



## CONSPIRACY

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Conspiracy<sup>1</sup> is when two or more persons agree to an act, which is forbidden by law, or an act which is not illegal but when it is done by illegal means. Earlier, Conspiracy was not an offence under Indian Penal Code (IPC) until the Criminal Law Amendment Act of 1913. It was added under the Section 120-A and 120-B of Indian Penal Code. Section 120-A defines 'conspiracy' and Section 120-B prescribed punishment for 'criminal conspiracy'. Conspiracy was being framed upon these elements. They were-

- Agreement to do an act
- Between two or more persons
- A criminal object, which may be either the ultimate aim of the agreement, or may constitute the means by which that Aim is to be accomplished.

There are many unproven conspiracy theories from disappearance of Malaysia Airlines Flight MH370 in South-East India to Germany's pretense for invading Poland in World War II. Conspiracy existed in the times of Julius Caesar as well. Famous Julius Caesar was ceased to death by Conspiracy of his kingdom's officials. But there has been difference between English Law and Indian Law relating to Conspiracy. The Supreme Court in **State v. Nalini (Rajiv Gandhi Assassination Case)**, Rajiv Gandhi was assassinated by a human bomb. And this case led to forming of certain broad

principles governing the Law of Conspiracy. It firmly explained that offence of criminal conspiracy is an exception to the general rule where intent alone doesn't constitute a crime. It is the intention to commit crime and joining hands with persons having the same intention. In the eyes of Indian law, Conspiracy is punishable in two forms viz., conspiracy by way of abetment and conspiracy involved in certain offences. In the Former Case, an act or illegal omission must take place in pursuance of conspiracy in order to be punishable. The latter is conspiracy by implication and proof of membership is enough to establish the charge of conspiracy. The punishment for conspiracy is the same as if the conspirator had abetted the offence. Conspiracy is a form of substantive offence. The offence of conspiracy is complete when two or more conspirators have agreed or cause to be done an act which is itself an offence, in which case, no overt act need not be established. Conspiracy can be considered as volatile entity. A Conspiracy to commit an offence under Section 121 or to discourage the government by means of criminal force is punishable under Indian Penal Code. Conspiracy Theory frequently emerge following the deaths of prominent people from which the best known is theories concerning to assassination of John F. Kennedy in 1963. Conspiracies have led from hijacks of Airplanes to killing of prominent persons in the world.

<sup>1</sup> Ronald wood Mathams v. State of West Bengal



In the Famous Case of **State of Maharashtra v. Somnath Thapa**<sup>2</sup>, Supreme Court explained the ingredients of Conspiracy. It was observed in this case that ultimate offence consists of a chain of actions, it would be not be necessary for the prosecution to establish, to bring home the charge of conspiracy, that each of the conspirators had to know of what the collaborator would do, so long as it is known that the collaborator would put the goods or services to an unlawful use.

Types of Conspiracy Theories (Optional if needed)

- Surveillance Theory
- Hiding Theory
- Control Theory
- Deaths Theory
- Warfare Theory
- Technology Theory
- Paranormal Theory

Reasonable ground exists for believing that 'A' has joined in a conspiracy to wage war against the Government of India.

Principal and scope:

The general principle is that no person can be made liable for the acts of another

except in cases of abetment in criminal proceedings and contract of agency in civil proceedings and contract of agency in civil proceedings. However, in conspiracy persons who take part in conspiracy are deemed the mutual agents or confederates for the purpose of the executive of the joint purpose.

**Bhagwan Swarup v. State of Maharashtra**, the Supreme Court of India states that Section 10 of the Evidence Act will come into play only when the Court is satisfied that there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong, that is to say, there should be a prima facie evidence that a person was a party to the conspiracy, before his act can be used against his co- conspirators.

Section 10 is based on the theory of agency. In **Emperor v. Shafi Ahmed**, it has been held that if two or more persons conspire together to commit an offence, each is regarded as being the agent of the other, and just the principal is liable for the acts of the agent of the other, and just the principal is liable for what is done by his fellow- conspirator, in furtherance of the common intention entertained by both of them.

<sup>2</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 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 (sic) 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.

