

**A.F.R.**

**Reserved on 09.09.2020**

**Delivered on 15.10.2020**

**Court No. - 1**

**Case :- CRIMINAL APPEAL No. - 3658 of 2002**

**Appellant :- Udai Bhan**

**Respondent :- State of U.P.**

**Counsel for Appellant :- K.D. Tiwari, Sunil Kumar, Sunil Singh, Vikas Sharma Amicus**

**Counsel for Respondent :- Govt. Advocate**

**Connected with**

**Case :- CRIMINAL APPEAL No. - 3917 of 2002**

**Appellant :- Hukum Singh**

**Respondent :- State of U.P.**

**Counsel for Appellant :- K.D. Tiwari, Avinash Jaiswal (A.C.), Jitendra Singh, K.Kumar Tripathi, M.F. Ansari, Mary Pancha (Sheeb Jose), Mohd. Kalim, R.K. Vaish, Ramanuj Yadav, Sushil Kumar Dwivedi, Vikas Sharma Amicus, Avinash Jais**

**Counsel for Respondent :- A.G.A., S.P. Sharma, Sanjay Tripathi**

**Connected with**

**Case :- CRIMINAL APPEAL No. - 3960 of 2002**

**Appellant :- Kalyan Singh**

**Respondent :- State of U.P.**

**Counsel for Appellant :- K.D. Tiwari**

**Counsel for Respondent :- Govt. Advocate**

**Hon'ble Ramesh Sinha, J.**

**Hon'ble Samit Gopal, J.**

***(Per Ramesh Sinha, J. for the Bench)***

1. The present criminal appeals have been preferred against the judgment and order dated 5.9.2002 passed by 1<sup>st</sup> Additional Sessions Judge, Mahoba in S.T. No.16 of 2001 (Case Crime No.220 of 2000), Police Station Ajnar, District Mahoba convicting and sentencing the appellants, namely, Hukum Singh and Kalyan Singh under Section 147 I.P.C. for one year R.I., under Section 148 I.P.C. for two years R.I. and under Section 302/149 I.P.C. for life

imprisonment and fine of Rs.2000/- each and in default of payment of fine, six months additional imprisonment to each of the appellants, whereas appellant, namely, Udai Bhan has been convicted and sentenced for life imprisonment under Section 302/120-B I.P.C. and fine of Rs.2,000/- and in default of payment of fine, six months simple imprisonment.

2. The accused, namely, Hukum Singh and Kalyan Singh who have preferred Crl. Appeal Nos. 3917 of 2002 & 3960 of 2002 have died during the pendency of their appeals and their appeals have already been ordered to be abated by this Court vide orders dated 9.9.2020 14.11.2018 respectively, hence, the Court proceeds to hear the criminal appeal filed by the appellant Udai Bhan being Crl. Appeal No.3658 of 2002 against whom the only charge is for conspiring the murder of the deceased along with the two accused Hukum Singh and Kalyan Singh.

3. The prosecution case, as has been set out in the F.I.R. by the informant Sohan Lal, is that the house of the informant is at a distance of 150 yards from the house of his cousin brother, namely, Jagat Singh. There was some dispute between Jagat Singh and one Hukum Singh and others of his village with respect to land, on account of which in the night of 25.10.2020 accused Hukum Singh, Kalyan Singh along with 2-3 unknown persons entered in the house of his cousin brother Jagat Singh with lathi, farsa, axe and country-made pistol and assaulted them. On hearing the alarm being raised by his cousin brother Jagat Singh, his wife Mannu and daughter Km. Anita for

rescue, the informant Sohan Lal, Jai Hind, Prithvi Raj, Sughar Singh, Basanta and other persons of the village reached at the place of occurrence in the night at about 1:30 a.m. and they in the torch light saw the accused, namely, Hukum Singh, Kalyan Singh and 2-3 unknown persons along with them who were indulged in marpeet and were uttering that if any person would come in between, would be dealt in the same manner. The accused have killed his brother Jagat Singh, his wife Smt. Mannu and daughter Km. Anita with lathi, farsa and fled away towards the village. While the accused were fleeing from the place of occurrence, the informant and others had seen the accused Hukum Singh and Kalyan Singh with 2-3 unknown persons and identified them and further the unknown person could be identified by them if they were brought before them. The incident has been conspired by the by the brother of Hukum Singh, namely, Udai Bhan. When the informant and others reached on the spot, they saw the dead body of Jagat Singh lying in the courtyard of his house and that of his wife Smt. Mannu on the roof of the house, whereas the dead body of his daughter Km. Anita was lying on the way towards the west side near the house of one Bal Kishan.

4. The F.I.R. of the incident was lodged on the basis of written report submitted by the informant Sohan Lal against the accused persons, namely, Hukum Singh, Kalyan Singh, Udai Bhan and 2-3 unknown persons on 25.10.2000 at 6.30 a.m. at Police Station Ajnar, District Mahoba being Case Crime No.220 of 2000, under Sections 147, 148, 302, 149 & 120B I.P.C.

5. The investigation of the case was entrusted to the Station Officer, namely, Surendra Singh, who after conclusion of the investigation, submitted charge sheet against the three accused persons, namely, Hukum Singh, Kalyan Singh and Udai Bhan.

