REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 915 OF 2016

MAGHAVENDRA PRATAP SINGH
@ PANKAJ SINGH ... **APPELLANT**

VERSUS

STATE OF CHHATTISGARH ... **RESPONDENT**

J U D G M E N T

SANJAY KAROL, J.

1. The following three questions arise for consideration :

1. Whether the Investigating Officer in the present case had complied with the duties and responsibilities cast upon him by virtue of Chapter XII of Code of Criminal Procedure Code, 1973?

2. Whether the court below, while acquitting all the other co-accused in connection with the same crime, erred in not returning a finding qua the instant appellant – a co-accused - in respect of a charged framed under Section 120-B of the Indian Penal Code, 1860?

3. Whether the impugned judgments convicting the appellant are sustainable in law or not?

2. Maghavendra Pratap Singh @ Pankaj Singh (referred to as Pankaj Singh) has preferred the present appeal against the Judgment dated 14.1.2016 passed by the High Court of Chhattisgarh at Bilaspur in Criminal Appeal No.468 of 2013. He alone stands convicted for having committed an offence punishable under Section 302, Indian Penal Code, 1860, with life imprisonment and a fine of Rs.1000/- with further imprisonment of 6 months in default; under Section 201 of the IPC, punishable with 7 years RI with a fine of Rs.1000/- and 6 months RI for default; under Section 25(1)(1-b)(a) of the Arms Act, 1959 3 years RI with fine of Rs.1000/- and 6 months RI for default. The sentences were awarded to run concurrently.

3. The incident which led to the present case was that a businessman by the name of Goverdhan Aggarwal (hereinafter, the deceased) and certain others were threatened, and a demand of rupees ten lakhs was made from each of them. On 26.9.2009 the deceased left his office at about 7:00 PM for his home when two motorcyclists shot him. He was taken to the District Hospital, Ambikapur, in the car of PW-24, namely Prabodh Minz, where he died. That night, an FIR was registered at the P.S. Gandhi Nagar

(Ex.P-37). The body was sent for a post-mortem vide Memo under Ex.P-39. After due investigation, a chargesheet was filed, stating that all the accused persons, including Sunil Paswan, Pankaj Singh, and Pappu Tiwari, came together and, in agreement, committed or caused to be committed the murder of Gowardhan Aggarwal. In pursuance of the said agreement, Pappu Tiwari made available the motorcycle, Pankaj Singh conveyed the information of the deceased having departed from his office, Abhishek Singh carried Sunil Paswan and the weapons as pillion rider on the said motorcycle on the evening of 26.9.2009 at about 7:00 PM, where Sunil Paswan then shot the deceased.

4. The Learned Additional District Judge, in Session Trial No. 76/2010, seized of the trial against Sunil Paswan, Maghavendra Pratap Singh @ Pankaj Singh, Akhileshwar Pratap Singh @ Lalit Singh, and Sidkant Tiwari @ Pappu Tiwari; and in Sessions Case 166/2010, Mannu Singh @ Gyanendra Singh @ Manvendra Singh @ Abhishek Singh, Satish Tripathi, and Ganeshdutt Mishra.

A total of twenty- eight witnesses were examined, and the Trial Court framed eight issues for consideration. Issues A, B and C concern the instant appellant. They are; A) whether the accused persons have in agreement with each other and, in pursuance of

criminal conspiracy, murdered the deceased; B) whether the accused have in agreement with each other and with the intention to screen each other from punishment concealed particular articles such as the motorcycle, pistol, cartridges, scarf, etc. and C) whether Pankaj Singh has been found in possession of two 9mm pistols, their magazines and thirty-three live cartridges without possessing the requisite licence thereof.

5. The Learned Additional District Judge disposed of both the cases with a common judgement dated 25.03.2013. by which out of the seven persons named above, one, namely, Akhileshwar Pratap Singh, was acquitted, and others were convicted and sentenced under various provisions of the Indian Penal Code, 1860 and in certain cases under provisions of the Arms Act, 1959.