The State of Maharashtra and Ors. vs. Rajesh and Ors. (05.05.2016 - BOMHC) : MANU/MH/0660/2016



Section 10 contains the following ingredients as stated in Bhagwant Swarup v. State of Maharashtra,

- There shall be a prima facie evidence affording a reasonable ground for a Court to believe that two or more persons are members of a conspiracy,
- If the said condition is fulfilled anything said, done or written by any one of them in reference to their common intention will be evidence against the others,
- Anything said, done or written by him should have been said, done or written by him after the intention was formed by any one of them,
- It would also be relevant for the said purpose against another who entered the conspiracy, whether it was said, done or written before he entered the conspiracy or after he left,
- In addition, it can be used only against a conspirator and not in his favor.

REASONABLE GROUND OF CONSPIRACY:

*In Barudra Kumar Ghose v. Emperor*, it has been held that the operation of Section 10 is strictly conditional upon there being reasonable ground to believe that two or more persons have conspired together to commit offence. In *Gulab Singh v. Emperor*, it has been observed that it is necessary in a prosecution for conspiracy to prove that there were two or more persons agreeing for purpose of conspiracy and that there could not be a conspiracy of one. This decision is based on the decision given in *King v. Plummer*.

In re: Rangarajulu, it has been held that the existence of a secret code by itself is evidence to support the inference that the persons named therein have conspired to commit an offence.

In *Samundar Singh V. State*, it has been held that the evidence is taken after a prime a facie proof of the Conspiracy but at a later stage of the trial that reasonable ground of belief or prime facie proof is displaced by further evidence, the Court must reject the evidence previously taken.

**Confession:**

In *State of Gujrat v. Mohammed Atik*, it has been held that a post-arrest statement made to police officer whether it is a confession or otherwise touching his involvement in the conspiracy would not fall within the ambit of Section 10 of the Act.

In *Kehar Singh v. State*, it was held that in the absence of reliable evidence beyond reasonable doubt confession of a co-accused could not be used against other.

In the absence of reliable and trustworthy evidence, such confession cannot be used in a conspiracy case.

**Difference between English Law and Indian Law relating to conspiracy:**

- In Indian Law, under Section 10 of the Evidence Act, what the Conspirator said, did or wrote must be in reference to his common intention, whereas under the English Law, such acts must be in furtherance of the common design. The Indian Law is much wider than the English Law.



- In Indian Law, even after one conspirator ceases to have connection with the conspiracy, his acts are admissible, whereas under the English Law, they are not admissible
- In Indian Law, acts done after the termination of the conspiracy are also relevant, but in English Law if the acts and declarations were done or made after the person against whom the evidence is to be given and served his connection with the conspiracy, they will not be held relevant.
- In Nathu Ram Godse v. Rex, it has been held that “Under the English law statements or acts made or done by one conspirator in order to be admissible against the others, must have been made or done in furtherance of the common purpose and in pursuance of the conspiracy. This rule of the English Law has not been adhered to in Section 10 of the Indian Evidence Act. ”

**Case Laws:**

The opening words in Section 10 of the Evidence Act, 1872, are "where there is reasonable ground to believe that two or more persons have conspired together to commit an offence". If prima facie evidence of the existence of a conspiracy is given and accepted, the evidence of acts and statements made by any one of the conspirators in furtherance of the common object is admissible against all. Therefore, there should first be a prima facie evidence that the person was a party to the conspiracy before his acts or statements can be used against his co-conspirators. No worthwhile prima facie evidence apart from the alleged confessions have

been brought to notice to show that the petitioner along with A-2 and A-4 was party to a conspiracy. The involvement of the petitioner and A-2 and A-4 in the alleged conspiracy is sought to be established by the confessions themselves.

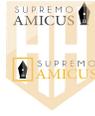
Here, the confessions of A-2 and A-4 were recorded long after the murder when the conspiracy had culminated and, therefore, Section 10 of the Evidence Act cannot be pressed into service.

Subject Category:  
 CRIMINAL MATTERS - CRIMINAL MATTERS RELATING TO BAIL/INTERIM BAIL/ANTICIPATORY BAIL AND AGAINST SUSPENSION OF SENTENCE

**JUDGMENT**

1. Leave granted.  
 2. This appeal, by special leave, has been preferred against the order dated 8.12.2004 of Madras High Court, by which the petition for bail filed by the petitioner under Section 439 Cr.P.C. was rejected.