6. The case was committed to the Court of Sessions and charges were framed against the accused for the offence under Sections 147, 148, 302/149 & 120B I.P.C. by the trial Court.

7. The accused were put to trial. The accused denied the charges and claimed their trial.

8. The prosecution in support of its case has examined PW1-Sohan Lal, PW2-Prithvi Raj, PW3-Basanta, PW-4 Dr. T.R. Sarsaiya, PW5-Head Constable Daya Shankar Tiwari, PW6-S.I.Surendra Singh and PW7-Jai Hind

9. PW1-Sohan Lal has deposed before the trial Court reiterating the prosecution case, as has been stated by him in the F.I.R. He proved the written report Ext.Ka.1 to be in his hand writing and signature. He stated that he reached at the place of occurrence on the alarm raised by the deceased Mannu and had seen the accused Hukum Singh and Kalyan, who were armed with axe, coming out from the house of deceased Jagat Singh along with 2-3 unknown persons. The unknown persons were armed with farsa, country-made pistol and lathi. He saw the incident in the torch light and identified the accused. This witness further deposed that along with him Prithvi Raj, Jai Hind and Basanta were also present. The accused had also threatened them for dire consequence. The deceased

Jagat Singh wanted to give his landed property to his daughter Km. Anita whose marriage he had fixed in Village Lamhora. Prior to the incident, there was a quarrel between the deceased Jagat Singh and accused Hukum Singh and Kalyan Singh with respect to giving of his landed property to his daughter Km. Anita, for which a report was also lodged by the deceased Jagat Singh. In the murder of the three deceased, there was a conspiracy of Kalyan Singh, Hukum Singh and Udai Bhan.

10. In his evidence, this witness further deposed that the accused Udai Bhan was also present at the time of incident, but in his cross-examination he denied the presence of the accused Udai Bhan and has only deposed that he conspired along with other accused persons for murdering the deceased Jagat Singh and his family.

11. PW2-Prithvi Raj who is also an eye witness of the occurrence, has deposed before the trial Court that he too reached at the place of occurrence on hearing the fire shot and on the alarm raised by Smt. Mannu for rescue. He saw the accused Hukum Singh, Kalyan Singh and three unknown persons coming out from the house of the deceased Jagat Singh. He had also seen the accused and identified them in the torch light. After the accused had gone away, he visited the house of Jagat Singh and saw that that the doors of the house was broken and the dead body of the deceased Jagat Singh was lying in the courtyard of the house, that of Smt. Mannu on the roof whereas the dead body of his daughter Km. Anita was

lying on the way near the house of one Bal Kishan.

12. This witness further deposed that more than one month or so prior to the present incident at about 9 hrs. during day time he heard from the courtyard of his house which is adjacent to the side of pathway accused Udai Bhan, Hukum Singh and Kalyan Singh talking to each other that they be killed otherwise the entire property of Jagat Singh would be taken by the in-laws of Km. Anita and when the said conversation was going on, at that time accused Udai Bhan had come to the village. All the three accused have conspired the murder of the three deceased. This witness is also the witness of panchayatnama of the three deceased and on the inquest report/panchayatnama he had also signed. This witness is also the witness of certain recoveries such as blood stained lathi, which he had signed and proved as paper no.9 Ka-1 and further the police had recovered the three empty cartridges and prepared fard recovery memo as paper no.9Ka-2 and in his presence blood stained earth and plain earth were recovered and sealed in different boxes, which has been marked as paper no.9ka-3, 9Ka-4 & 9Ka-5 and also signed the same.

13. This witness further stated that after 6-7 days of the incident, accused, namely, Kalyan Singh was arrested by the police and on his pointing out the weapon of assault, i.e., axe was recovered in his presence behind the house from the bushes of Besharm plant, which was blood stained and the said recovery was marked as paper no.17Ka-1.

14. PW3-Basanta who is also an eye witness of the occurrence, has deposed before the trial Court that he is brother-in-law (Sala ) of the deceased Jagat Singh and on the day of the incident he had come to the house of deceased Jagat Singh. On the night of the incident he was sleeping at the flour mill of Prithvi Raj and at about 1:30 a.m. in the night he heard the alarm of his sister Mannu from the house of the deceased Jagat Singh for rescue, he reached on the spot and in the torch light he saw that accused Hukum Singh and Kalyan Singh were assaulting his sister Mannu with axe on the roof of the house of deceased Jagat Singh and thereafter he saw both the accused who were armed with axe in their hands and three unknown persons who were armed with countrymade pistol, farsa and lathi coming out from the house of deceased Jagat Singh. He further deposed that the murder of the three deceased was pre-planned/ conspired by the accused Udai Bhan. The murder of Km. Anita was committed at the door of one Bal Kishan and of Jagat Singh in the courtyard of his house.

15. PW7-Jai Hind who is also an eye witness of the occurrence examined by the trial Court, has stated that in the intervening night of 24/25.10.2000 at about 1:30 a.m. on hearing noise of fire shot and alarm raised, he reached at the house of Jagat Singh where he saw that the accused Hukum Singh, Kalyan Singh and three unknown persons were coming out of the house of Jagat Singh. Accused Hukum Singh and Kalyan Singh were armed with axe, whereas three unknown persons were armed with country-made pistols. The dead body of Km. Anita

was lying in the lane at the door of the house of one Bal Kishan and that of Jagat Singh in the courtyard whereas Smt. Mannu was at the roof of the house of Jagat Singh. He saw the accused in the torch light and identified them. Besides him, the incident was witnessed by Prithvi Raj, Sughar Singh, Sohan Singh, Basanta and others.

