

RESERVED JUDGMENT

IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

THE HON'BLE THE CHIEF JUSTICE SRI RAGHVENDRA SINGH CHAUHAN
AND
THE HON'BLE SRI JUSTICE ALOK KUMAR VERMA

CRIMINAL APPEAL No. 154 OF 2015

JUDGMENT RESERVED : 21ST SEPTEMBER, 2021

JUDGMENT DELIVERED : 25TH NOVEMBER, 2021

Between:

Shri Karan Yadav.

...Appellant

and

Central Bureau of Investigation.

...Respondent

Counsel for the appellant. : Mr. S.S. Lingwal and Mr. Narendra Bisht,
the learned counsel.

Counsel for the respondent. : Mr. Sandeep Tandon, the learned counsel.

The Court made the following:

JUDGMENT : (per Hon'ble The Chief Justice Sri Raghvendra Singh Chauhan)

Aggrieved by the judgment dated
28.02.2015/10.03.2015, passed by the IIIrd Additional
Sessions Judge/Special Judge (C.B.I.), Dehradun, the
appellant, Karan Yadav, has filed the present appeal
before this Court.

2. By the said judgment, the appellant has been convicted for the offences under Section 302 read with Section 120-B of the Indian Penal Code (for short “the IPC”). For offence under Section 302/120B IPC, he has been sentenced to life imprisonment. He has further been directed to pay a fine of Rs. 1,00,000/-, and to further undergo a simple imprisonment of one year in default thereof. He was further convicted for offences under Section 307 read with Section 120-B IPC, and sentenced to undergo ten years’ rigorous imprisonment. He was directed to pay a fine of Rs. 10,000/-, and to further undergo six months of simple imprisonment in default thereof. Furthermore, he has been convicted for the offences under Section 326 read with Section 120-B IPC and sentenced to undergo seven years rigorous imprisonment. He was directed to pay a fine of Rs. 5,000/-, and to undergo one month of additional simple imprisonment in default thereof. All the sentences were directed to run concurrently.

3. Briefly, the facts of the case are that on 13.09.1992, Anil Kumar Bhati (P.W. 39), the nephew of one of the deceased person, namely Mahendra Singh

Bhati, lodged a written report (Ex. Ka. 30) with the Police Station Dadri, District Ghaziabad, Uttar Pradesh, wherein he claimed that on 13.09.1992, around 06:30 PM, Mahendra Singh Bhati, the M.L.A. Dadri Constituency, Ghaziabad, received a telephonic call from Mool Chand Tiwari, Inspector C.B.C.I.D. Mool Chand Tiwari informed Mahendra Singh Bhati that his presence is required in order to record his statement for the murder of Santram. Therefore, he is directed to come to village Bhangel. Upon this information, Mahendra Singh Bhati left in his Maruti car, along with his driver, Devendra, and his gunman, Vedram Kaushik (P.W. 31), for village Bhangel. On the way, his friend, Udai Ram Arya also got into the car, and sat in the back seat. However, as the Dadri railway crossing gate, on the way to village Bhangel, was closed, Mahendra Singh Bhati's car stopped at the railway crossing gate. According to the complainant, he and Dharamveer Singh also reached the railway crossing gate on their motorcycle. As soon as the railway crossing gate opened, around 07:00 P.M., and as soon as the driver, Devendra, started the car, about seven to eight unknown persons fired at the car. Consequently, both Mahendra Singh Bhati, and Udai Prakash Arya died on the spot. The

gunman, Vedram Kaushik (P.W. 31), was also injured. The driver, Devendra ran away as soon as the firing was started. Near the car of Mahendra Singh Bhati, in another car, O.P. Kayal (P.W. 35) was also injured. Moreover, Dharamveer Singh, who was on his bicycle, and was standing near the railway crossing gate, he, too, was injured. O.P. Kayal (P.W. 35) was rushed to Yashoda Hospital; the gunman, Vedram Kaushik (P.W. 31), was taken to the Narendra Mohan Hospital; the bicyclist, Dharamveer Singh was carried to the District Hospital for medical treatment. After killing Mahendra Singh Bhati, the killers sat in a Maruti car, and escaped. When they were fleeing, they shouted "*try again to have Prakash Pehelwan contest the elections*". According to the complainant, Amar Singh, Omveer Singh, Manveer Singh, Prakash, Atar Sigh, Dharamveer Singh and others, standing at the scene of the crime, have seen the incident. Although, these eye-witnesses have recognized the assailants, due to fear that the assailants were armed, they did not try to catch hold of them.

4. The complainant, Anil Kumar Bhati (P.W.39), dictated the complaint (Ex. Ka. 30) to Narendra Singh Bhati (P.W. 10), the M.L.A. of Secunderabad. The

complaint (Ex. Ka. 30) was lodged with the Police Station Dadri, Ghaziabad. On the basis of this complaint (Ex. Ka. 30), a formal FIR (Ex. Ka. 39), namely FIR No. 371/92, was registered, for offences under Sections 147, 148, 149, 302 and 307 IPC.

5. Initially, the investigation was handed over to the S.S.I., Jagdish Singh (P.W. 21). The Investigating Officer immediately reached the scene of the crime, and recovered five empty cartridges of AK-47 rifle, and seven empty cartridges of 7.62 mm rifle. Through the recovery memo (Ex. Ka. 96), the dead bodies of Mahendra Singh Bhati, and Udai Prakash Arya were sent for post-mortem.

6. Since a sitting M.L.A., Mahendra Singh Bhati, was assassinated by unknown persons, his assassination generated sufficient heat. But as the investigation by the police was not upto the mark, on 10.08.1993, the investigation was transferred to the Central Bureau of Investigation (for short "the CBI") by notification No.228/58/92 A.B.D.