6. A total of five appeals were filed before the High Court. The status of all accused persons is as under:

Accused	**Charge**	**Trial Court**	**High Court**
1. Sunil Paswan	S. 302/120B, 201(1), 120B IPC	Convicted. Life imprisonment.	Acquitted.
2. Maghavendra Pratap Singh @ Pankaj Singh	S. 302,120B, 201(1)/120B, IPC, S. 25(1) (1-B)a, Arms Act.	Convicted. Life imprisonment.	Convicted.
3.Akhileshwar Pratap Singh @ Lalit Singh	S. 212, IPC.	Acquitted.	Not appealed.
4.Siddhkant Tiwari @ Pappu Tiwari	S. 302/120B, 201(1), 120B IPC.		
5.Mannu Singh @	S. 302/120B,	Convicted. Life	Acquitted.

Gyanendra Singh @ Manvendra Singh @ Abhishek Singh	201(1), 120B IPC	imprisonment.	
6.Satish Tripathi	S. 212(1), 201(1), 120B, IPC.	Convicted. Five years rigorous imprisonment.	Acquitted.
7.Ganeshdutt Mishra	S. 212(1), IPC.	Convicted. Five years rigorous imprisonment.	Acquitted.

7. The High Court, vide Impugned judgement dated 14.01.2016, acquitted all the accused save and except Maghavendra Pratap Singh @ Pankaj Singh, the present appellant.

8. This Court has therefore been called upon to examine the correctness of the conviction decision and sentence rendered by the learned First Additional Sessions Judge, Ambikapur, District Sarguja, Chhattisgarh, and as partly confirmed by the High Court.

The Impugned Judgment

9. In the appeal preferred by the convicts (five in number) in terms of the impugned Judgment, the High Court, while acquitting all the other convicts, namely, Satish Tripathi, Ganesh Datt Mishra, Mannu Singh, and Sunil Paswan, has confirmed the conviction and sentence awarded to Pankaj Singh as reproduced above. In doing so, the Court found the testimonies of Ashish Agrawal (PW-1), Naresh Mandal (PW-6), Avinash Tirki (PW-7) and Inspector J.S. Saggu (PW-23),

Investigation Officer sufficient enough to prove the guilt of Pankaj Singh warranting conviction and sentence. In paragraph 49 of its Judgment, the High Court observed as under:

> "49. On due consideration, the prosecution has proved entire circumstantial evidence against the appellant Madvendra. The circumstances are fully established consistent only with the hypothesis of the guilt of the accused and that is not explainable by any other circumstances except that appellant Madhvendra is guilty and evidence collected by the prosecution is of the conclusive nature and tendency. The chain of evidence is complete, it shows in all human probability the act must have been done by the accused. The Prosecution has duly proved that appellant Madhvendra had killed Gowardhan Agrawal and was also in possession of fire arm and cartridges in contravention of relevant provisions of Arms Act and had caused disappearance of evidence of offence committed by concealing the pistol, cartridges and other articles. The conviction awarded to accused Madhvendra does not call for any interference. The same is well founded."

Consideration of the Evidence on Record

10. It is pertinent to note that the prosecution's case rests solely on circumstantial evidence, as none was found present at the scene of the incident.

11. Further, it is also not the case of the prosecution that the present appellant had either used or shot the deceased with the gun allegedly recovered based on his statement (Ex. P-15), which was

purportedly made before the police officer (PW-23) in the presence of independent witnesses namely, Naresh Mandal (PW-6) and Avinash Tirki (PW-7).

12. It will be helpful to refer to the general principle of cases revolving around circumstantial evidence as encapsulated by **Vijay Shankar v. State of Haryana (2015) 12 SCC 644**. The relevant portion is as follows:

> **"8.** There is no eyewitness to the occurrence and the entire case is based upon circumstantial evidence. The normal principle is that in a case based on circumstantial evidence the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established; that these circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused; that 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 they should be incapable of explanation of any hypothesis other than that of the guilt of the accused and inconsistent with their innocence vide *Sharad Birdhichand Sarda* v. *State of Maharashtra* [*Sharad Birdhichand Sarda* v. *State of Maharashtra*, (1984) 4 SCC 116 : 1984 SCC (Cri) 487]. The same view was reiterated in *Bablu* v. *State of Rajasthan* [*Bablu* v. *State of Rajasthan*, (2006) 13 SCC 116 : (2007) 2 SCC (Cri) 590]."