16. This witness further deposed that the accused Udai Bhan one month prior to the incident had come to the Village Mavaiya from Lucknow and he heard the accused Udai Bhan, Hukum Singh and Kalyan Singh talking together that the marriage of Km. Anita may not be solemnized and prior to it all the three persons be murdered, so that the property would come to them (accused). He heard the said conversation of the accused from the door of the house which was in lane and at the time of witnessing the incident he had a torch which he had given in the supurdagi of the Investigating Officer and fard recovery/supurdaginame has also been prepared as paper No.31 Ka which he had signed and proved as material Ext. 14.

17. PW4-Dr. T.R.Sarsaiya in his examination before the trial Court has stated that he conducted the post mortem of the three deceased, namely, Jagat Singh, Smt. Mannu wife of Jagat Singh & Km. Anita daughter of Jagat Singh in the District Hospital, Mahoba on 26.10.2000 at 12:00 Noon, 1:00 p.m. and 2:00 p.m. respectively and in the opinion of the doctor all the three deceased died on account of ante mortem injuries which were found on their person. This witness has proved the post mortem report

as Ext. Ka3, Ka.4 & Ka.5 respectively. He further stated that the three deceased died on 25.10.2000 at 1:30 a.m. in the night.

18. PW5-Head Constable Daya Shankar Tiwari has deposed before the trial Court that he was posted as Head Constable on 25.10.200 at Police Station Ajnar. On the said date, on the basis of written report of the informant Sohan Lal he registered the First Information Report of Case Crime No.220 of 2000, under Sections 147, 148, 149, 302 and 120B I.P.C. against Hukum Singh and others and proved the F.I.R. as paper No.4Ka in his hand writing and signature, which has been marked as Ext. Ka.6 and on the same day he also endorsed the F.I.R. in G.D. No.10 at 6.30 a.m. and proved the same as Ext. Ka.7.

19. PW6-S.I. Surendra Singh has deposed before the trial Court that on 25.10.2000 he was posted as Station House Officer at Police Station Ajnar, in his presence the F.I.R. was registered and he took over the investigation of the case. He further prepared the inquest report of the three deceased, namely, Jagat Singh Smt. Manni @ Mannu, wife of Jagat Singh and Km. Anita, daughter of Jagat Singh and completed all the formalities of inquest etc. and got the dead body of the three deceased sealed and sent the same for post mortem. He recorded the statement of the informant Sohan Lal under Section 161 Cr.P.C. and further prepared the site plan of the place of occurrence, recovery memo and proved the same as Ext. Ka.8 to Ka.28. He further recorded the statement of

Prithvi Raj, Jai Hind and Basanta and further got the recovery of axe at the pointing of accused Kalyan Singh and proved the same as Ext. Ka.29. He further took into custody the torches which were handed over by the witnesses, namely, Sohan Lal, Jai Hind and prepared the material exhibit regarding the same and proved the same as Ext. Ka.30 & 31.

20. This witness further stated that statement of one of the accused, namely, Munir Khan was recorded by S.I. Brij Mohan Sharma under Section 161 Cr.P.C. and also sent the case property for examination to the Forensic Science Lab at Agra as per orders of C.J.M. concerned. The papers which were prepared and signed by Brij Mohan as paper no.29 Ka was proved by him as Ext. Ka.32. S.I. Brij Mohan Sharma after concluding the investigation on 22.01.2001 submitted charge sheet against the accused Hukum Singh and two others and proved the same as Ext. Ka.33. This witness further stated that S.I. Brij Mohan Sharma was admitted in hospital at Jhansi as he met with an accident in which he received injury and was unable to move.

21. The accused in their statements recorded under Section 313 Cr.P.C. have denied the prosecution case excepting relationship of the three deceased with each other and further relationship between the accused. They categorically stated in their statements under Section 313 Cr.P.C. that the motive which has been suggested for the commission of the crime, is absolutely false and incorrect and further denied the deposition of the eye witnesses

against them and further the investigation which has been carried out against them, was also denied by them. Accused Udai Bhan has categorically stated in his statement under Section 313 Cr.P.C. that for the last several years he was living at Lucknow and doing Government job but he has been falsely implicated in the present case along with his family members.

22. The trial Court after examining the prosecution evidence and the defence version given by the accused in their statements under Section 313 Cr.P.C. found the prosecution case proved against the accused and has convicted and sentenced them for the offence in question. Being aggrieved by the same, the accused have preferred the instant appeals before this Court.

23. Heard Sri Sunil Kumar Singh, learned counsel for the appellant, Ms. Archana Singh, learned A.G.A. appearing for the State and perused the lower court record.

