A ABUTHAGIR AND ORS.

v.

STATE REP. BY INSPECTOR OF POLICE, MADURAI

(Criminal Appeal No. 26 of 2007)

B MAY 8, 2009

[DR. ARIJIT PASAYAT AND P. SATHASIVAM, JJ.]

Penal Code, 1860 – s. 302 r/w s. 34, s. 120 and s.148 – C *Conviction under, by courts below relying on evidence of eye-witnesses – Interference with – Held: Not called for, as no infirmity in conviction order – Prosecution witnesses were independent – They had no enmity with the accused – Merely because they revealed the truth long time after seeing the* D *photos of the accused persons would not be factor to discard their evidence.*

Criminal Law – Delay in examining prosecution witnesses during the course of investigation – Effect on prosecution case – Held: Not fatal – On facts, since no question was specifically E *put to investigating officer as to why there was delay in recording the statement of witnesses, no reason to create doubt regarding veracity of prosecution case.*

The courts below convicted the appellants under F **s.302 r.w. s.34, s.120B and s.148 IPC on the basis of evidence of eye witnesses. Hence the appeal.**

Dismissing the appeal, the Court

HELD: 1. The prosecution version has to be judged G **as a whole having regard to the totality of the evidence. In appreciating the evidence, the approach of the Court must be integrated and not truncated or isolated. The Court has to appreciate in reaching the conclusion about**

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the guilt of the accused, analyse and assess the evidence placed before it by the yardstick of probabilities, its intrinsic value and the animus of the witnesses. It is well settled that delay in examination of the prosecution witnesses by the police during the course of investigation *ipso facto* may not be a ground to create a doubt regarding the veracity of the prosecution's case. So far as the delay in recording a statement of the witnesses is concerned, no question was put to the investigating officer specifically as to why there was delay in recording the statement. Unless the investigating officer is categorically asked as to why there was delay in examination of the witnesses the defence cannot gain any advantage therefrom. It cannot be laid down as a rule of universal application that if there is any delay in examination of a particular witness the prosecution version becomes suspect. It would depend upon several factors. If the explanation offered for delayed examination is plausible and possible and the Court accepts the same as plausible there is no reason to interfere with the conclusion. [Para 9] [445-B-F]

Devender Pal Singh v. State of N.C.T. of Delhi and Anr. **AIR (2002) SC 1661;** *Hithendra Vishnu Thakur v. State of Maharashtra* **AIR (1994) SC 2623;** *Mohd. Khalid v. State of West Bengal* **(2002) 7 SCC 334;** *Harijana Thirupala and Ors. v. Public Prosecutor Andhra Pradesh* **(2002) 6 SCC 470;** *Ranbir and Ors. v. State of Punjab* **AIR (1973) SC 1409;** *Bodhraj @ Bodha and Ors. v. State of Jammu and Kashmir* **(2002) 8 SCC 45;** *Banti @ Guddu v. State of M.P.* **(2004) 1 SCC 414 and State of U.P. v. Satish AIR 1004 SC 261, relied on.**

2.1. It is seen that the PWs 3 and 4 disclosed that they witnessed the incident. Before PW-22 their evidence was recorded. The incident took place on 29.8.1997 and the accused persons were arrested after about 8 months. Till

A the arrest of the accused the statements of PWs 3 and 4 were not recorded under Section 161 CrPC. After arrest because their photos were published in the newspapers, that is how PWs 3 and 4 came to the police station on their own accord on two different occasions and gave B statements. PWs 3 and 4 had no interest either for prosecuting the accused or making a statement in the defence. They were independent witnesses. In such a case it is absurd to hold that investigating officer had erred in recording the statement of PWs 3 and 4. The C investigating agency was making all possible efforts to know the names of the witnesses. This factor cannot be doubted. [Para 9] [445-G-H; 446-A-C]

Bachittar Singh and Anr. v. State of Punjab (2002) 8 SCC 125; *Vemireddy Satyanarayan Reddy and Ors. v. State of* D *Hyderabad* AIR 1956 SC 379, relied on.