7. Initially, the CBI registered the case as RC-1(S)/93/SIU-I, for offences under Section 147, 148, 149,

302, 307, 109, 120-B IPC, and under Section 3 of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (for short "TADA").

8. After completing the investigation, the CBI submitted its charge-sheet not only against the present appellant, Karan Yadav, but also against the other co-accused persons, namely Dharmpal Singh Yadav @ D.P. Yadav, Pal Singh @ Pala @ Lakkar @ Harpal Singh, Tejpal Bhati, Praneet Bhati, Maharaj Singh, Jaipal Gujjar and Aulad Ali.

9. By order dated 07.01.1996, the Special Judicial Magistrate, CBI, Dehradun, took cognizance against the appellant, Karan Yadav, for the offences under Sections 302, 307 and 326 read with Section 120-B IPC.

10. Since the other co-accused persons were being tried under a different Session Case, by order dated 23.04.2001, the Special Court, CBI, consolidated the Session Trial No. 87 of 2000, "*C.B.I. v. Tejpal Bhati and others*", with Session Trial No. 48 of 2001, "*C.B.I. v. D.P. Yadav*".

11. In order to prove its case, the CBI examined forty-one witnesses, submitted 115 documents, and produced 159 material objects.

12. During the trial four co-accused persons expired, namely, Maharaj Singh, Tejpal Bhati, Jaipal Gujjar & Aulad Ali. Therefore, the trial *qua* them abated.

13. After appreciating the evidence produced by the prosecution, by a common judgment dated 10.03.2015, the learned Trial Court convicted and sentenced the present appellant as aforementioned. Although, a number of appeals have been filed by other co-accused persons, presently we shall deal with the appeal filed by the appellant, Karan Yadav. The other appeals shall be decided separately.

14. Mr. S.S. Lingwal, the learned counsel appearing for the appellant, has raised the following contentions before this Court:-

Firstly, the appellant is not the main accused, as there is no evidence to show that he was one of the assailants, who had caused the death of Mahendra Singh Bhati and Udai Ram Arya. In fact, the appellant has been

convicted for the aforesaid offences with the aid of Section 120-B IPC. Thus, according to the prosecution he is supposed to be one of the conspirators. However, the prosecution has miserably failed to establish his involvement in the conspiracy.

Secondly, the case of the prosecution against the appellant revolves around the get-away car allegedly used by the two assailants to flee from the scene of the crime. According to the prosecution, the appellant had purchased the car from M/s Saini Motors under the pseudonym of Kunal Kapoor. Meenakshi Saini (P.W. 17), the proprietor of the Saini Motors claims in her testimony that she had sold the car to one Kunal Kapoor, but she does not identify the appellant as the person who had bought the car as Kunal Kapoor. According to the statement (Ex. Ka. 114) of Narayan Yadav (P.W. 37), recorded under Section 161 Cr.P.C., Karan Yadav had informed him that the car was given to him by D.P. Yadav for “a big job”. Therefore, the prosecution has failed to prove the fact that the car was bought by the appellant from Saini Motors, and was in his possession prior to the alleged incident.

Thirdly, both the prosecution and the learned Trial Court have heavily relied upon the twin statements of Narayan Yadav (P.W. 37), which were recorded by the CBI. The first statement (Ex. Ka. 103), under Section 161 Cr.P.C., was recorded on 26.08.1994; the second statement (Ex. Ka. 114), under Section 161 Cr.P.C., was recorded on 16.08.1996. The learned Trial Court has failed to notice the fact that the statement of Narayan Yadav (P.W. 37) was recorded twice by the CBI. In his first statement, Narayan Yadav (P.W. 37) does not disclose any involvement of the appellant in a conspiracy to kill Mahendra Singh Bhati. It is only after two years that in his second statement, recorded under Section 161 Cr.P.C., that Narayan Yadav (P.W. 37) gives the details of an alleged conspiracy hatched among the accused persons in the present case. However, as Narayan Yadav (P.W. 37) has turned hostile, his twin statements (Ex. Ka. 103 and 114), given under Section 161 Cr.P.C., cannot be read against the present appellant. The learned Trial Court has erred in reading the statement (Ex. Ka. 114) given by Narayan Yadav (P.W. 37), under Section 161 Cr.P.C., as a substantive piece of evidence. According to the learned counsel, a statement under Section 161

Cr.P.C. is not a substantive piece of evidence. The statement under Section 161 Cr.P.C. has a limited function, i.e. only to contradict, or to discredit the trustworthiness of a witness. It can never be used as a substantive piece of evidence, or for corroborating the statement of a witness. Therefore, the said statement (Ex. Ka. 114), under Section 161 Cr.P.C., cannot be treated as a substantive piece of evidence. Therefore, the learned Trial Court has misapplied the law while reading the statement of Narayan Yadav (P.W. 37) against the appellant. In order to buttress this plea, the learned counsel has relied upon the cases of ***Tahsildar Singh v. State of U.P., [AIR 1959 SC 1012]***, and ***V.K. Mishra & another v. State of Uttarakhand, [AIR 2015 SC 3043]***.

He has further pleaded that the statement, under Section 161 Cr.P.C., cannot be used to convict the accused. In order to buttress this plea, the learned counsel has relied upon the case of ***Virendra Singh v. State of Haryana, [AIR 2017 SC 1228]***. Hence, according to the learned Senior Counsel, the learned Trial Court has erred in convicting the appellant on the basis of

the statement (Ex. Ka. 114) given by Narayan Yadav (P.W. 37) under Section 161 Cr.P.C.