24. It has been contended by learned counsel for the appellant that admittedly as per the prosecution case, the appellant Udai Bhan is said to have hatched conspiracy with his brother Hukum Singh and father Kalyan Singh for committing the murder of the three deceased, namely, Jagat Singh, his wife Smt. Mannu and daughter Km. Anita. He further submitted that the motive which has been suggested, for committing the crime by the accused persons, is absolutely false as few days prior to the present incident, i.e., 10-15 days before, the deceased Jagat Singh, had executed a 'will deed' in favour of his

sister Smt. Gyan Devi, his wife Mannu and daughter Km. Anita of his landed property and after the incident, Mulayam Singh, son of Gyan Devi had filed an application for mutation of the property of the deceased Jagat Singh in favour of his mother before the competent authority. The deceased had also called Basanta who is his brother-in-law at Gulpahar in this regard. PW3 Basanta has stated before the trial Court that he was the witness of the said 'will deed' of the deceased Jagat Singh, thus, it was argued that the deceased Jagat Singh along with his wife and daughter might have been killed by Mulayam Singh in order to grab the property of Jagat Singh.

25. He next argued that the appellant Udai Bhan for the last several years was living at Lucknow and doing a Government Job, hence, he has no concern with the incident which has taken place in his native village. The prosecution has led evidence against the appellant Udai Bhan for conspiring the murder of the three deceased and in this regard there is evidence of PW2-Prithvi Raj and PW3-Basanta who have also deposed against the appellant Udai Bhan with respect to conspiracy for the murder of the three deceased.

26. Learned counsel for the appellant has drawn the attention of this Court towards the statement of PW2 Prithvi Raj who has stated before the trial Court that prior to one month before the incident, he heard the accused Udai Bhan, Hukum Singh and Kalyan Singh at 9 a.m. in the day talking together from the courtyard of his house close to the side of a pathway saying that all the three be killed otherwise Jagat Singh would give all his landed

property to the in-laws of Km. Anita. He further stated that the accused Udai Bhan was working at Lucknow but when this conversation was going on, Udai Bhan had come to the village and Udai Bhan had planned the murder of the three deceased with Hukum Singh and Kalyan Singh. Similarly, PW7 Jai Hind has also reiterated the same version as has been given by PW2 Prithvi Raj before the trial Court against the appellant Udai Bhan in his evidence. So far as evidence of PW1 Sohan Lal and PW3 Basanta is concerned, it is submitted that they have also deposed before the trial Court with respect to conspiring the murder of the three deceased by the appellant Udai Bhan along with other co-accused.

27. It was further urged that so far as the evidence of PW2 Prithvi Raj and PW7 Jai Hind is concerned, their evidence is not sufficient and reliable to convict and sentence the appellant Udai Bhan for conspiring the murder of the three deceased. He submitted that no specific date has been stated either by PW2-Prithivi Raj or PW7-Jai Hind and only vague statements have been made by them that one month or so the appellant Udai Bhan had conspired the murder of the three deceased with his father Kalyan Singh and brother Hukum Singh for the motive which has been suggested by the prosecution. Besides the same, there is no other evidence even that too of circumstantial in nature to show that the appellant Udai Bhan conspired the murder of the three deceased.

28. It has been further argued by learned counsel for the appellant that PW1-Sohan Lal who claims himself to be an eye witness of the occurrence, has initially in the

F.I.R. has stated that it was the appellant Udai Bhan who conspired the murder of the three deceased, but in his evidence before the trial Court he stated that the appellant Udai Bhan also committed the murder of the three deceased with his father Kalyan Singh and brother Hukum Singh and in his cross-examination he admitted the fact that the appellant Udai Bhan was not present at the place of occurrence.

29. It was further argued by the learned counsel for the appellant that in the statement under Section 313 Cr.P.C. the appellant Udai Bhan has categorically taken the plea that he was falsely implicated in the present case though for the last several years he was living at Lucknow and doing a Government job, but then too he was falsely implicated in the present case along with his family members.

30. He next argued that the trial Court has misread the evidence on record and has wrongly convicted the appellant Udai Bhan along with other co-accused for conspiring the murder of the three deceased, which is against the evidence on record and is liable to be set aside by this Court and the appellant Udai Bhan be acquitted.

31. *Per contra*, Ms. Archana Singh, learned A.G.A. appearing for the State has vehemently opposed the arguments of learned counsel for the appellant and submitted that three persons of a family were murdered by the father Kalyan Singh and brother Hukum Singh of the appellant Udai Bhan who has conspired the murder of the three deceased for grabbing the landed property of

deceased Jagat Singh who wanted to give the same to his daughter Km. Anita after marriage, which was objected by him.

32. She further submitted that no doubt the accused Kalyan Singh and Hukum Singh have been assigned the active role for murdering the three deceased with axe along with 2-3 unknown persons who were armed with lathi, farsa and countrymade pistol and all of them received several injuries on their person i.e., lacerated wound, incised wound, firearm wound etc. and the incident was witnessed by the informant PW1 Sohan Lal who is the cousin brother of the deceased Jagat Singh, PW2 Prithvi Raj, PW7 Jai Hind and PW3 Basanta who is brother-in-law of the deceased Jagat Singh, the ocular testimony corroborates the medical evidence. The evidence of PW2 and PW7 who have deposed before the trial Court regarding conspiracy of murder of the three deceased by the appellant Udai Bhan for the motive suggested by the prosecution, is sufficient enough for convicting and sentencing the appellant Udai Bhan in the present case by the trial Court, the same does not suffer from any infirmity or error in law and be up-held by this Court. The appeal of the appellant Udai Bhan is devoid of merits and be dismissed.

