannot be any conspiracy to commit an offence if husband and wife are the only parties to an agreement.<sup>15</sup> "It seems rather odd that though husband and wife by themselves alone cannot be convicted of an offence of conspiracy for agreeing to commit an offence but if two of them commit the self-same substantive offence they can be convicted of that offence".<sup>16</sup> Fortunately this state of law does not exist in



India, where husband and wife by themselves alone can be parties to a criminal conspiracy. Where the husband is a party with some others in a conspiracy and his wife joined him in that with knowledge that he was involved with others to commit an unlawful act, she would be guilty of the conspiracy.<sup>17</sup> Since conspiracy requires at least two persons, where two or more named persons only were charged and all but one of them were acquitted, the remaining accused could not be convicted under [section 120B, IPC, 1860](#), as he could not have conspired with himself.<sup>18</sup> In a similar case before the Supreme Court, a military major was tried for theft of military goods along with nine others who were supposed to have abetted him. He was found guilty along with one more accused and the rest were acquitted. On his appeal, the High Court quashed the judgment of the Court martial because there was no proof that he had removed the wheel drums. He was reinstated. In view of the acquittal and reinstatement of the main accused, the matter of his co-accused came before the Supreme Court. He too was ordered to be acquitted and reinstated.<sup>19</sup> The same rule obtained under the English common law provided two named persons were tried together.<sup>20</sup> This rule has now been abolished by section 5(8) of the Criminal Law Act, 1977 which provides that unless conviction of one becomes inconsistent with the acquittal of the other even one of the two conspirators can be convicted, e.g., where one was acquitted for want of sanction or on ground of being an exempted person. The Bombay High Court has taken the same view in a case. Thus, where of the two accused one was a public servant and he had to be acquitted as he was prosecuted without obtaining sanction under [section 197, Code of Criminal Procedure, 1973 \(Cr PC, 1973\)](#), the other could still be convicted on a charge of conspiracy as the acquittal of the other accused was not on facts but on technical ground and in spite of evidence establishing the factum of conspiracy.<sup>21</sup>

The circumstances in which a single person can be tried and convicted have been thus, stated in *Kenny*.<sup>22</sup> "But though there must be plurality of conspirators, it is not necessary that all should be brought to trial together. One person may be indicted, alone, for conspiring with other persons who are not in custody, or who are even unknown to the indictors. Indeed, some of the conspirators may be unknown to the rest, provided all are acting under the directions of one leader. There need not be communication between each conspirator and every other, provided there be a design common to all."<sup>23</sup> Thus, a wife knowing that her husband was involved with others in a conspiracy, agreed with him that she would join the conspiracy and play her part, it was held that she thereby became guilty of conspiracy notwithstanding that the only person with whom she actually concluded the agreement was her husband.<sup>24</sup>

**2. Agreement is gist of the offence.**—The gist of the offence is the bare engagement and association to break the law, whether any act be done in pursuance thereof by the conspirators or not.<sup>25</sup> Meeting of minds is essential. Mere knowledge or discussion is not sufficient.<sup>26</sup> It is intention to commit crime and joining hands with persons having the same intention. Not only the intention but the presence of an agreement to carry out the object of the intention, is an offence. The question for consideration in a case is did all the accused had 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.<sup>27</sup> In the absence of an agreement, a mere thought to commit a crime does not constitute the offence.<sup>28</sup> The offence of conspiracy is a substantive offence. It renders the mere agreement to commit an offence punishable even if no offence takes place pursuant to the illegal agreement.<sup>29</sup> The object in view or the methods employed should be illegal, as defined in section 43, (*supra*). A distinction is drawn between an agreement to commit an offence and an agreement of which either the object or the methods employed are illegal but do not constitute an offence. In the case of the former, the criminal conspiracy is completed by the act of agreement; in the case of the latter,



there must be some act done by one or more of the parties to the agreement to give effect to the object thereof, that is, there must be an overt act. An express agreement need not be proved. Evidence relating to transmission of thoughts leading to sharing of thought relating to the unlawful act is sufficient.<sup>30</sup> A wrong judgment or an inaccurate or incorrect approach or poor management by itself, even after due deliberations between Ministers or even with Prime Minister, by itself cannot be said to be a product of criminal conspiracy.<sup>31</sup> A few bits here and a few bits there on which the prosecution relies cannot be held to be adequate for connecting the accused with the commission of the crime of criminal conspiracy. It has to be shown that all means adopted and illegal acts done were in furtherance of the object of conspiracy hatched. The circumstances relied for the purposes of drawing an inference should be prior in point of time than the actual commission of the offence in furtherance of the alleged conspiracy.<sup>32</sup>

The meeting of the minds to form a criminal conspiracy has to be proved by adducing substantive evidence, in cases where the circumstantial evidence is incomplete or vague.<sup>33</sup>