Fourthly, the prosecution claims that Karan Yadav had sold this car after the incident to one Gurvinder Pal Singh (P.W. 38). However, Gurvinder Pal Singh (P.W. 38) has turned hostile. The prosecution further claims that after the incident, the car was sold to Gurdeep Singh, from whose possession the car was allegedly recovered by the CBI. Yet, Gurdeep Singh has not been examined as a witness. Therefore, the prosecution has withheld a material witness. Hence, an adverse inference should be read against the prosecution. Although the CBI claims that it had seized the car from the possession of Gurdeep Singh, the seizure memo has not been exhibited before the learned Trial Court. Moreover, the car was never produced as a material object before the learned Trial Court.

Fifthly, the learned Trial Court has relied on the disclosure statement of Pal Singh (Ex. Ka. 113) wherein allegedly Pal Singh had stated that “in June, 1992, D.P. Yadav and his relative Karan Yadav had given him a white Maruti car, which he had gotten serviced in September,

1992 from the Somko Automobiles Service Center located near a Court in Gurgaon". He further claimed that he could take the police to the said service station and identify the same. The learned Trial Court has, therefore, concluded that the white Maruti car, which was allegedly used as the get-away car, was given to Pal Singh by the present appellant. However, the use of such statement, recorded under Section 27 of the Evidence Act, is contrary to the settled principle of law governing the use, ambit and scope of a statement made under Section 27 of the Evidence Act. Relying on the case of ***Pulukuri Kotayya v. King Emperor, [AIR 1947 PC 67]***, the learned counsel had pleaded that the past use, or the past history of the object is inadmissible piece of evidence. He has further relied on the case of ***Asar Mohd. & others v. State of U.P., [AIR 2018 SC 5264]*** in order to explain the scope and ambit of Section 27 of the Evidence Act. The learned counsel has further relied on the case of ***Salim Akhtar @ Mota v. State of U.P., [AIR 2003 SC 4076]*** in order to buttress his plea that the part of the statement which reveals that the car was given by the appellant cannot be used against the appellant. Therefore, the finding of the learned Trial

Court, on the basis of the statement made by Pala @ Pal Singh, under Section 27 of the Evidence Act, or the finding of the learned Trial Court on the basis of Narayan Yadav's statement (Ex. Ka. 114) given under Section 161 of Cr.P.C., is wholly erroneous.

Lastly, the learned Trial Court is unjustified in reading the fact of abscondance against the appellant. The learned counsel submits that absconding, by itself, is not an incriminating piece of evidence. Moreover, a person cannot be convicted merely on the fact that he had absconded after the commission of the alleged offence.

15. On the other hand Mr. Sandeep Tandon, the learned counsel for the CBI, has raised the following counter-contentions before this Court :-

Firstly, during the relevant time, there were two gangs working in the area, namely one belonging to Satbir Gujjar, and the other belonging to Mahendra Singh Fauji. While the deceased patronized the former gang, the appellant sided with the latter gang. Both the gangs were engaged in a series of gang warfare, as they wanted

to eliminate the members of the other gang. The existence of gang warfare in the area is evident from the fact that a large number of criminal cases were registered for murder of members of each other gang: Crime Case No. 372/90 was registered at Police Station Loni against Satveer, Kaluram Rana Kesar Gujar, Ashok, Ali, Maidan, Mohan, Pappu Neeraj, Onnkar Singh, Vikram, Ranapal, Lokesh and Kenga Nai for the murder to Rashid Ali, Sajan Sah, Mehardeen, Ajmeithi, Brahma Singh Feju. While the deceased belonged to the Salbir Gujjar's gang, the accused persons belonged to Mahendra Singh Fauji's gang. In this case six persons were killed, including Rashid Ali, who was the brother of Aulad Ali, one of the co-accused in the present case.

On 23.12.1991, FIR No. 251/91 was chalked out in Police Station Bhopa, Muzzafar Nagar, for offence under Section 302 IPC against Bharampal Singh, Prempal, Satendra, Dakpal, Ajeet, and Titu for the murder of Shobha Ram Yadav, and Yahada Hasan. Even in this case while the accused persons belonged to Mahendra Singh Fauji's gang, the deceased belonged to the gang of Satbir Gujjar.

Likewise, in Crime Case No. 647/92, registered at Police Station Kavi Nagar, the case was registered against Prakash Pehalwan, Prakash Gujar, Satyavir Gujar, Man Singh and Satyapal. These persons belonged to the Satbir Gujjar gang.

Most importantly, Case Crime No. 38 of 1993, which was registered at Police Station Bisrakh, Ghaziabad, was registered both against D.P. Yadav and the present appellant, Karan Yadav, and other co-accused persons. In this case Prakash Pehlwan, Jaiveer, Gurmeet Singh, Ram Prakash, who members of the Satbir Gujjar's gang, were injured by the present appellant and other co-accused persons in the present case.

Thus, it is obvious that from 1990 till 1996, for six long years, gang wars were waged between the members of Satbir Gujjar's gang and the members of the Mahendra Singh Fauji's gang. As stated earlier, the deceased and Pehalwan Singh supported the former gang, and the appellant and the coaccused persons, in the present case, supported the latter gang. Hence, the appellant had a strong motive for killing the deceased, Mahendra Singh Bhati.

Secondly, according to Sameer Bhati (P.W. 32), his father, the deceased, Mahendra Singh Bhati, was under the apprehension that he may be attacked by Pal Singh and Mahendra Singh Fauji and other gangsters belonging to the gang of Mahendra Singh Fauji. Since the present appellant belonged to the gang of Mahendra Singh Fauji, the learned Trial Court was justified in reading the complaint submitted by Mahendra Singh Bhati to the Police (Ex. Ka. 95) as a dying declaration. Hence, the said document could equally be read against the present appellant.

Thirdly, Pal Singh in his disclosure statement recorded under Section 27 of the Evidence Act (Ex. Ka. 113) had clearly stated that the Maruti car was given to him by D.P. Yadav and his relative "Karan Yadav". Therefore, the learned Trial Court was justified in concluding that this statement clearly proved the fact that Karan Yadav, the appellant, was part of the conspiracy.