13. In light of the fact that all the co-accused who had preferred appeals stand acquitted by the Court below, therefore, while fully appreciating the testimony of this witness, this Court confines the

discussions only concerning the present appellant, namely Pankaj Singh.

14. Interestingly, neither of the independent witness (PW 6 and PW 7) supported the prosecution case. Despite extensive cross-examination conducted by the Public Prosecutor, nothing substantial could be elicited from their testimonies indicating any guilt of the accused. Noticeably, both the witnesses are rustic villagers working as daily wagers, have deposed to have signed blank papers, and are not residents of the area.

15. A perusal of the testimony of PW-6 unrefutably reveals the witness to have signed documents which were blank, purportedly used by the police to strengthen this case for the commission of the offence.

16. PW-6, while stating that he does not recognize the accused, admits that his signatures are on several documents. He further says that he had signed blank papers under threat from police officials. Such a statement is uncontroverted as the record does not reflect any cross-examination on this issue or any other, for that matter. `

17. We also notice that PW-7, one of the persons on whom reliance was placed by the courts below, states that he does not know the

accused persons and that he had come to know from having perused newspapers that the deceased was murdered.

18. We may also observe that PW-1, namely, Ashish Agrawal, nephew of the deceased, has not made out any person to be responsible for the offence, nor has he expressed any doubt or pointed fingers against any of the accused, much less the present appellant. He states he has "no information as to how many persons, how hit to uncle with bullet coming with what mode."

19. The testimony of the Investigating Officer Inspector J.S. Saggu (PW-23) runs into 97 pages. Close examination of the same reveals that the witness miserably failed to investigate as is expected and required of a police officer to investigate a crime of murder, especially when not even a single eyewitness exists, and the entire case rests entirely on circumstantial evidence.

20. The homicidal death of Shri Goverdhan Aggarwal is not in dispute. Be that as it may, it has come in the testimony of the Investigating Officer that on 27.9.2009, after registration of the complaint, he visited the spot; carried out the preliminary investigation; sent the dead body for post-mortem and collected several incriminating articles.

21. It is pertinent to note that his testimony reveals that the prime accused was Sunil Paswan, who stands acquitted on all charges by the Court below, and this Court is not called upon examine the complicity of the other accused.

22. It further emanates from the testimony of P.W. 23 that the present appellant was not present at the spot of the crime. In fact, not even one person has disclosed his complicity in the crime. His testimony further reads the complicity of Pankaj Singh in the crime, to be suspected only based on the disclosure statements of co-accused Sunil Paswan (Ex. P-13) to the effect that the former could get recovered pistol/bullets/live cartridges from the house of co-accused Abhishek Singh. The courts below have disbelieved this part of the version of the deponent qua the other accused. Hence, the High Court's reasoning in arriving at Pankaj Singh's guilt is illogical if not self-contradictory.

23. Furthermore, we notice that on 12.10.2009, Pankaj Singh was called to the police station, where he recorded his statement, which corroborated what Sunil Paswan had said regarding him being able to support the recovery of arms and ammunition from the house allegedly belonging to Abhishek Singh. Under the statement, the incriminating material, i.e., three guns (one with an empty cartridge);

thirty- three live cartridges of 9mm; six empty 9 mm cartridges and four empty 9 mm cartridges, were recovered vide memo Ex. P-14. They were sent for analysis to the laboratory at Chandigarh. Further, his statement shows that the accused, Pankaj Singh, was arrested on 22.10.2019 vide memo Ex. P-21/P-22.

24. Now significantly, the witness (P.W. 23) admits that the statements of neither Sunil Paswan nor Pankaj Singh have been recorded by him, in his hand, or by any other named persons, under his instructions. If that were so, it raises the question as to who prepared these memos, which still needs to be answered by the prosecution.