#### [s 120A.3] **Actus reus.**—

The *actus reus* in a conspiracy is the agreement to execute the illegal conduct, not the execution of it. It is not enough that two or more persons pursued the same unlawful object at the same time or in the same place; it is necessary to show a meeting of minds, a consensus to give effect to an unlawful purpose. It is not, however, necessary that each conspirator should have been in communication with every other.<sup>34</sup>

#### [s 120A.4] **Participation.**—

It is not necessary that all the conspirators should participate from the inception to the end of the conspiracy; some may join the conspiracy after the time when such intention was first entertained by any one of them and some others may quit from the conspiracy. All of them cannot be treated as conspirators. Where in pursuance of the agreement the conspirators commit offences individually or adopt illegal means to do a legal act which has a nexus to the object of conspiracy, all of them will be liable for such offences even if some of them have not actively participated in the commission of those offences.<sup>35</sup> To constitute a conspiracy, meeting of mind of two or more persons for doing an illegal act or an act by illegal means is the first and primary condition and it is not necessary that all the conspirators must know each and every detail of conspiracy. Neither is it necessary that every one of the conspirators takes active part in the commission of each and every conspiratorial act.<sup>36</sup> 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.<sup>37</sup> 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 defendant's liability than the fact that the crime was performed as a part of a larger division of labour to which the accused had also contributed his efforts.<sup>38</sup>

#### [s 120A.5] **Overt act.**—

No overt act is necessary.<sup>39</sup> Where the allegation against the third accused was that he was merely standing nearby when the other accused committed the murder, he cannot be charged for an offence under [sections 302/120B, IPC, 1860](#), in the absence of any other reliable evidence.<sup>40</sup> In a case where the agreement is for accomplishment

of an act which by itself constitutes an offence, then in that event, unless the Statute so requires, no overt act is necessary to be proved by the prosecution because in such a fact-situation criminal conspiracy is established by proving such an agreement.<sup>41</sup> When two agree to carry it into effect, the very plot is an act in itself, and an act of each of the parties, promise against promise, *actus contra actum*, capable of being enforced, if lawful, punishable if for a criminal object or for use of criminal means.<sup>42</sup> Where the conspiracy alleged is with regard to the commission of a serious crime as contemplated by section 120-B read with the proviso to sub-section (2) of section 120A, then the mere proof of an agreement is enough to bring about conviction under section 120B and the proof of any overt act by the accused or by any of them would not be necessary.<sup>43</sup> The illegal act may or may not be done in pursuance of agreement, but the very agreement is an offence and is punishable.<sup>44</sup>

It is not an ingredient of the offence under this section that all the parties should agree to do a single illegal act. It may comprise the commission of a number of acts. Where the accused are charged with having conspired to do three categories of illegal acts, 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 can all be held guilty of the offence of conspiracy to do illegal acts, though for individual offences all of them may not be liable.<sup>45</sup> Where the agreement between the accused is a conspiracy to do or continue to do something which is illegal, it is immaterial whether the agreement to do any of the acts in furtherance of the commission of the offence do not strictly amount to an offence. The entire agreement must be viewed as a whole and it has to be ascertained as to what in fact the conspirators intended to do or the object they wanted to achieve.<sup>46</sup> It is not necessary that each member of a conspiracy must know each other or all the details of the conspiracy.<sup>47</sup> It is also not necessary that every conspirator must have taken part in each and every act done in pursuance of a conspiracy.<sup>48</sup> It is, however, necessary that a charge of conspiracy should contain particulars of the names of the place or places where it was hatched, persons hatching it, how was it hatched and what the purpose of the conspiracy was.<sup>49</sup>

In the matter<sup>50</sup> of the assassination of the then Prime Minister of India, Smt. Indira Gandhi, one of the two actual killers and two conspirators were brought to trial. Both the conspirators were away from the scene of the crime. One of them was acquitted by the Supreme Court. His movements after the incident were not properly proved. The documents recovered from his custody did not indicate any agreement between him and the other accused. They only showed his agitated mind which was in the grip of an avenging mood. This is not enough to establish an agreement with anybody. On the other hand, about *Kehar Singh*, it was shown that he was having secret talks with one of the actual killers, that they were trying all the time to keep themselves away from their wives and children, they avoided the company of the other members of the family and on being asked what they were talking about, they remained mysterious. These facts were sufficient to show that they were planning something secret. This was enough to constitute a *prima facie* evidence of conspiracy within the meaning of [section 10 of the Evidence Act, 1872](#) and to bring them within the jacket of punishment of all for the act of one.

Privacy and secrecy are more characteristics of a conspiracy, than of a loud discussion in an elevated place open to public view. Direct evidence in proof of a conspiracy is seldom available; offence of conspiracy can be proved by either direct or circumstantial evidence. It is not always possible to give affirmative evidence about the date of the formation of the criminal conspiracy, about the persons who took part in the formation of the conspiracy, about the object, which the objectors set before themselves as the object of conspiracy, and about the manner in which the object of conspiracy is to be carried out, all this is necessarily a matter of inference.<sup>51</sup> Thus, a conspiracy is an