Fourthly, Narayan Yadav (P.W. 37) in both his statements, recorded under Section 161 Cr.P.C., (Ex. Ka. 103 and Ex. Ka. 114 respectively) clearly describe his

conversation with the appellant, who used to frequently visit his farm house, namely Shiv Farm House. Although Narayan Yadav (P.W. 37) may have turned hostile, his statement, recorded under Section 161 Cr.P.C., can certainly be read against the present appellant. Therefore, the learned Trial Court was justified in reading the said statement against the present appellant.

Lastly, it is an admitted fact that after the incident Karan Yadav, the appellant, had absconded from his home. His absconding reveals a guilty mind. Therefore, the prosecution has succeeded in establishing the case against the present appellant. Hence, the learned counsel has supported the impugned judgment.

16. Heard the learned counsel for the parties, perused the impugned order, and examined the records of the case.

17. A bare perusal of the record of the impugned judgment clearly reveals three facts :-

Firstly, undoubtedly, the death of both Mahendra Singh Bhati and Uday Ram Arya was a

homicidal death. This fact has been proven by the testimony of Dr. A.K. Rastogi (P.W. 6), and by the Post-Mortem Reports (Ex. Ka. 6 and 7 respectively). Therefore, this Court will not go into the issue whether the death was homicidal, or not?

Secondly, since Anil Kumar Bhati (P.W. 39), the complainant and an eye-witness, does not mention the presence of the appellant at the scene of the crime, the entire case of the prosecution against the appellant is based on circumstantial evidence.

Thirdly, it is the case of the prosecution that the present appellant was involved in a criminal conspiracy with D.P. Yadav and others for hatching and executing the murder of Mahendra Singh Bhati, one of the two deceased persons.

18. Therefore, the twin questions before this Court are: whether the prosecution has established its case against the present appellant on the basis of a complete chain of circumstances, which unerringly points towards the guilt of the appellant, or not? Secondly, whether the prosecution has sufficient evidence to show the

involvement of the appellant in a criminal conspiracy to commit the alleged murder of Mahendra Singh Bhati and Uday Ram Arya, or not?

19. In the case of **Anwar Ali and another v. The State of Himachal Pradesh, [(2020) 10 SCC 166]**, the Hon'ble Supreme Court has reiterated the principles with regard to the assessment of evidence in a case based on circumstantial evidence. The principles are as under:-

5.4 It is also required to be noted and it is not in dispute that this is a case of circumstantial evidence. As held by this Court in catena of decisions that in case of a circumstantial evidence, the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else and the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence. In the case of Babu (supra), it is observed and held in paragraphs 22 to 24 as under:

“22. In Krishnan v. State (2008) 15 SCC 430, this Court after considering a large number of its earlier judgments observed as follows: (SCC p. 435, para 15)

“15. ... This Court in a series of decisions has consistently held that when a case rests upon circumstantial evidence, such evidence must satisfy the following tests:

(i) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;

(ii) those circumstances should be of definite tendency unerringly pointing towards guilt of the accused;

(iii) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and

(iv) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence. (See Gambhir v. State of Maharashtra (1982) 2 SCC 351)”

23. *In Sharad Birdhichand Sarda v. State of Maharashtra (1984) 4 SCC 116 while dealing with circumstantial evidence, it has been held that the onus was on the prosecution to prove that the chain is complete and the infirmity or lacuna in prosecution cannot be cured by false defence or plea. The conditions precedent before conviction could be based on circumstantial evidence, must be fully established. They are: (SCC p. 185, para 153)*

(i) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned “must” or “should” and not “may be” established;

(ii) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;

(iii) the circumstances should be of a conclusive nature and tendency;

(iv) they should exclude every possible hypothesis except the one to be proved; and

(v) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

A similar view has been reiterated by this Court in State of U.P. v. Satish (2005) 3 SCC 114 and Pawan v. State of Uttaranchal (2009) 15 SCC 259.

24. *In Subramaniam v. State of T.N (2009) 14 SCC 415, while considering the case of dowry death, this Court observed that the fact of living together is a strong circumstance but that by alone in absence of*

any evidence of violence on the deceased cannot be held to be conclusive proof, and there must be some evidence to arrive at a conclusion that the husband and husband alone was responsible therefor. The evidence produced by the prosecution should not be of such a nature that may make the conviction of the appellant unsustainable. (See Ramesh Bhai v. State of Rajasthan (2009) 12 SCC 603)."

(emphasis supplied)

5.5 Even in the case of *G. Parshwanath (supra)*, this Court has in paragraphs 23 and 24 observed as under:

"23. In cases where evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should, in the first instance, be fully established. Each fact sought to be relied upon must be proved individually. However, in applying this principle a distinction must be made between facts called primary or basic on the one hand and inference of facts to be drawn from them on the other. In regard to proof of primary facts, the court has to judge the evidence and decide whether that evidence proves a particular fact and if that fact is proved, the question whether that fact leads to an inference of guilt of the accused person should be considered. In dealing with this aspect of the problem, the doctrine of benefit of doubt applies. Although there should not be any missing links in the case, yet it is not essential that each of the links must appear on the surface of the evidence adduced and some of these links may have to be inferred from the proved facts. In drawing these inferences, the court must have regard to the common course of natural events and to human conduct and their relations to the facts of the particular case. The court thereafter has to consider the effect of proved facts.

