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IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
B.R. GAVAI; J., PAMIDIGHANTAM SRI NARASIMHA; J.
CRIMINAL APPEAL No. 1066 of 2010; AUGUST 25, 2022
RAM SHARAN CHATURVEDI *versus* **THE STATE OF MADHYA PRADESH**

Indian Penal Code, 1860; Section 120B - The principal ingredient of the offence of criminal conspiracy under Section 120B IPC is an agreement to commit an offence - Such an agreement must be proved through direct or circumstantial evidence- Some kind of physical manifestation of agreement is required to be established- It is not necessary that there must be a clear, categorical and express agreement between the accused. However, an implied agreement must manifest upon relying on principles established in the cases of circumstantial evidence. *(Para 22-25)*

For Appellant(s) Ms. S. Janani, AOR

For Respondent(s) Mr. Pashupathi Nath Razdan, AOR

J U D G M E N T

PAMIDIGHANTAM SRI NARASIMHA J.

1. This appeal by accused no. 3[1], challenges the judgment of the High Court of Madhya Pradesh in Criminal Appeal No. 213 of 2006 confirming the conviction of the Appellant imposed by the Additional Sessions Judge, Guna for offences under Sections 201, 380, 435, 457 and 477 read with Section 120B of the Indian Penal Code, 1860. The High Court also confirmed the sentence of rigorous imprisonment for four years along with a fine of Rs. 500 under Sections 380, 435, 457 of the IPC and rigorous imprisonment of two years along with a fine of Rs. 500 under Section 201 IPC. However, the sentence under Section 477 IPC was reduced by the High Court from rigorous imprisonment for six years to four years.

2.1 Three accused, employees of Guna Branch of Central Bank of India, were prosecuted for the above-referred offences of theft (of Rs. Six Lakhs from the safe and strong room of the Bank), house-trespass, destruction of valuable security, and other offences. While the main accused, Pradeep Saxena (hereinafter referred to as 'A-1') and Vinod (hereinafter referred to as 'A-2'), were convicted and sentenced concurrently given the oral and documentary evidence, as per which the money is proved to have been recovered from their possession, the Appellant (A-3) was convicted and sentenced for the very same offences only with the aid of Section 120B of the IPC.

2.2 The enquiry against the appellant is therefore confined to the existence or the proof of criminal conspiracy between him and the other accused. The charge of conspiracy against the appellant arose because, as Head Cashier, he was to be in the custody of one of the keys of the dual locker system maintained by the Bank for the safe custody of cash and valuable security.

3. The case of the prosecution is that, upon transfer of the existing Branch Manager Shri R.K. Makore, Senior Manager Shri K.R. Lydia (hereinafter referred to as 'PW-4') was given the additional charge as Manager-in-Charge. As he was on leave for attending a meeting in the Regional Office, Gwalior, another employee Shri Sushil Kumar Verma

[1] hereinafter referred to as Appellant.

(hereinafter referred to as 'PW-10') was given the additional charge as Manager-in-Charge. Guna is a very small branch of the Central Bank of India but on 11.06.2004 a large amount of Rs. Fifteen Lakhs came into the custody of the Bank, and everybody in the Bank was aware of this fact. The next day, 12.06.2004, happened to be a Saturday, and after the transactions were completed and the branch was closed at 5.45 p.m., it reopened only on Monday, i.e., 14.06.2004 at 10.30 a.m., intervening Sunday being a holiday. As the commission of theft and other offences occurred after Saturday evening at 5.45 p.m. and before 10.30 a.m. on Monday, and the locks of the building were not broken, all the transactions before and after the closure became relevant to detect the crime. The prosecution explained the events as under.

4. On 12.06.2004 at around 3.30 p.m., there was a problem with the computer at the Bank, and PW-10 got involved in rectifying it. As the Bank was about to close, a customer Smt. Seema Jain walked in and sought to use the bank locker, for which PW-10 sought the help of the Appellant. The Appellant, along with Sanjay Daria (hereinafter referred to as 'PW-12'), entered the locker room and helped the customer operate the locker. After the above-referred transaction, the Appellant left the Bank. PW-10, PW-12 and A-1 remained in the premises till 5.45 p.m., and by the end of the day, after A-1 secured the locks of the main gate, PW-10 and PW-12 left for their respective residences.