2.2. A witness is normally considered to be an independent witness unless he springs from the sources which are likely to be tainted such as enmity. As PWs 3 E and 4 had no enmity with the accused they were independent and natural witnesses. They were not under the control of the police and did not have in any sense any obligation to the police. Since they revealed the truth after long time after seeing the photos of the accused F persons, that cannot be a factor to discard their evidence. [Para 11] [446-F-H; 447-A]

Sardul Singh v. State of Haryana AIR 2002 SC 3462, relied on.

G 2.3. PW-3 was a mason by profession and PW-4 was a petty seller of sarees. Their courage in coming forward to depose against the accused persons is appreciable. They are from the lowest status of the society who took courage to stand up, picked and identified the accused H persons. PWs 2 and 3 stated that they witnessed the

incident from a place which was just near the Central Jail. In a bright day light the murder took place. Therefore, there was no infirmity in the identification. The evidence of PWs 10, 19 and 22 clearly proved the recoveries and discoveries. Apart from that there was recovery of the material objects. The investigator was able to locate the STD booth from where the accused talked with others. This was also an important factor which was discovered at the instance of known accused persons. There was a minor discrepancy pointed out as to what PWs 3 and 4 spoke about the manner of arrival of the motor riders. PW-3 stated that they came when the deceased was crossing the road while PW-4 stated that they were already there. This was too a trivial matter to corrode the credibility of the witnesses who were being examined after a length of time. The impugned judgment does not suffer from any infirmity to warrant interference. [Paras 12, 14 and 16] [447-D-F; 448-C-D; 452-E-F]

Case Law Reference:

AIR (2002) SC 1661	relied on	Para 5
AIR (1994) SC 2623	relied on	Para 6
2002 7 SCC 334	relied on	Para 7
2002 6 SCC 470	relied on	Para 8
AIR (1973) SC 1409	relied on	Para 9
2002 8 SCC 45	relied on	Para 9
2004 1 SCC 414	relied on	Para 9
AIR 1004 SC 261	relied on	Para 9
2002 8 SCC 125	relied on	Para 10
AIR 1956 SC 379	relied on	Para 11
AIR 2002 SC 3462	relied on	Para 11

A CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 26 of 2007.

From the Judgment & Order dated 10.7.2006 of the High Court of Madras, Madurai Bench in Crl. Appeal No. 953 of 2003.
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Sushil Kumar, Adolf Mathew, Aditya Kumar, Meenakshi Kumar, Vinay Arora and Sanjay Jain for the Appellant.

R. Shunmugasundram, V.G. Pragsam, S.J. Aristotle, Prabu
C Ramasubramaniam for the Respondents.

The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. Challenge in this appeal is to the judgment of a Division Bench of the Madras High Court
D upholding the conviction of the appellants for offence punishable under Section 302 read with Section 34, Section 120B and Section 148 of the Indian Penal Code, 1860 (in short the 'IPC'). However, the conviction and consequential sentences imposed for offence punishable under Section 341 IPC was set aside.
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2. Background facts in a nutshell are as follows:

Balan Alagiri (PW-5) was working as a Superintendent of Madurai Central Prison during the period May 1996 to October 1998. During that period Krishnan (PW7), Chokkalingam
F (PW20) were also working on 30/05/1997. One accused detained under TADA was brought from Chennai Central prison and produced before Coimbatore Court and returned back to Madurai Central Prison. When the Assistant Jailor Jayaprakash intend to have body search and examination of identification
G marks the accused Sahul Hameed refused to allow him to have body search and refused to show identification marks. The intimation was given to PW 20. The accused was taken to his office and was instructed to concede for body search. But he declined to do so. The said Jayaprakash tried to remove the
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shirts. At the time the Sahul Hameed has proclaimed that "Insha Allah! you have to answer for this" after that he was examined and sent to 6th block and detained in a separate cell. Whenever the relatives visit the jail, the Assistant Jailor Jayaprakash used to verify the things as per rules and regulations. Enraged by this, the said Sahul Hameed had complained to PW-5 that the Assistant Jailor has assaulted and insulted his religion.