24. In deciding the sufficiency of the circumstantial evidence for the purpose of conviction, the court has to consider the total cumulative effect of all the proved facts, each one of which reinforces the conclusion of guilt and if the combined effect of all these facts taken together is conclusive in establishing the guilt of the accused, the conviction would be justified even though it may be that one or more of these facts by itself or themselves is/are not decisive. The facts established should be consistent only with the hypothesis of the guilt of the accused and should exclude every hypothesis except the one sought to be proved. But this does not mean that before the prosecution can succeed in a case resting upon circumstantial evidence alone, it must exclude each and every hypothesis suggested by the accused, howsoever, extravagant and fanciful it

might be. There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused, where various links in chain are in themselves complete, then the false plea or false defence may be called into aid only to lend assurance to the court."

20. In the case of **State v Nalini, [(1999) 5 SCC 253]** the Hon'ble Supreme Court has laid down the principles governing a case of criminal conspiracy in the following terms:

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 120A 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 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.

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 enrolls. There may be a kind of umbrella-spoke enrollment, 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 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 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 others put the conspiracy into effect, is guilty though he intends to take no active part in the crime.

21. Therefore, the principles established by the Hon'ble Supreme Court on the assessment of evidence in a case based on circumstantial evidence, and the principles laid down by the Hon'ble Supreme Court in dealing with a case of criminal conspiracy, would necessarily have to be borne in mind while assessing the prosecution evidence in the present case.

22. Sameer Bhati (P.W. 32) claims that he had submitted photostat copies of complaints submitted by his father Mahendra Singh Bhati, wherein Mahendra Singh Bhati had clearly expressed his apprehension that he may be killed by Pal Singh and Mahendra Singh Fauji, and other gangsters. The three complaints were submitted and marked as Ex. Ka. 94. The particular complaint, namely complaint dated 23.06.1992 (Ex. Ka. 95) has been read by the learned Trial Court as a dying

declaration. However, in the said complaint (Ex. Ka. 95) the appellant is nowhere mentioned as a possible assailant. Moreover, the complainant does not describe the cause of death of the complainant. Furthermore, it does not even describe the transaction which would cause the death of the complainant. Therefore, the learned Trial Court has erred in treating the said complaint (Ex. Ka. 95) as a dying declaration.

23. In the case of ***State of M.P. v. Paltan Mallah & others, [(2005) 3 SCC 169]***, the Hon'ble Supreme Court was dealing with the issue whether entries in the diary made by the deceased could be treated as dying declaration, or not? The Hon'ble Apex Court opined as under:-

11. The entries in the diary and certain statements of the deceased recorded on a microcassette were sought to be made admissible as evidence under Section 32 of the Evidence Act. Section 32 of the Evidence Act says that the statement, written or oral, of relevant facts made by a person who is dead, are themselves relevant facts, but this statement should have been made as to the cause of his death or as to any of the circumstances of the transaction which resulted in his death when such question comes up for consideration by the court. It is true that when such statements were made, the maker of the statement need not be under the expectation of death. But nevertheless, these statements should give either the cause of his death or any of the circumstance which led to his death.

12. The entries in the diary and the representation Niyogi had submitted to the President of India were in general terms. He apprehended some danger at, the hands of some industrialists as the agitation of the workers had been going on and in some instances the henchmen of the 44 industrialists had unleashed physical violence on the workers. Even though he had mentioned the names of some of the accused persons in the diary and in the cassette, that by itself may not be of any assistance to the prosecution, to prove the case as the entries in the diary and cassette do not refer to any event which ultimately was the cause of his death.

24. Therefore, the learned Trial Court has erred in treating the said complaint (Ex. Ka. 95) as a dying declaration. Since the word used in the complaint was merely “gangsters”, the said word cannot be zeroed down to mean only the appellant. Therefore, the said complaint cannot be read against the present appellant.

25. Both the prosecution and the learned Trial Court have heavily relied on the statements given by Narayan Yadav (P.W. 37) under Section 161 Cr.P.C. Admittedly, Narayan Yadav (P.W. 37) had turned hostile during the trial. Therefore, the issue before this Court is whether the statement given by Narayan Yadav (P.W. 37), under Section 161 Cr.P.C., can be read against the present appellant, or not?

26. In the locus classicus case of **Tahsildar Singh** (supra), the Constitution Bench of the Hon'ble Apex Court had elaborately discussed the scope, ambit and use of a statement given under Section 161 Cr.P.C. The Apex Court had finally concluded as under:-

From the foregoing discussion the following propositions emerge: (1) A statement in writing made by a witness before a police officer in the course of investigation can be used only to contradict his statement in the witness-box and for no other purpose; (2) statements not reduced to writing by the police officer cannot be used for contradiction; (3) though a particular statement is not expressly recorded, a statement that can be deemed to be part of that expressly recorded can be used for contradiction, not because it is an omission strictly so-called but because it is deemed to form part of the recorded statement; (4) such a fiction is permissible by construction only in the following three cases: (i) when a recital is necessarily implied from the recital or recitals found in the statement ; illustration: in the recorded statement before the police the witness states that he saw A stabbing B at a particular point of time, but in the witness-box he says that he saw A and C stabbing B at the same point of time; in the statement before the police the word " only " can be implied, i.e., the witness saw A only stabbing B; (ii) a negative aspect of a positive recital in a statement; illustration: in the recorded statement before the police the witness says that a dark man stabbed B, but in the witness-box he says that a fair man stabbed B; the earlier statement must be deemed to contain the recital not only that the culprit was a dark complexioned man but also that he was not of fair complexion; and (iii) when the statement before the police and that before the Court cannot stand together; illustration: the witness says in the recorded statement before the police that A after stabbing B ran away by a northern lane, but in the Court he says that immediately after stabbing he ran away towards the southern lane; as he could not have run away immediately after the stabbing, i.e., at the same point of time, towards the northern lane as well as towards the southern lane, if one statement is true, the other must necessarily be false.

27. According to the Hon'ble Apex Court, the said statement can be used *"only to contradict the witness and for no other purpose"*.