5. On Monday i.e., 14.06.2004, the sanitation employee Rajendra Premi (PW-9) went to the house of the Appellant to collect the key to the main gate of the Branch. After reaching the Bank, he started his routine work of cleaning when another peon Dashrath Yadav (hereinafter referred to as 'PW-5'), security guard Ram Naresh Bhadoria (PW-7), and PW-10 also reached the Bank at about 10.00 a.m. Around the same time, the Appellant also reached the Bank. PW-5 was asked to open the main gate of the strong room, and it is the case of the prosecution that this gate could not be opened with the key of the Manager-in-Charge PW-10. However, it opened with the help of the Appellant's key. As soon as they entered the strong room, they sensed a burning smell of petrol. After that, they sought to open the grill gate of the strong room. This could also not be opened with the key in the custody of PW-10, but could be opened with the key of the Appellant. Upon entering the room past the grill gate, the employees saw that the bank registers were thrown open, and some of them were in a burnt condition. Further, even the safe inside the strong room could not be opened with the key of PW-10 but could be opened with the key of the Appellant. Upon opening the safe, they noticed that the bundle of currency notes and secured documents were in half-burnt condition and lying scattered. After inspection, it was noticed that out of Rs. 18,07,691/- in the custody of the Bank as of 12.06.2004, an amount of Rs. Six Lakhs was missing, and currency notes worth Rs. 17,160/- were in a half-burnt condition. At this point, A-1 was not in the Bank. PW-10 informed Senior Manager PW-4 about these events at 10.30 a.m. PW-4 returned to the Bank and finally lodged the FIR No. 538 of 2004 on 14.06.2004 at 6.15 p.m. before the Police Station Guna. The FIR was registered for offences under Sections 436 and 380 of the IPC.

Investigation:

6. During the course of the investigation, A-1 was interrogated on 15.06.2004. Based on the information given by him through Memo Ex. P-5, Rs. 5,40,000 was recovered from a briefcase at the '*tand*' of a room in A-2's house, and the balance amount of Rs. 50,000 was also recovered from a locker secured in an almirah in his house. Further, A-2 led the

investigation to identify and recover the plastic bottle containing the remaining petrol, hidden in the canteen of the branch. The Investigating Officer seized it through memo Ex. P-58.

7. In the absence of evidence of breaking of the locks of the building, or of the main gate, grill gate of the strong room, or even the safe in the Bank, it was inferred that the act of theft was not possible without the usage of actual keys. As the second set of keys were in the official custody of the Appellant, he was arrested.

8. While A-1 and A-2 were charged for offences under Sections 436, 457, 380, 201 and 477 of the IPC, the Appellant was charged for the same crimes with the aid of Section 120B therein. All the three accused were tried together by the First Additional Sessions Judge, Guna, in Sessions Case No. 228 of 2004.

Trial:

9. The prosecution examined 20 witnesses, being PW-1 to PW20 and marked as many as 65 documents. As there was no direct evidence of the commission of the offence, the prosecution had to rely on circumstantial evidence through testimonies of PW-4, PW-5, PW-6, PW-7, PW-8, PW-9 and PW-15 to prove that the theft and incineration of currency notes and documents by the sprinkling of petrol had in fact taken place at the instance of A-1 and A-2.

Trial Court:

10. The Trial Court, by its judgment dated 07.03.2006, rejected the plea of A-1 and A-2 that no offence of theft was committed as the entire cash was recovered, by holding that the cash receipts recovered from A-2 based on A-1's statements, bore slips of different banks, and undoubtedly comprised stolen property. Further, the argument that branch-wise account statements of the Bank from 12.06.2004 and 14.06.2004 did not show any variation in the amount maintained by the Bank, was rejected by the Trial Court based on the testimony of PW-4 and the recoveries made.