25. Pertinent to note here is that no direct evidence is available which firmly proves the ballistic report, i.e., the expert's report. Further, neither the expert who analysed and conducted the chemical analysis nor the author of the report stand examined.

26. Statement of the Investigating Officer that appellant Pankaj Singh was called to the police station itself is uninspiring in confidence, for there is no written communication on record which reflects the same. Further, it is also not his version that he was called by any other mode or that the co-accused had brought him to the police station.

27. We find PW-23 not to have placed on record any case diary indicating his movements to the spot of recovery. In light of the given facts and circumstances, this fact acquires significance. It is also observed that before arresting the accused, no information was ever supplied to the family members of any of the accused persons. Moreover, some of the accused, residents of other States, for instance, Uttar Pradesh, were arrested without supplying any information to their relatives. This is in contravention to the directions issued in **D.K Basu v. State of WB (1997) 1 SCC 416,** the relevant portion thereof is as under:-

> "(3) A person who has been arrested or detained and is being held in custody in a police station or interrogation centre or other lock-up, shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place, unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee.
>
> (4) The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or town through the Legal Aid Organisation in the District and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest."

28. In pursuance of these directions, Section 79 of the Code of Criminal Procedure, 1973 was introduced, laying down the process

for “Warrant directed to police officer for execution outside jurisdiction”.

29. The record does not reflect that the house from which the recoveries were affected belonged to accused Abhishek Singh. Regarding the conduct of the search, we may also observe that the owner of the house was not examined. This begs the question that if both Abhishek and Sunil were aware of the situs of incriminating articles, then why is it that recoveries were not affected by their statements or through them?

30. Nothing on the record suggests that the present appellant had conspired to commit the offence. At best, as shown from the testimony of this deponent, the present appellant has only concealed the relevant incriminating evidence/articles. The materials on record in no way establish that before the commission of the offence, the accused had any common purpose, object or intention of committing the crime, without the same being borne out of the records, the charge of criminal conspiracy and of common intention which is to be read with Section 302 of the Indian Penal Code, fails.

31. For the charge of criminal conspiracy under Section 120B of the Indian Penal Code, 1860, to be established, an agreement between the parties to do an unlawful act must exist. In some cases, direct

evidence to establish conspiracy may be absent, but when the lack of evidence is apparent, it is not safe to hold a person guilty under this section. To prove the offence of criminal conspiracy, it is imperative to show a meeting of the minds between the conspirators for the intended common object. It was observed by a two-judge bench of this Court in **Parveen v. State of Haryana, 2021 SCC OnLine SC 1184,** that "A few bits here and a few bits there on which prosecution relies, cannot be held to be adequate for connecting the accused with the commission of crime of criminal conspiracy."

32. Keeping this abovesaid principle in view, we believe that the present appellant cannot be convicted of criminal conspiracy under Section 120B, Indian Penal Code, 1860, solely for having concealed the location of the incriminating materials/ articles and, in the absence of any evidence establishing meeting of the minds. Given that all the other co-accused have been acquitted by the courts below, meaning they were innocent of the crime, the fundamental requirement of a criminal conspiracy is not met.

33. Needless to say, the charge of criminal conspiracy also fails on the ground that a single person cannot hatch a conspiracy.

34. So far as the second question is concerned, we may refer to recent judgment of this Court in **Geeta Devi Vs. State of U.P. & Ors. 2022 SCC OnLine 57**, wherein it was observed that the High Court, by virtue of being the First Appellate Court ought to reappreciated and discussed the evidence on record. Had that been done completely in the present case, the High Court would have returned a finding on Section 120-B of IPC. The charge of criminal conspiracy requires meeting of the minds prior to commission of offence, and with four of the five appeals being allowed and only the present appellant being convicted, the basic requirement of the section, that is of two or more persons agreeing to or causing to be done an illegal act or an act which is not *per se* illegal but it is done by illegal means, is not met. The impugned judgment, however, only records that Section 10 and 30 of the Evidence Act, 1872, which deal with things having been said or done by a conspirator in reference to common design and a proved confession being considered as against another person; are not applicable and then observes that the sentence handed down to Pankaj Singh does not call for any interference. Therefore, the Court implies that the conviction in its entirety

including the sentence for criminal conspiracy is upheld. Such a view, in the considered view of this Court, cannot be sustained.