28. 36. In the case of **V.K. Mishra & another** (supra), the Hon'ble Supreme Court has elaborately discussed the interrelation between Section 161 Cr.P.C. and Section 162 Cr.P.C. as under:-

14. Section 161 Cr. P. C. titled "Examination of witnesses by police" provides for oral examination of a person by any investigating officer when such person is supposed to be acquainted with the facts and circumstances of the case. The purpose for and the manner in which the police statement recorded under Section 161 Cr.P.C can be used at any trial are indicated in Section 162 Cr. P. C. Section 162 Cr. P. C. reads as under:

162. Statements to police not to be signed—Use of statements in evidence.—(1) No statement made by any person to a police officer in the course of an investigation under this Chapter, shall, if reduced to writing, be signed by the person making it; nor shall any such statement or any record thereof, whether in a police diary or otherwise, or any part of such statement or record, be used for any purpose, save as hereinafter provided, at any inquiry or trial in respect of any offence under investigation at the time when such statement was made:

Provided that when any witness is called for the prosecution in such inquiry or trial whose statement has been reduced into writing as aforesaid, any part of his statement, if duly proved, may be used by the accused, and with the permission of the Court, by the prosecution, to contradict such witness in the manner provided by Section 145 of the Indian Evidence Act, 1872 (1 of 1872); and when any part of such statement is so used, any part thereof may also be used in the re-examination of such witness, but for the purpose only of explaining any matter referred to in his cross-examination.

(2) Nothing in this section shall be deemed to apply to any statement falling within the provisions of clause (1) of Section 32 of the Indian Evidence Act, 1872 (1 of 1872), or to affect the provisions of Section 27 of that Act.

Explanation.- An omission to state a fact or circumstance in the statement referred to in sub-section (1) may amount to contradiction if the same appears to be significant and otherwise relevant having regard to the context in which such omission occurs and whether any omission amounts to a contradiction in the particular context shall be a question of fact.

15. Section 162 Cr. P. C. bars use of statement of witnesses recorded by the police except for the limited purpose of contradiction of such witnesses as indicated there. The statement made by a witness before the police under Section 161(1) Cr. P. C. can be used only for the purpose of contradicting such witness on what he has stated at the trial as laid down in the proviso to Section 162 (1) Cr. P. C. The statements under Section 161 Cr. P. C. recorded during the investigation are not substantive pieces of evidence but can be used primarily for the limited purpose:- (i) of contradicting such witness by an accused under Section 145 of Evidence Act;(ii) the contradiction of such witness also by the prosecution but with the leave of the Court and (iii) the re-examination of the witness if necessary.

16. Court cannot suo moto make use of statements to police not proved and ask question with reference to them which are inconsistent with the testimony of the witness in the court. The words in Section 162 Cr. P. C. "if duly proved" clearly show that the record of the statement of witnesses cannot be admitted in evidence straightway nor can be looked into but they must be duly proved for the purpose of contradiction by eliciting admission from the witness during cross-examination and also during the cross-examination of the investigating officer. Statement before the investigating officer can be used for contradiction but only after strict compliance with Section 145 of Evidence Act that is by drawing attention to the parts intended for contradiction.

17. Section 145 of the Evidence Act reads as under:

145. Cross-examination as to previous statements in writing.- A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him, or being proved; but, if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him.

18. Under Section 145 of the Evidence Act when it is intended to contradict the witness by his previous

statement reduced into writing, the attention of such witness must be called to those parts of it which are to be used for the purpose of contradicting him, before the writing can be used. While recording the deposition of a witness, it becomes the duty of the trial court to ensure that the part of the police statement with which it is intended to contradict the witness is brought to the notice of the witness in his cross-examination. The attention of witness is drawn to that part and this must reflect in his cross-examination by reproducing it. If the witness admits the part intended to contradict him, it stands proved and there is no need to further proof of contradiction and it will be read while appreciating the evidence. If he denies having made that part of the statement, his attention must be drawn to that statement and must be mentioned in the deposition. By this process the contradiction is merely brought on record, but it is yet to be proved. Thereafter when investigating officer is examined in the court, his attention should be drawn to the passage marked for the purpose of contradiction, it will then be proved in the deposition of the investigating officer who again by referring to the police statement will depose about the witness having made that statement. The process again involves referring to the police statement and culling out that part with which the maker of the statement was intended to be contradicted. If the witness was not confronted with that part of the statement with which the defence wanted to contradict him, then the court cannot suo moto make use of statements to police not proved in compliance with Section 145 of Evidence Act that is, by drawing attention to the parts intended for contradiction.

29. Thus, Section 162 Cr.P.C. permits the use of a statement made under Section 161 Cr.P.C. for an extremely limited purpose, namely for contradicting the maker of the statement on what he has stated during the investigation as laid down in the proviso to Section 162 (1) Cr.P.C. read with Section 145 of the Evidence Act. Therefore, the said statement can be used by the accused to contradict the witness; secondly, with the permission of the Court by the prosecution to contradict the witness

provided by Section 145 of the Indian Evidence Act. Thirdly, the said statement can also be used for re-examination of such witness in order to explain any matter referred to in his cross-examination. However, the statement made under Section 161 Cr. P. C. cannot be used to convict an accused.