11. The Trial court convicted A-1 and A-2 for all the offences and sentenced them as indicated earlier. Dealing with the access of the accused into the Bank, the strong room, and then into the safe therein, the Trial Court relied on the evidence of PW-4, who referred to the rules governing the operation of strong room and safe with the aid of dual lock system. Based on testimonies of PW-4, PW-5, PW-7, PW-8, PW-10, the Trial Court concluded that the Appellant was in the exclusive custody of one of the keys that could have been used for operating the grill gate, strong room, as well as the safe of the Bank. After referring to the statements of these witnesses, the Trial Court concluded that as the Appellant is the custodian of one set of keys, he was a part of a conspiracy with A-1 and A-2 to commit the offences. It is on this inference that the Trial Court convicted the Appellant for the same offences with the aid of Section 120B of the IPC and proceeded to sentence him along with the other accused.

High Court:

12. As indicated above, the High Court has confirmed the conviction and sentence of the Trial Court with a simple modification that rigorous imprisonment for six years under Section 477 of the IPC was reduced to rigorous imprisonment of four years.

13. Before considering the submissions made on behalf of the Appellant, we may note that all the three accused have already served their sentences.

Submissions:

14.1 Ms. S. Janani, AOR appeared on behalf of the Appellant, had reiterated the submissions made on behalf of A-1 and A-2 in the Trial Court, that there was no loss caused to the Bank, as the entire stolen amount was recovered. She sought to demonstrate that the accounts maintained by the Bank did not reflect any variation in the amounts; hence, the Trial Court, as well as the High Court, were not justified in concluding that commission of theft took place and accordingly convicting the Appellant.

14.2 We heard Shri Pashupathi Nath Razdan, AOR, assisted by Shri Prithiviraj Singh, Shri Mirza Kayesh Begg, Shri Prakhar Srivastav, Shri Astik Gupta, Ms. Ayushi Mittal for the State. Shri Razdan has submitted that the Trial, as well as the High Court, correctly concluded the findings on the basis of well-appreciated evidence, and there is no occasion for interfering with the judgment of the High Court.

Analysis:

15. We are not convinced with the argument of Ms. Janani, that neither an offence of theft has taken place nor any loss was caused to the bank, for the very same reason that the Trial Court as well as the High Court had given while confirming the conviction of A-1 and A-2. We reiterate that apart from the testimony of the Senior Manager PW-4, proving the fact of theft, both the Courts have observed that the recovered currency notes from A-2's house bore slips of different banks, including the Central Bank of India and the Punjab National Bank. Mere recovery of the stolen amount by the Bank does not exonerate A-1 and A-2 and for that matter, even the Appellant. We, therefore, have no hesitation in rejecting this submission.

16. So far as the Appellant is concerned, we have noted that there is neither any overt act attributable to him, nor any recovery of stolen property from him. The conclusion drawn against him is only for the reason that he was in exclusive possession of the set of keys used to open the locks of the main gate, the grill of the strong room and the safe inside it on 14.06.2004. Hence, his conviction and sentence were based exclusively on the charge of conspiracy under Section 120B of the IPC.

17. Before we consider Appellant's liability for being the authorized custodian of one set of keys for the lockers, it is necessary to examine the system of dual locking adopted by the Bank. The Office Manual of the Bank provides that cash was to be stored in the strong room of the Bank, guarded by a Dual Control System, where locks are secured by two keys operable successively and separately. The Branch Manager and the Cashier-in-Charge are to be in the joint custody of the sets of keys to the strong room and the safe. The relevant clauses in the Manual are extracted herein below for ready reference:

"*2.1.1 The branch cash balance must be kept overnight in the strong room, or at the smaller branches where no strong room has been installed in a fire-proof safe, in the joint custody of the Head Cashier and the Manager or any other officer authorized to hold joint custody of cash.*

2.1.2 The strong room or fire-proof safe, must be under the double lock of the Head Cashier and officer-in-charge, and both must be present whenever the strong room or safe is opened to withdraw or deposit cash and neither official may enter the cash portion of the strong room except in the presence of the other.