33. We have considered the respectful submissions advanced by learned counsel for the parties and have gone through the impugned judgement and the entire record of the trial Court.

34. The three accused persons, namely, Kalyan Singh and his two sons, namely, Hukum Singh and Udai Bhan

were named in the F.I.R. which was lodged by PW1 Sohan Lal after the incident on the next day at 6:00 a.m., i.e. on 25.10.2000 at Police Station Ajnar which is 6 Kms. away from the place of occurrence for the murder of the three deceased, i.e., Jagat Singh, his wife Smt. Mannu and daughter Km. Anita.

35. The prosecution case as emerges out from the F.I.R. is that the accused Kalyan Singh and Hukum Singh along with 2-3 unknown persons have committed the murder of the three deceased in the night of 25.10.2000 at 1:30 a.m. on account of the fact that deceased Jagat Singh wanted to give his entire landed property to his daughter Km. Anita after her marriage which he had fixed in the Village Lamhora, which was being objected by the accused persons. The eye witnesses of the occurrence, namely, PW1-Sohan Lal who is cousin brother of the deceased Jagat Singh, PW2 Prithivi Raj who is an independent witness, PW3 Basanta who is brother-in-law of the deceased Jagat Singh and PW7 Jai Hind who is another independent witness, have categorically stated that it was the accused Kalyan Singh and his son Hukum Singh who were armed with axe had assaulted the three deceased in their house and dead body of Jagat Singh was lying in the courtyard, that of Smt. Mannu on the roof of the house and that of Km. Anita in the lane of the house of one Bal Kishan.

36. In the F.I.R. as well as in the evidence which has been led by the prosecution against the appellant Udai Bhan is that a conspiracy is said to have been hatched by him along with two co-accused for the murder of the three

deceased.

37. In order to adjudicate the case of the appellant Udai Bhan for conspiring the murder of the three deceased, the evidence led by prosecution of PW2 Prithvi Raj and PW7 Jai Hind is to be scrutinized by this Court, which is reproduced here-in-below:-

“पी0डब्लू-2 पृथ्वीराज- इस घटना से पहले करीब 1 सवा माह पहले मुल्जिमान उदयभान, हुकुमसिंह कल्याणसिंह को करीब 9 बजे दिन में अपने मकान के ऑगन से लगी रास्ते के किनारे बाते करते सुना था। ये लोग आपस में कह रहे थे। मुल्जिमान हुकुम सिंह, उदयभान व कल्याणसिंह आपस में कह रहे थे कि इन लोगो को मार डालो नहीं तो जगत सिंह की सारी जायजाद कु0 अनीता के ससुराल वाले ले जायेंगे। यह बात मैंने, जयहिंद व सुघर सिंह ने की सुनी थी। मुल्जिम उदयभान लखनऊ में नौकरी करता है जब बातचीत हो रही थी तो मुल्जिम उदयभान गाँव आया था। मुल्जिम उदयभान ने हुकुमसिंह व कल्याणसिंह ने इस हत्या की योजना बनायी थी।

पी0डब्लू-7 जयहिन्द- उदयभान अभियुक्त लखनऊ में नौकरी करता है। वह घटना के एक माह पहले गाँव मवैया आया था। मैंने अपने कानों से सुना था कि अभियुक्त गण उदयभान हुकुम कल्याण सिंह आपस में बातें कर रहे थे कि अनीता की शादी न हो पावे इसके पहले ही तीनों लोगों को मार डालों ताकि इनकी जायदाद हमें मिल जावे। यह तीनों मुल्जिमान यह बातचीत अपने घर में कर रहे थे। मैंने यह बात उनके मकान के दरवाजे गली से सुनी थी। उस समय मेरे साथ सोनसिंह व पृथ्वीराज भी थे।”

38. From the above evidence of the aforesaid two witnesses, it is apparent that no specific date has been stated by either of the witnesses on which the appellant Udai Bhan along with his father Kalyan Singh and brother Hukum Singh is said to have conspired the murder of the three deceased. Further, it is also not apparent from the evidence of PW2 that he saw the appellant Udai Bhan

along with his father and brother for conspiring the murder of the three deceased and it was only stated by PW2 that he heard the appellant Udai Bhan from the courtyard of his house talking to each other along with the other co-accused persons to kill them otherwise deceased Jagat Singh will give all his landed property to the in-laws of his daughter Km. Anita.

39. Similarly, from the evidence of PW7 it is apparent that he had also not seen the appellant Udai Bhan having conversation with his father Kalyan Singh and brother Hukum Singh for the murder of the three deceased but only heard the conversation from the door of the house which was in the lane. Thus, the evidence of conspiracy led by the prosecution of PW2 Prithvi Raj and PW7 Jai Hind against the appellant Udai Bhan is not sufficient enough to prove beyond reasonable doubt that the appellant Udai Bhan has conspired the murder of the deceased along with two co-accused.