30. In fact, in the case of **Virendra Singh** (supra) the Hon'ble Supreme Court has further opined that "*PW-12, having been discredited by the prosecution and she having been contradicted with reference to her previous statements recorded under Section 161 Cr. P. C, as required under Section 145 of the Evidence Act, no part of the testimony of PW-12 can be taken into account for determining the culpability of the accused-appellant. The statements made by her in the course of her investigation and recorded under Section 161 Cr.P.C. do not constitute evidence that can be relied upon by a Court to convict an accused.*"

(Emphasis added)

31. The learned Trial Judge has relied on the case of **Bhagwan Das v. State of Delhi, [(2011) 6 SCC 396]** in order to cull out the principle that because the

witness turned hostile during the trial, and the said witness was confronted by her/his statement recorded under Section 161 Cr.P.C., the statement can be used as an evidence. Therefore, an accused can be convicted on the basis of the statement recorded under Section 161 Cr.P.C. Having extracted this principle from the said judgment, the learned trial Court has proceeded to read the second statement (Ex. Ka. 114) of Narain Yadav (P.W. 37) given under Section 161 Cr.P.C. However, while doing so, the learned Trial Court has committed three errors: firstly, it has ignored the proviso to Section 162 Cr.P.C. which clearly prescribes the limited purpose for which a statement recorded under Section 161 Cr.P.C. can be used. Secondly it has ignored the settled principles of law as annunciated by the Hon'ble Supreme Court in catena of cases—some of which have been mentioned above. Thirdly, it has ignored the rules of precedent.

32. Rules of precedent play a pivotal role in maintaining consistency and certainty in the development of law. There has to be harmony in the interpretation and development of law. If rules of precedent were to be ignored, it would unnecessarily lead to cacophony in law.

Thus, judicial discipline demands and dictates that rules of precedent should be adhered to both in spirit and in letter. *[Ref. to Shah Faesal v Union of India, (2020) 4 SCC 1]*.

33. While relying on the case of **Bhagwan Das** (supra), the learned Trial Court should have kept in mind the principle annunciated in the case of **Tahsildar Singh** (supra). For the latter decision was not only one of the earliest decision on the scope and use of statement recorded under Section 161 Cr.P.C., but was also a decision by a learned Constitution Bench. Thus, the said decision was binding on the learned Division Bench which decided the case of **Bhagwan Das** (supra). Further, while the case of **Bhagwan Das** (supra) was decided by a learned Division Bench, the case of **V.K. Mishra** (supra) was decided by a learned Full Bench of the Hon'ble Supreme Court. Hence, the learned Trial Court should have adhered to the principles of law as annunciated by the learned Constitution Bench in the case of **Tahsildar Singh** (supra) and by the learned Full Bench in the case of **V.K. Mishra** (supra).

34. Thus, the learned Trial Court has erred in reading the second statement (Ex. Ka. 114) given by Narayan Yadav (P.W. 37), under Section 161 Cr.P.C., against the present appellant.

35. Although, it is true that Pal Singh, one of the co-accused persons, in his disclosure statement, recorded under Section 27 of the Evidence Act, claims that a car was given to him by D.P. Yadav and his relative, Karan Yadav, but even this part of the disclosure statement could not be read against the present appellant. For, in the famous case of ***Pulukuri Kottaya and Others v. Emperor, [AIR (1947) PC 67]***, the Hon'ble Privy Council had elaborately dealt with the scope and ambit of Section 27 of the Evidence Act. It had opined as under:-

9. Section 27, which is not artistically worded, provides an exception to the prohibition imposed by the preceding section, and enables certain statements made by a person in police custody to be proved. The condition necessary to bring the section into operation is that the discovery of a fact in consequence of information received from a person accused of any offence in the custody of a Police officer must be deposed to, and thereupon so much of the information as relates distinctly to the fact thereby discovered may be proved. The section seems to be based on the view that if a fact is actually discovered in consequence of information given, some guarantee is afforded thereby that the information was true, and accordingly can be safely allowed to be given in evidence; but clearly the extent of the information admissible must depend on the exact nature of the fact discovered to which such information is required to relate. Normally the section is brought into operation when a person in police custody produces from some place of concealment some object,

such as a dead body, a weapon, or ornaments, said to be connected with the crime of which the informant is accused. Mr. Megaw, for the Crown, has argued that in such a case the "fact discovered" is the physical object produced, and that any information which relates distinctly to that object can be proved. Upon this view information given by a person that the body produced is that of a person murdered by him, that the weapon produced is the one used by him in the commission of a murder, or that the ornaments produced were stolen in a dacoity would all be admissible. If this be the effect of Section 27, little substance would remain in the ban imposed by the two preceding sections on confessions made to the police, or by persons in police custody. That ban was presumably inspired by the fear of the legislature that a person under police influence might be induced to confess by the exercise of undue pressure. But if all that is required to lift the ban be the inclusion in the confession of information relating to an object subsequently produced, it seems reasonable to suppose that the persuasive powers of the police will prove equal to the occasion, and that in practice the ban will lose its effect. On normal principles of construction their Lordships think that the proviso to Section 26, added by Section 27, should not be held to nullify the substance of the section. In their Lordships' view it is fallacious to treat the "fact discovered" within the section as equivalent to the object produced; the fact discovered embraces the place from which the object is produced and the knowledge of the accused as to this, and the information given must relate distinctly to this fact. Information as to past user, or the past history, of the object produced is not related to its discovery in the setting in which it is discovered. Information supplied by a person in custody that "I will produce a knife concealed in the roof of my house" does not lead to the discovery of a knife; knives were discovered many years ago. It leads to the discovery of the fact that a knife is concealed in the house of the informant to his knowledge; and if the knife is proved to have been used in the commission of the offence, the fact discovered is very relevant. But if to the statement the words be added "with which I stabbed A", these words are inadmissible since they do not relate to the discovery of the knife in the house of the informant.

36. In the case of **Mohd. Inayat v. State of Maharashtra, [(1976) 1 SCC 828]**, the Hon'ble Apex Court opined that "the expression 'provided that' together

with the phrase 'whether it amounts to a confession or not' show that the Section is in the nature of an exception to the preceding provisions particularly Sections 25 and 26. It is not necessary in this case to consider if this Section qualifies, to any extent, Section 24, also. It will be seen that the first condition necessary for bringing this section into operation is the discovery of a fact, albeit a relevant fact, in consequence of the information received from a person accused of an offence. The second is that the discovery of such fact must be deposed to. The third is that at the time of the receipt of the information the accused must be in police custody. The last but the most important condition is that only 'so much of the information' as relates distinctly to the fact thereby discovered is admissible. The rest of the information has to be excluded."