Some members of an association also made an agitation before the District Collector, and affixed wall-posters. Sahul Hameed also reported the matter against the Jayaprakash to his superior officers and gave a statement also. The association members of Sahul Hameed also wrote a letter informing to identify the person who has caused annoyance to him and we will teach him a lesson. The said letter was received by PW5 and handed over to Superior Officer for further proceedings. The letter sent to Sahul Hameed is Ex.P2 series. Letter containing some religious verses is EX-P-3 and the cover is EX-P.4, printed format sent to a High Court Judge of the Madras High Court.

This case relates to an incident on 29.8.1997 around 3 p.m. near the central jail.

According to the first report and the preliminary investigation of police, three or four unidentified persons came on motor cycles and attacked the deceased with sickles and knives and having killed him fled away. The usual investigation proceeded without much progress on the identity of culprits. The C.B.C.I.D. Police of the State took up further investigation. Even they could not get any clue immediately.

While the big break through of the case is the Crime No.741/1998 of Kodambakkam Police Station; The first appellant was arrested in that crime registered under Sections 120(b), 307 IPC. His interrogation disclosed the involvement of all the appellants and the other absconding accused in this case. Resulting orders of police custody of the appellants, and

A their interrogation leading to discovery of incriminating facts under Section 27 of Indian Evidence Act, 1872 (in short the 'Act') connecting the accused with crime; the fact of arrest of appellants are published in the media with their photographs. On seeing their photographs the two witnesses i.e. PW3 and
B PW4 gave statements to police that they witnessed the murder and appellants are the assailants. Later the charge sheet was laid. As accused persons pleaded innocence, trial was held.

Saroja (PW-2) is a Sugarcane vendor in front of Madurai Prison. Shannlugam (PW-3) is a mason, Lakshmi (PW-4) is
C doing Textile business. PW3 has stated that 4 years before at about 3 P.M., when he was proceeding on the west to east by his bicycle to Arsaradi in front of the Jail main gate, he found a sugar cane juice vehicle and he was taking a sugar cane juice. At that time a person wearing jail Sub-Inspector Uniform, was
D riding a bicycle near to Sugarcane vehicle two Yamaha vehicles were parked. While the Sub-Inspector has crossed the sugar cane vehicle the person has taken the Aruval from his blue colour jeans bag and assaulted him on his neck and he has resisted by his left arm and also a cut injury and he has fallen
E down. Along with a person who has assaulted, yet another 4 persons have inflicted injury by knife and Aruval. After that three persons on one bike and two persons on another bike has started proceeding towards east. The occurrence was seen by Saroja (PW2), Shanmugam (PW-3) and PW4 Lakshmi.

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On 29-8-1997 around 3 p.m. Mohammed Sulaiman (PW-1) when he was in the guard duty a person parked his scooter and informed him that near to the prison main gate a Sub-Inspector who was riding bicycle with uniform was assaulted
G by four persons and ran away towards east. Immediately he rushed to the spot and found that the Assistant Jailor Jayaprakash was found dead and he has given intimation to his officers. On their instructions PW 1 has preferred a complaint to the Karimedu P.S. The Inspector of Karimedu P.S, Mary George (PW-21) has received the complaint EXP1 and
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preferred an F.I.R. EXP 27 and sent to Magistrate and other officers. Subsequently she has visited the place of occurrence and preferred observation mahazar in the presence of Alamarathan (PW-6) and Pandi EXP 29 is a observation mahazar and ExP28 a rough sketch was prepared. The police Photographer Shanmugasundaram (PW-18) has taken the photographs of the place of occurrence and a dead body in different angles. MO 6 is a negative and MO 17 are Photographs. An inquest was conducted in the presence of Panchayathar and inquest report was prepared and dead body was sent through David Shamuvel (PW 19) for Post mortem. MOs 19 to 24 were recovered in the presence of PW-20 and witnesses were examined and evidences were recorded. Dr. Maiyazagan (PW-12) has started post mortem on 30-8-1997 at 10.10 a.m. On receipt of the requisition which is ExP 15 from the Inspector (PW-21), he found 21 injuries and the first injury would be the cause of death. And injuries 2, 3 and 6 can cause death in natural course. Dr. Maiyazagan has suggested that all the injuries together would cause death and the rest of injuries, though it is simple would cause death in future. The injuries were inflicted by a sharp edged weapon like Aruval and deep injury would cause by one side sharped weapon and issued a post mortem certificate EX.P. 16.