40. The most important ingredient of conspiracy is agreement between two or more persons to do an illegal act. In a criminal case the onus lies on the prosecution to prove affirmatively that accused was directly and personally connected with the acts and omission attributable to the crime committed by him. It is settled proposition of law that act or action of one of the accused cannot be used as evidence against the other. To attract applicability of Section 10 of the Evidence Act the Court must have reason to believe that two or more persons have conspired together for committing an offence.

41. The Apex Court in the case of **John Pandian Vs.**

**State represented by Inspector of Police, Tamil Nadu, reported in (2010) 14 SCC 129** in paragraph nos. 107, 108, 109, 110, 111, 112, 113, 114, 115 & 116 has laid down the law regarding criminal conspiracy, which are reproduced here-in-below:-

*“107. The law on conspiracy has been stated time and again by this Court. In Major E.G. Barsay v. State of Bombay [AIR 1961 SC 1762 : (1961) 2 Cri LJ 828] , Subba Rao, J. observed: (AIR p. 1778, para 31)*

*“31. ... The gist of the offence is an agreement to break the law. The parties to such an agreement will be guilty of criminal conspiracy, though the illegal act agreed to be done has not been done. So too, it is not an ingredient of the offence that all the parties should agree to do a single illegal act.”*

**108.** *In Halsbury's Laws of England [ 4th Edn., Vol. 11, p. 44, para 58] the definition of conspiracy is as under:*

*“58. Meaning of conspiracy.—Conspiracy consists in the agreement of two or more persons to do an unlawful act, or to do a lawful act by unlawful means. It is an indictable offence at common law....*

*The essence of the offence of conspiracy is the fact of combination by agreement. The agreement may be express or implied, or in part express and in part implied. ... and the offence continues to be committed so long as the combination persists, that is until the conspiratorial agreement is terminated by completion of its performance or by*

*abandonment or frustration or however it may be.”*

**109.** *In American Jurisprudence, 2nd Edn., Vol. 16, p. 129, the following definition of conspiracy is given:*

*“A conspiracy is said to be an agreement between two or more persons to accomplish together a criminal or unlawful act or to achieve by criminal or unlawful means an act not in itself criminal or unlawful... The unlawful agreement and not its accomplishment is the gist or essence of the crime of conspiracy.”*

**110.** *Lastly, in the celebrated case of Kehar Singh v. State (Delhi Admn.) [(1988) 3 SCC 609 : 1988 SCC (Cri) 711] it was observed by Jagannatha Shetty, J.: (SCC p. 731, para 271)*

*“271. ... ‘The gist of the offence of conspiracy then lies, not in doing the act, or effecting the purpose for which the conspiracy is formed, nor in attempting to do them, nor in inciting others to do them, but in the forming of the scheme or agreement between the parties. Agreement is essential. Mere knowledge, or even discussion, of the plan is not, per se, enough.’ [Ed.: As observed in Russell on Crime, 12th Edn., Vol. I, p. 202.] ”*

*(emphasis ours)*

**111.** *In the celebrated judgment of State v. Nalini [(1999) 5 SCC 253 : 1999 SCC (Cri) 691] S.S.M. Mohd. Quadri, J. relying upon Van Riper v. United States [13 F 2d 961 (2nd Cir 1926)] observed [Ed.: State (NCT of Delhi) v. Navjot Sandhu, (2005) 11 SCC 600 at p. 687, para 90.] :*

*“When men enter into an agreement for an unlawful end, they become ad hoc agents for one another and have made a partnership in crime.”*

**112.** Other celebrated decisions on the question of conspiracy are *Yash Pal Mittal v. State of Punjab* [(1977) 4 SCC 540 : 1978 SCC (Cri) 5] as also *State of H.P. v. Krishan Lal Pardhan* [(1987) 2 SCC 17 : 1987 SCC (Cri) 270] . It has been held in *Mohd. Khalid v. State of W.B.* [(2002) 7 SCC 334 : 2002 SCC (Cri) 1734] and in *Mohd. Usman Mohd. Hussain Maniyar v. State of Maharashtra* [(1981) 2 SCC 443 : 1981 SCC (Cri) 477] that the agreement amongst the conspirators can be inferred by necessary implication. All these cases together came to be considered in *State (NCT of Delhi) v. Navjot Sandhu* [(2005) 11 SCC 600 : 2005 SCC (Cri) 1715] where even the celebrated judgment of *V.C. Shukla v. State (Delhi Admn.)* [(1980) 2 SCC 665 : 1980 SCC (Cri) 561] came to be considered wherein it was observed by Fazal Ali, J.: (*V.C. Shukla case* [(1980) 2 SCC 665 : 1980 SCC (Cri) 561] , SCC pp. 669-70, para 8)

*“8. ... in most cases it will be difficult to get direct evidence of an agreement to conspire but a conspiracy can be inferred even from circumstances giving rise to a conclusive or irresistible inference of an agreement between two or more persons to commit an offence.”*

*(emphasis supplied)*

**113.** It is significant at this stage to note the observations in *V.C. Shukla* [(1980) 2 SCC 665 : 1980 SCC (Cri) 561] wherein it was laid that in