(Emphasis added)

37. In the case of **Salim Akhtar @ Mota** (supra), the Hon'ble Apex Court has clearly opined as under:-

So far as the disclosure statement of the appellant is concerned, the same was admittedly made to police personnel and only that part of the statement would be admissible which is permissible under Section 27 of the Evidence Act. The scope of this provision was explained by the Privy Council in the well known case of Pulukuri Kottaya and Ors. v. Emperor, AIR (1947) PC 67,

wherein it was held that it is fallacious to treat the "fact discovered" within the section as equivalent to the object produced. The fact discovered embraces the place from which the object is produced and the knowledge of the accused as to this, and the information given, must relate distinctly to this fact. Information as to the past user, or the past history, of the object produced is not related to its discovery in the setting in which it is discovered. Therefore, what is admissible is the place from where the polythene bag containing pistol and other articles was allegedly recovered. The fact that some terrorist organisation had given the pistol and other articles to the appellant or its use would not be admissible.

38. Therefore, only that portion of the statement of Pal Singh, given under Section 27 of the Evidence Act, could be read against the accused, which lead to the discovery of the fact that he had taken the car for service in the first week of September, 1992 to the Service Station located near the Court in Ghaziabad, and the fact that he can identify the said Service Station can be used against Pal Singh. However, the previous history of the car, or its usage in the alleged offence, cannot be read against the appellant. Therefore, the learned Trial Court has mis-applied the law while reading a part of Pal Singh's disclosure statement as convincing evidence against the appellant.

39. The prosecution has examined Minakshi Saini (P.W. 17) in order to establish the fact that the get-away

car was bought by one Kunal Kapoor. According to the disclosure statement of Pal Singh, the car was given to him by D.P. Yadav and his relative, Karan Yadav. However, the prosecution has failed to examine Kunal Kapoor as a witness. Moreover, the prosecution has failed to establish the fact that the present appellant had bought the car in the name of Kunal Kapoor. Even Minakshi Saini (P.W. 17) does not identify the appellant as Kunal Kapoor. Moreover, the prosecution has failed to establish the fact that the car was ever in possession of the appellant. Although the prosecution has tried to use, and the learned Trial Court has erroneously relied on the statement of Narayan Yadav (P.W. 37), recorded under Section 161 Cr.P.C., to establish that the car was in the possession of the present appellant, for reasons stated above, the statement of Narayan Yadav (P.W. 37) cannot be read against the present appellant. Therefore, the entire case of the prosecution falls to the ground that the car was bought by Karan Yadav, and was in his possession, and was subsequently given to Pal Singh as a get-away car.

40. Since neither the statement given by Narayan Yadav (P.W. 37), under Section 161 Cr.P.C., nor the disclosure statement made by Pal Singh, under Section 27 of the Evidence Act, can be read against the present appellant, the prosecution has miserably failed to establish the fact that the appellant had entered into a criminal conspiracy with D.P. Yadav and other co-accused persons for committing the murder of Mahendra Singh Bhati. Therefore, the conviction of the appellant with the aid of Section 120-B, and his conviction specifically for offence under Section 120-B, is clearly unsustainable.

41. The Hon'ble Supreme Court has clearly opined that absconding cannot be treated as an incriminating evidence. For, even innocent people do tend to run away from the scene of the crime and from their village or home. Therefore, conviction cannot be based only on the ground that the alleged accused has absconded. Since there is lack of evidence with regard to the appellant being a conspirator, his conviction only on the basis of the fact that he had absconded from his home cannot be the basis for convicting him for the aforementioned offences.

42. In the case of **Matru v. State of U.P.**, [(1971) 2 SCC 75], the Hon'ble Supreme Court had clearly observed as under :-

The appellant's conduct in absconding was also relied upon. Now, mere absconding by itself does not necessarily lead to a firm conclusion of guilty mind. Even an innocent man may feel panicky and try to evade arrest when wrongly suspected of a grave crime such is the instinct of self-preservation. The act of absconding is no doubt relevant piece of evidence to be considered along with other evidence but its value would always depend on the circumstances of each case. Normally the courts are disinclined to attach much importance to the act of absconding, treating it as a very small item in the evidence for sustaining conviction. It can scarcely be held as a determining link in completing the chain of circumstantial evidence which must admit of no other reasonable hypothesis than that of the guilt of the accused. In the present case the appellant was with Ram Chandra till the FIR was lodged. If thereafter he felt that he was being wrongly suspected and he tried to keep out of the way we do not think this circumstance can be considered to be necessarily evidence of a guilty mind attempting to evade justice. It is not inconsistent with his innocence.

43. In the case of **Bipin Kumar Mondal v. State of West Bengal**, [(2010) 12 SCC 91], an identical opinion has been expressed by the Hon'ble Apex Court. Therefore, even in the present case even if the appellant has absconded from his place of residence, this fact, by itself, cannot form the basis of convicting the appellant of the aforementioned offences.

44. Therefore, for the reasons stated above, this appeal is, hereby, allowed. The judgment, dated

28.02.2015/10.03.2015, passed by the IIIrd Additional Sessions Judge/Special Judge (C.B.I.), Dehradun, *qua* the appellant is set aside. Hence, the appellant is acquitted of offences under Section 302 read with Section 120-B IPC, Section 307 read with Section 120-B IPC, and Section 326 read with Section 120-B IPC. Since the appellant is on bail, his bail bonds stand discharged.

RAGHVENDRA SINGH CHAUHAN, C.J.

ALOK KUMAR VERMA, J.

Dt: 25th November, 2021
Rahul