2.1.3 Under the dual control system, it is advisable that the Branch Manager should hold the second key of the cash safe and the cashierin-charge the first key. First and second keys are so named

according to the order of locking the safe. For the strong room door, the Branch Manager will hold the first key and the Cashierin-Charge the second key.

...

2.1.6 The key holders are jointly responsible for the contents of the strong room/safe."

18. Returning to the charge under Section 120B of the IPC, the evidence available on record will only show that when on Monday morning, i.e. 14.06.2004, PW-5 and Manager-in-charge PW-10, along with the Appellant, sought to open the main gate, grill gate of the strong room, as well as the safe, the locks allegedly could not be opened with the set of keys in possession of PW-10, but could be opened through the set of keys in custody of the Appellant. Precisely what caused the locks to not open with the keys of PW-10 is not explained. The fact that these locks could be opened by the key in possession of the Appellant cannot by itself lead to an inference that he alone was responsible for enabling A1 and A-2 to access the safe to commit the offences. The very purpose and object of the dual lock system is to prevent any single custodian from accessing the strong room and the safe.

19. As per Clause 2.1.2 of the Office Manual, both the key holders were mandatorily required to be present each time the locks were secured or opened, except in emergency circumstances which stipulate handing over the key to the next senior official and recording the same in the key movement register. We may note here that the key movement register was not seized or produced by the prosecution on the premise that it was practically never used. Further, Clause 2.1.6 of the Office Manual stipulates that both the key holders are jointly responsible for the contents of the strong room and the safe. Under these circumstances, we are of the opinion that the Appellant cannot be solely held accountable for the failure to comply with the Office Manual, and for this reason the Appellant's exclusive possession of the keys cannot render him culpable of the offences as mentioned earlier.

20. In his evidence, PW-10 stated that on 12.06.2004, he caused the main gate of the branch to be closed by A-1, a contingent employee. Thereafter, on 14.06.2004, the sanitation employee obtained this set of keys from the house of the Appellant, a fact used by the prosecution to imply that after the branch was locked on 12.06.2004, the Appellant was in possession of the keys to the main gate of the branch. On this, the Trial Court glossed over the lapse on the part of PW-10. This questionable observation of the Trial Court is as follows:

"*It was admitted by Sushil Verma (PW-10) in the paragraph No. 30 of the cross-examination that locks could be locked as per the rules of the bank only by the authorised person. The accused Pradeep being not a casual worker, but even then he had committed error deliberately while handing over the key. The witness stated further in the paragraph No. 36 that the external, gate was got closed by the accused Pradeep. It is correct to say that he had no authority to close the gate. Thus the witness did not get the lock locked by the authorised person as per the rule of the bank, but the lock was locked by unauthorised person. But the errors committed by the witness do not exempt the accused from the consequences of the crime. It does not provide any benefit to the accused*."

(emphasis supplied)

21. Apart from the fact that the Appellant by himself could not have operated the strong room and the safe of the Bank without the presence of the officer who was in the custody of the other set of keys, it is also important to note that the prosecution completely failed in adducing any evidence to indicate the existence of any agreement between the

Appellant on the one hand and A-1 and A-2 on the other. The link necessary for proving the charge of conspiracy is entirely missing.

22. The principal ingredient of the offence of criminal conspiracy under Section 120B of the IPC is an agreement to commit an offence. Such an agreement must be proved through direct or circumstantial evidence. Court has to necessarily ascertain whether there was an agreement between the Appellant and A-1 and A-2. In the decision of *State of Kerala* v. *P. Sugathan and Anr.*[2], this Court noted that an agreement forms the core of the offence of conspiracy, and it must surface in evidence through some physical manifestation:

*"**12.** ...As in all other criminal offences, the prosecution has to discharge its onus of proving the case against the accused beyond reasonable doubt. ...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...*

***13.** ...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 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..."* (emphasis supplied)

23. The charge of conspiracy alleged by the prosecution against the Appellant must evidence explicit acts or conduct on his part, manifesting conscious and apparent concurrence of a common design with A-1 and A-2. In *State (NCT of Delhi)* v. *Navjot Sandhu*[3], this Court held:

*"**101**. One more principle which deserves notice is that the cumulative effect of the proved circumstances should be taken into account in determining the guilt of the accused rather than adopting an isolated approach to each of the circumstances. Of course, each one of the circumstances should be proved beyond reasonable doubt. Lastly, in regard to the appreciation of evidence relating to the conspiracy, the Court must take care to see that the acts or conduct of the parties must be conscious and clear enough to infer their concurrence as to the common design and its execution."* (emphasis supplied)

24. In accepting the story of the prosecution, the Trial Court, as well as the High Court, proceeded on the basis of mere suspicion against the Appellant, which is precisely what this Court in *Tanviben Pankajkumar Divetia* v. *State of Gujarat*[4], had cautioned against:

*"**45**. The principle for basing a conviction on the basis of circumstantial evidences has been indicated in a number of decisions of this Court and the law is well settled that each and every incriminating circumstance must be clearly established by reliable and clinching evidence and the circumstances so proved must form a chain of events from which the only irresistible conclusion about the guilt of the accused can be safely drawn and no other hypothesis against the guilt is possible. This Court has clearly sounded a note of caution that in a case depending largely upon circumstantial evidence, there is always a danger that conjecture or suspicion may take the place of legal proof. The Court must satisfy itself that various circumstances in the chain of events have been established clearly and such completed chain of events must be such as to rule out a reasonable likelihood of the innocence of the accused. It has also been indicated that when the important link goes, the chain of circumstances gets snapped and the other circumstances cannot, in any manner, establish the guilt*

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[2] (2000) 8 SCC 203.
[3] (2005) 11 SCC 600. [4] (1997) 7 SCC 156.

of the accused beyond all reasonable doubts. It has been held that the Court has to be watchful and avoid the danger of allowing the suspicion to take the place of legal proof for sometimes, unconsciously it may happen to be a short step between moral certainty and legal proof. It has been indicated by this Court that there is a long mental distance between "may be true" and "must be true" and the same divides conjectures from sure conclusions. (Jaharlal Das v. State of Orissa (1991) 3 SCC 27)"

(emphasis supplied)

25. It is not necessary that there must be a clear, categorical and express agreement between the accused. However, an implied agreement must manifest upon relying on principles established in the cases of circumstantial evidence. Accordingly, in the majority opinion of *Ram Narayan Popli* v. *CBI*[4], this Court had held:

*"**354.** ... 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..."*

26. In view of the clear enunciation of law on the criminal conspiracy by this Court, we find that the prosecution has failed to produce any evidence whatsoever to satisfy the Court that there was a prior meeting of minds between the Appellant and A-1 and A-2. There is no physical manifestation of such a concurrence extractable from surrounding circumstances, declarations, or the conduct of the Appellant. The evidence is shorn of even a passive acknowledgment of conspiracy of the Appellant with the accused, let alone heralding a clear and conscientious participation of the Appellant in the conspiracy. As noted above, this Court has cautioned against replacing mere suspicion with the legal requirement of proof of agreement.

27. For the reasons stated above we are of the opinion that the prosecution failed to establish the circumstances in which the Appellant, being the custodian of only one set of the keys for the dual lock system functional in the Bank, could alone be made responsible for providing access to the strong room and the safe in the Bank. We are also of the clear opinion that the prosecution failed to establish the existence of any agreement between the Appellant, A-1 and A-2, which is quintessential for a charge under Section 120B of the IPC. In the absence of such an agreement, even by inference through circumstantial evidence, the Appellant is entitled to be acquitted of the charge of criminal conspiracy.

28. For the reasons and conclusions drawn by us, we hereby:

i) Allow Criminal Appeal No. 1066 of 2010.

ii) The judgment passed by the High Court of Madhya Pradesh in Criminal Appeal No. 213 of 2006 dated 05.08.2008 and the judgment of the First Additional Sessions Judge, Guna in Sessions Case No. 228 of 2004, dated 07.03.2006, are hereby quashed and set aside.

iii) The Appellant is acquitted of all the charges.

iv) Parties to bear their own costs.

[4] (2003) 3 SCC 641.