*order to prove criminal conspiracy, there must be evidence direct or circumstantial to show that there was an agreement between two or more persons to commit an offence. It was further held that there must be a meeting of minds resulting in ultimate decision taken by the conspirators regarding the commission of the offence and where the factum of conspiracy is sought to be inferred even from circumstances giving rise to a conclusive or irresistible inference of an agreement between two or more persons to commit an offence.*

**114.** *Relying on V.C. Shukla case [(1980) 2 SCC 665 : 1980 SCC (Cri) 561] , Pasayat, J. in Esher Singh v. State of A.P. [(2004) 11 SCC 585 : 2004 SCC (Cri) Supp 113] observed that: (Esher Singh case [(2004) 11 SCC 585 : 2004 SCC (Cri) Supp 113] , SCC p. 607, para 38)*

*“38. ... the prosecution has to discharge its onus of proving the case against the accused beyond reasonable doubt. The circumstances in a case, when taken together on their face value, should indicate the meeting of minds between the conspirators for the intended object of committing an illegal act or an act which is not illegal, by illegal means. A few bits here and a few bits there on which the prosecution relies cannot be held to be adequate for connecting the accused with the commission of the crime of criminal conspiracy. It has to be shown that all means adopted and illegal acts done were in furtherance of the object of conspiracy hatched. The circumstances relied on for the*

*purposes of drawing an inference should be prior in point of time than the actual commission of the offence in furtherance of the alleged conspiracy.”*

*(emphasis supplied)*

**115.** *In Esher Singh case [(2004) 11 SCC 585 : 2004 SCC (Cri) Supp 113] this Court held that the conspiracy was proved between the nine accused. A systematic role played by each accused was highlighted. Pasayat, J. in that judgment also considered the decision in Bhagwan Swarup Lal Bishan Lal v. State of Maharashtra [AIR 1965 SC 682 : (1965) 1 Cri LJ 608] and observed that (Esher Singh case [(2004) 11 SCC 585 : 2004 SCC (Cri) Supp 113] , SCC p. 606, para 37) “[t]here is no difference between the mode of proof of the offence of conspiracy and that of any other offence”. The other decisions in State of Maharashtra v. Som Nath Thapa [(1996) 4 SCC 659 : 1996 SCC (Cri) 820 : JT (1996) 4 SC 615] , Ajay Aggarwal v. Union of India [(1993) 3 SCC 609 : 1993 SCC (Cri) 961] as also Mohd. Usman case [(1981) 2 SCC 443 : 1981 SCC (Cri) 477] and Yash Pal Mittal [(1977) 4 SCC 540 : 1978 SCC (Cri) 5] were considered in that decision. The law laid down in Ajay Aggarwal case [(1993) 3 SCC 609 : 1993 SCC (Cri) 961] was reiterated and it was held that: (Esher Singh case [(2004) 11 SCC 585 : 2004 SCC (Cri) Supp 113] , SCC p. 610, para 45)*

*“45. ... ‘8. ... It is not necessary that each conspirator must know all the details of the scheme nor be a participant at every stage. It is necessary that they should agree for design*

*or object of the conspiracy. Conspiracy is conceived as having three elements: (1) agreement; (2) between two or more persons by whom the agreement is effected; and (3) a criminal object, which may be either the ultimate aim of the agreement, or may constitute the means, or one of the means by which that aim is to be accomplished.’ [ As observed in Ajay Aggarwal v. Union of India, (1993) 3 SCC 609, p. 617, para 8.] ”*

*These decisions were thereafter considered in Navjot Sandhu case [(2005) 11 SCC 600 : 2005 SCC (Cri) 1715] .*

**116.** *In K.R. Purushothaman v. State of Kerala [(2005) 12 SCC 631 : (2006) 1 SCC (Cri) 686] a specific observation was made (SCC p. 631d-e) to the effect that all conspirators need not take active part in the commission of each and every conspiratorial act but, mere knowledge, even discussion, of the plan would not constitute conspiracy. It was further observed that (SCC p. 631e-f) each one of the circumstances should be proved beyond reasonable doubt and such circumstances proved must form a chain of events from which the only irresistible conclusion is about the guilt of the accused which can be safely drawn and no other hypothesis of the guilt is possible. We respectfully agree with the law laid down in Navjot Sandhu case [(2005) 11 SCC 600:2005 SCC (Cri) 1715] and K.R. Purushothaman case [(2005) 12 SCC 631 : (2006) 1 SCC (Cri) 686] .”*

42. Similarly, in the case of **Baliya alias Bal Kishan Vs.**

**State of Madhya Pradesh, reported in (2012) 9 SCC 696**, the Apex Court has also reiterated the law regarding criminal conspiracy in paragraph nos.15, 16 & 17, which are reproduced here-in-below:-

**15.** *The offence of “criminal conspiracy” is defined in Section 120-A of the Penal Code whereas Section 120-B of the Code provides for punishment for the said offence. The foundation of the offence of criminal conspiracy is an agreement between two or more persons to cooperate for the accomplishment/performance of an illegal act or an act which is not illegal by itself, through illegal means. Such agreement or meeting of minds create the offence of criminal conspiracy and regardless of proof or otherwise of the main offence to commit which the conspiracy may have been hatched, once the unlawful combination of minds is complete, the offence of criminal conspiracy stands committed. More often than not direct evidence of the offence of criminal conspiracy will not be forthcoming and proof of such an offence has to be determined by a process of inference from the established circumstances of a given case.*