3 An F.I.R was lodged at 7.00 p.m. on 3.9.2004 at Police Station B-2, Vishnu Kanchi by Shri N.S. Ganesan. It was stated therein that at about 5.45 p.m. on 3.9.2004 while he was in the office of Devarajaswamy Devasthanam, two persons armed with aruval came there and caused multiple injuries to Sanakararaman, In-charge Administrative Manager, who was sitting on a chair. Three persons were



waiting outside and the assailants escaped on their motor cycles. After the case was registered, necessary investigation followed and several persons have been arrested. According to the case of the prosecution, the actual assault upon the deceased was made by A-6 and A-7, while four persons, namely, A-5, A-8, A-9 and A-10 were standing outside.

4. The petitioner, Shri Jayendra Saraswathi Swamigal, who is the Shankaracharya of Kanchi Mutt, Kanchipuram, was arrested on 11.11.2004 from Mehboob Nagar in Andhra Pradesh. He moved a bail petition before the High Court of Madras, which was rejected on 20.11.2004 and the second bail petition was also rejected by the impugned order dated 8.12.2004.

5. In order to establish the aforesaid motive for commission of crime, the prosecution relies upon copies of 39 letters which were allegedly recovered from the house of the deceased himself. What the prosecution claims is that the deceased used to keep copies of all the letters and complaints which he made against the petitioner and it is these copies which have been recovered from the house of the deceased. The prosecution claims that of these 39 letters or complaints 5 complaints were found in the office of HR&CE, Chennai which relate to the period 14.8.2001 to 23.1.2002, one in the residence of A-4 and 2 in the residence of the petitioner. In our opinion, the recovery of these letters from the house of the deceased

himself is not a proof of the fact that they were actually received by the petitioner or were brought to his notice. The deceased was not an employee of the Mutt but was working as In-charge Administrative Manager of another Dharamsthanam which has nothing to do with Kanchi Mutt and at least since 1998 he had no connection with the said Mutt. Though according to the case of the prosecution, the deceased had started making complaints against the petitioner since August 2001, there is absolutely no evidence collected in investigation that the petitioner made any kind of protest or took any kind of action against the deceased. Even otherwise, many letters or complaints etc. are addressed to people holding high office or position and it is not necessary that they read every such letter or complaint or take them seriously. There is absolutely no evidence or material collected so far in investigation which may indicate that the petitioner had ever shown any resentment against the deceased for having made allegations against either his personal character or the discharge of his duties as Shankaracharya of the Mutt. The petitioner having kept absolutely quiet for over three years, it does not appeal to reason that he suddenly decided to have Sankararaman murdered and entered into a conspiracy for the said purpose.

6. N. Sundaresan (A-23) who is Manager of the Mutt was arrested on 24.12.2004 and was produced before the Judicial Magistrate, Kanchipuram at 1.45 p.m. on 25.12.2004. He stated before the Magistrate that he had



received Rs.50 lakhs in cash on 30.4.2004 and the said amount was deposited in Indian Bank, Sankara Mutt Branch on 7.5.2004. Learned counsel for the petitioner has placed before the Court copies of two accounts bearing nos.124 and 125 which the Kanchi Kamakothi Peetham Shri Sankaracharya Swam has in the Indian Bank at No.1, Salai Street, Kanchipuram. This statement of account shows that on 7.5.2004 an amount of Rs.28,24,225/- was deposited in cash in account no.124 and an amount of Rs.21,85,478/- was deposited in cash in account no.125. Thus the total amount which was deposited in cash comes to Rs.50,09,703/-. Learned counsel has explained that in addition to Rs.50 lakhs which received in cash an extra amount of Rs.9,703/- was deposited in order to liquidate the overdraft over which penal interest was being charged by the bank. The statement of account clearly shows that after deposit of the aforesaid amount the entire overdraft was cleared. This clearly shows that the entire amount of Rs.50 lakhs which was received in cash on 30.4.2004 was deposited in Bank on 7.5.2004. This belies the prosecution case, which was developed subsequently after the order had been passed by this Court on 17.12.2004 directing the State to produce copy of the ICICI Bank account, that the cash money was retained by the Petitioner from which substantial amount was paid to the hirelings.