35. Even about the search, we do not find the veracity of the Investigating Officer's testimony to be inspiring in confidence on account of various lapses. For he (a) did not examine the owner of the house; (b) did not enter his movement in the case diary; (c) did not record that he took the accused for effecting the recovery; (d) was not able to describe clearly the area from where the recovery was effected; (e) admits both the independent witnesses, who do not belong to the area from where the recoveries were effected; (f) does not associate any of the residents of the area for conducting the search; (g) does not examine any of the residents for carrying out any further investigation and (h) Most importantly he admits that both the memo of arrest as also the recovery not to have been prepared by him or bearing his signature and the same too, have many corrections and over-writing, thus reducing the correctness and authenticity of this document.

36. Furthermore, he is not clear about the description of the articles recovered. Illustratively, in the memo, he records one black colour scarf to have been recovered, but on a pointed query put by the Court, he admitted that not to be so but only a black cloth which

undoubtedly cannot be equated to a scarf. Furthermore, there needs to be more clarity in his mind about whether the tank from where the articles were recovered was full of water.

37. It has come on record that the recovered arms and ammunition were first sent to the laboratory at Raipur and, after that, to the laboratory at Chandigarh. However, none had come forward to prove the report received from the said laboratories. Furthermore, there is nothing on the record besides any other scientific evidence linking the accused to the recovered articles.

38. The Investigating Officer is the person tasked with determining a direction, the pace, manner and method of the investigation. In **Amarnath Chaubey v. Union of India (2021) 11 SCC 80**, it was observed that the police has a primary duty to investigate upon receiving the report of the commission of crime. In **Manohar Lal Sharma v. Union of India (2014) 2 SCC 532**, this Court observed that one of the responsibilities of the police is protection of life, liberty and property of citizens. The investigation of offences to bring the offender to the book and facilitate the ultimate search for truth is one of the important duties the police has to perform. This is a statutory

duty under the Cr.P.C. and is also a constitutional obligation ensuring the maintenance of peace and the upholding of rule of law.

39. On the responsibility cast on an officer investigating a crime, this Court in **Common Cause v. Union of India (2015) 6 SCC 332**, observed as under :

> **"31.** There is a very high degree of responsibility placed on an investigating agency to ensure that an innocent person is not subjected to a criminal trial. This responsibility is coupled with an equally high degree of ethical rectitude required of an investigating officer or an investigating agency to ensure that the investigations are carried out without any bias and are conducted in all fairness not only to the accused person but also to the victim of any crime, whether the victim is an individual or the State."

40. It is well recognised that the Magistrate concerned is not empowered to interfere with the investigation being carried out up until the submission of the report by the said officer. Needless to state then that the role of the Investigating Officer is essential and crucial. Chapter XII of Cr.P.C. titled as "information to the police and their powers to investigate", lays down the procedure and course of action to be taken by the police upon receipt of the commission of an offence cognizable in nature. Section 156 lays down the power of investigation; Section 157 the procedure thereof; Section 160 the power to require attendance of a witness, Section 161 conduct

examination of such witness, etc. Section 172 requires such police officer to maintain a case diary and Section 173 lays down the format and the procedure for the report to be issued by such officer.