**16.** *The essential ingredients of the said offence, the permissible manner of proof of commission thereof and the approach of the courts in this regard has been exhaustively considered by this Court in several pronouncements of which, illustratively, reference may be made to E.K. Chandrasenan v. State of Kerala [(1995) 2 SCC 99 : 1995 SCC (Cri) 329] , Kehar Singh v. State (Delhi Admn.) [(1988) 3 SCC 609 : 1988 SCC (Cri) 711] , Ajay Aggarwal v. Union of India [(1993) 3 SCC 609*

: 1993 SCC (Cri) 961] and *Yash Pal Mittal v. State of Punjab* [(1977) 4 SCC 540 : 1978 SCC (Cri) 5] . The propositions of law which emanate from the above cases are, in no way, fundamentally different from what has been stated by us hereinabove.

**17.** *The offence of criminal conspiracy has its foundation in an agreement to commit an offence or to achieve a lawful object through unlawful means. Such a conspiracy would rarely be hatched in the open and, therefore, direct evidence to establish the same may not be always forthcoming. Proof or otherwise of such conspiracy is a matter of inference and the court in drawing such an inference must consider whether the basic facts i.e. circumstances from which the inference is to be drawn have been proved beyond all reasonable doubt, and thereafter, whether from such proved and established circumstances no other conclusion except that the accused had agreed to commit an offence can be drawn. Naturally, in evaluating the proved circumstances for the purposes of drawing any inference adverse to the accused, the benefit of any doubt that may creep in must go to the accused”.*

43. The Apex Court in the case of **State (Government of NCT of Delhi Vs. Nitin Gunwan Shah, reported in (2016) 1 SCC 472** has further enunciated the proposition of law as has been laid down by the Apex Court in its earlier pronouncements on the issue of criminal conspiracy.

44. Thus, this being the settled proposition of law, the

evidence of PW2 Prithvi Raj and PW7 Jai Hind does not qualify the set criteria, as has been settled by the Apex Court in *catena* of decisions where the allegation is for conspiring the murder against the accused. On the other hand, the other two eye witnesses, i.e., PW1 Sohan Lal and PW3 Basanta who have only given vague and ambiguous evidence regarding conspiracy being hatched by the appellant Udai Bhan for the murder of the three deceased, which too does not inspire any confidence in order to convict and sentence the appellant Udai Bhan. Further, there appears to be no circumstantial evidence also to show that the appellant Udai Bhan conspired the murder of the deceased or there were meeting of minds of all the accused including the appellant Udai Bhan to commit the crime in question. In the instant case, neither there was any prior meeting of minds of accused proved, nor was any action individually or in concert, proved against the appellant Udai Bhan.

45. Thus, the contention of learned counsel for the appellant that the appellant Udai Bhan who was working in Lucknow for the last several years and doing the Government job, but he has been falsely implicated in the present case along with his father Kalyan Singh and brother Hukum Singh and further the prosecution evidence of PW2 Prithvi Raj and PW7 Jai Hind is not sufficient enough to convict and sentence the appellant Udai Bhan, the same has substance. The trial Court though has scanned the evidence of eye witnesses, i.e. PW1 Sohan Lal, PW2 Prithvi Raj, PW3 Basanta and PW7 Jai Hind with respect to the participation of the co-

accused Kalyan Singh and Hukum Singh who were the main assailants, for the murder of the three deceased and has convicted and sentenced them for the offence in question by the impugned judgment and order but has also convicted the appellant Udai Bhan for the offence under Section 302 read with Section 120B I.P.C. without there being any legal evidence against him for conspiring the murder of the three deceased along with the two co-accused, does not appear to be sound and reasonable one as it failed to appreciate the evidence of PW2 Prithvi Raj and PW7 Jai Hind in the light of the established proposition of law as has been held by the Apex Court in various pronouncements. Thus, the trial Court has erred in convicting and sentencing the appellant Udai Bhan.

46. In view of the foregoing discussions and considering the entire material on record and the pronouncements of the Apex Court to connect a crime with two or more persons, the conviction and sentence of the appellant Udai Bhan cannot be sustained in the eyes of law by the trial Court. Hence, the conviction and sentence of the appellant Udai Bhan by the trial Court is liable to be set aside by this Court. It is, accordingly, set aside and the appellant Udai Bhan is acquitted of the charges. The appeal stands **allowed**.

47. The appellant is stated to be in jail since 19.8.2019, he shall be released forthwith unless otherwise wanted in any other criminal case.

48. It is further directed that the accused appellant Udai Bhan shall furnish bail bond with surety to the satisfaction of the Court concerned in terms of the provision of

Section 437-A of Cr.P.C.

49. Let the lower court record be transmitted to the trial Court concerned for its information and compliance forthwith.

50. The party shall file computer generated copy of such order downloaded from the official website of High Court Allahabad.

51. The computer generated copy of such order shall be self attested by the counsel of the party concerned.

52. The concerned Court/Authority/Official shall verify the authenticity of such computerized copy of the order from the official website of High Court Allahabad and shall make a declaration of such verification in writing.

(Samit Gopal, J.) (Ramesh Sinha, J.)

**Order Date** :15.10.2020

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