7. The prosecution also relies upon confessional statement of Kathiravan

(A-4) recorded under Section 164 Cr.P.C. on 19.11.2004, wherein he stated that he went to the Kanchi Mutt on 1.9.2004 and in the presence of Ravi Subramaniam and Sundaresan, the petitioner said that Sankararaman had written letters and had filed cases and it was not possible for him to bear the torture any longer and, therefore, he should be killed on the same day. It is important to mention here that A-4 retracted his confession on 24.11.2004 when his statement was again recorded under Section 164 Cr.P.C. The prosecution also relies upon confession of Ravi Subramaniam (A-2) which was recorded on 30.12.2004 wherein he made a similar statement that the petitioner offered him Rs.50 lakhs on 1.9.2004 for getting rid of Sankararaman.

8. Shri Nariman has submitted that in view of Section 30 of the Evidence Act confession of a co-accused is a very weak type of evidence which can at best be taken into consideration to lend assurance to the prosecution case. He has referred to the decision of the Privy Council in *Bhuboni Sahu v. The King* MANU/PR/0014/1949, wherein it was observed that confession of a co-accused is obviously evidence of a very weak type and it does not come within the definition of evidence contained in Section 3 as it is not required to be given on oath, nor in the presence of the accused and it cannot be tested by cross-examination. Learned counsel has also referred to *Kashmira Singh v. State of M.P.* MANU/SC/0031/1952 : 1952CriLJ839 where it was held that the confession of an accused person is



not evidence in the ordinary sense of the term as defined in Section 3 and it cannot be made the foundation of a conviction and can only be used in support of other evidence. It was further observed that the proper way is, first to marshal the evidence against the accused excluding the confession altogether from consideration and see whether, if it is believed a conviction could safely be based on it. If it is capable of belief independently of the confession, then of course it is not necessary to call the confession in aid. But cases may arise where the Judge is not prepared to act on the other evidence as it stands even though, if believed, it would be sufficient to sustain a conviction. In such an event the Judge may call in aid the confession and use it to lend assurance to the other evidence and thus fortify himself in believing such evidence which without the aid of the confession he would not be prepared to rely on for basing a finding of guilty. Reliance has also been placed upon the Constitution Bench decision in Haricharan Kurmi v. State of Bihar MANU/SC/0059/1964 : 1964CriLJ344 where it was held that the Court cannot start with the confession of a co-accused person; it must begin with other evidence adduced by the prosecution and after it has formed its opinion with regard to the quality and effect of the said evidence, then it is permissible to turn to the confession in order to receive assurance to the conclusion of guilt which the judicial mind is about to reach on the said other evidence. It was further observed that the confession of a co-accused person cannot be treated

as substantive evidence and can be pressed into service only when the Court is inclined to accept other evidence and feels the necessity of seeking for an assurance in support of its conclusion deducible from the said evidence. It has thus been urged that the confession of A-4 which was retracted by him subsequently and also that of A-2 have very little evidentiary value in order to sustain the charge against the petitioner.

9. Shri K.T.S. Tulsi, learned senior counsel, has, on the other hand, placed strong reliance on Section 10 of the Evidence Act and has submitted that this being a specific provision dealing with a case of conspiracy to commit an offence, the principle laid down in the authorities cited by Shri Nariman would not apply and anything said, done or written by any one of the accused is a relevant fact as against each of the person conspiring to commit a crime. In this connection he has referred to State of U.P. v. Buta Singh MANU/SC/0182/1978 : [1979]1SCR298 State of Maharashtra v. Damu MANU/SC/0299/2000 : 2000CriLJ2301 Firozuddin Basheeruddin and Ors. V. State of Kerala MANU/SC/0471/2001 : 2001CriLJ4215 Prakash Dhawal Khairnar v. State of Maharashtra MANU/SC/0788/2001 : 2002CriLJ928 and State of H.P. v. Satya Dev Sharma and Ors. : (2002)10SCC601.

10. The opening words in Section 10 are "where there is reasonable ground to believe that two or more persons have conspired together to commit an



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offence". If prima facie evidence of the existence of a conspiracy is given and accepted, the evidence of acts and statements made by anyone of the conspirators in furtherance of the common object is admissible against all. Therefore, there should first be a prima facie evidence that the person was a party to the conspiracy before his acts or statements can be used against his co-conspirators.

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