41. This Court has in **Pooja Pal v. Union of India (2016) 3 SCC 135**, expounded as under for criminal investigations and its success :

> "96. The avowed purpose of a criminal investigation and its efficacious prospects with the advent of scientific and technical advancements have been candidly synopsised in the prefatory chapter dealing with the history of criminal investigation in the treatise on *Criminal Investigation — Basic Perspectives* by Paul B. Weston and Renneth M. Wells:
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> "Criminal investigation is *a lawful search for people and things useful in reconstructing the circumstances of an illegal act or omission and the mental state accompanying it. It is probing from the known to the unknown, backward in time, and its goal is to determine truth as far as it can be discovered in any post-factum inquiry.*
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> *Successful investigations are based on fidelity, accuracy and sincerity in lawfully searching for the true facts of an event under investigation and on an equal faithfulness, exactness, and probity in reporting the results of an investigation.* Modern investigators are persons who stick to the truth and are absolutely clear about the time and place of an event and the measurable aspects of evidence. They work throughout their investigation fully recognising that even a minor contradiction or error may destroy confidence in their investigation.
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> The joining of science with traditional criminal investigation techniques offers new horizons of efficiency in criminal investigation. New perspectives in investigation bypass reliance upon informers and custodial interrogation and concentrate upon a skilled scanning of the crime scene for physical evidence and a search for as many witnesses as possible. *Mute evidence tells its own story in court, either by its*

> *own demonstrativeness or through the testimony of an expert witness involved in its scientific testing*. Such evidence may serve in lieu of, or as corroboration of, testimonial evidence of witnesses found and interviewed by police in an extension of their responsibility to seek out the truth of all the circumstances of crime happening. *An increasing certainty in solving crimes is possible and will contribute to the major deterrent of crime—the certainty that a criminal will be discovered, arrested and convicted*."
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> (Emphasis in original)

42. With reference to case diaries, it has been observed by this Court in **Bhagwant Singh v. Commission of Police (1983) 3 SCC 344**, a two-Judge Bench observed that entries into the police diary shall be with (a) promptness; (b) in sufficient detail; (c) containing all significant facts; (d) in chronological order; and (e) with complete objectivity.

43. This Court in **Mohd. Imran Khan v. State (Govt. of NCT of Delhi), (2011) 10 SCC 192,** observed as under while noting the effect of objectionable features and infirmities on criminal investigations:

> **"31.** The investigation into a criminal offence must be free from all objectionable features or infirmities which may legitimately lead to a grievance to either of the parties that the investigation was unfair or had been carried out with an ulterior motive which had an adverse impact on the case of either of the parties. The investigating officer is supposed to investigate an offence avoiding any kind of mischief or harassment to either of the party. He has to be fair and conscious so as to rule out any possibility of bias or impartial conduct so that any kind of suspicion to his conduct may be dispelled and the ethical

conduct is absolutely essential for investigative professionalism. The investigating officer

> "is not merely to bolster up a prosecution case with such evidence as may enable the court to record a conviction but to bring out the real unvarnished truth".

44. Keeping in view the aforesaid principles and applying them to the present set of facts, we may observe that the Investigating Officer did not meet the obligations he was under. As we have noticed above, numerous infirmities affected the conduct of the Investigation Officer calling into question, credibly, the investigation conducted by him or upon his directions.

Conclusion

45. In the considered opinion of the Court, the High Court, without appreciating the testimonies of the witnesses mentioned above in their true import and meaning, and without having any discussion concerning the complicity of the accused, in a perfunctory manner held the prosecution to have established the case, which is entirely circumstantial in nature, against the present appellant. Significantly, the High Court holds that the evidence reveals that "in all human probability the act must have been done by the accused". *Inter alia,* it

is this finding which we find to be erroneous, for the principle of determining the guilt of the accused in a case involving circumstantial evidence is not that of probability but certainty and that all the evidence present should conclusively point towards only a singular hypothesis, which is the guilt of the accused, Pankaj Singh.

46. Given the above, the Judgment dated 14.1.2016 passed by the High Court of Chhattisgarh at Bilaspur in Criminal Appeal No.468 of 2013 titled Maghavendra Pratap Singh @ Pankaj Singh v. State of Chhattisgarh is set aside and the appeal is allowed.

47. The three questions noted above are answered accordingly.

48. If not already released, the accused is directed to be set at liberty forthwith.

Interlocutory applications, if any, are disposed of.

.....J.
(B.R. GAVAI)

.....J.
(SANJAY KAROL)

Dated : 24th April, 2023;
Place : New Delhi.