After post mortem the MOs 8 to 12 were seized and dead body handed over to his relatives and the recovered material objects handed over to PW21. During the examination of PW21, during the pendency of this case as per the order of government, the case was handed over to CBCID, Madurai on 21-09-1997.

During the course of investigation by the Inspector of CBCID, Sundaram (PW-22) on the basis of statement given by Ist accused Abuthahir in connection with Kodambakkam Cr.No.741/98, U/Ss. 307, 305 and 120(b) I.P.C, he came to know that all the accused and the absconding accused Raja @ Tailor Raja have murdered Jayaprakash. On 4-5-1998

A accused Abuthakir was produced under PT warrant and brought to Madurai and Police Custody was taken from 26-5-1998 to 30-5-1998 for four days and he has given a confession before the Village Administrative Officer, Sethu Ramasamy (PW9) and Thalaiyari Ganesh. On the basis of an admitted B portion of Ex.P.7 the Hotel Service occupance Register from 17-9-1997 to 27-9-1997 MOI. Bill No.2501 dated 8-8-1997 to Bill No.2600 dated 2-9-1997 Cash Bill Book M02, and lodge maintenance register for Room No.107 from 25-8-1997 to 16-5-1998 anti Room No. 111 from 2 1-8-1997 to 24-5-1998 C maintenance register M04 were recovered under EX.P-8.

Further the Model signature denoted as R. Kumar was obtained in the presence of witnesses. MOs I to 4 were recovered from PW 10 Mayavan, who is a lodge clerk and cashier. Further an affixation for PT Warrant has been given to D Accused Aasik and he was remanded on 23-6-98 subsequently he was taken to police custody from 23.6.98 to 25.6.98 and he was examined in presence of Village Administrative Officer (PW-14) Velusamy and Thalaiyari Shanmugavel and confession was recorded.

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On the basis of an admitted portion of Ex.P.33 in the presence of witnesses the accused was taken to Trichy bus stand and was identified by the accused. Yamaha Motor Cycle (MO5) was recovered from the two wheeler stand under ExP34. F On 24.6.1998 he was sent to Judicial Custody. Further on 24-6-1998 an application was given for PT warrant for accused Aslam and Jafru, and they were remanded on 2-7-1998. From 2-7-1998 to 3-7-1998 accused were taken under police custody and examined in the presence of the witnesses and confession G was recorded. As specimen signature name as David in Tamil as well as English was obtained and the same was sent alongwith the accused for judicial custody on 3.7.1998. Accused Jafru was produced under PT warrant on 16.7.1998 and police custody was ordered from 16.7.1998 to 18-7-1998 on an application. He was examined and confession was

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recorded in the presence of Village Administrative Officer Kamaraj (PW5) and Thalaiyari Mohan. On the basis of an admitted portion of EX-P.35 he has taken witnesses and the Inspector and identified the STD Booth, run by Ponnazlagu, Tel.No.705564 situated on the Ist floor of Door No.66A, and he has confessed that he has made a call to Chennai and in between the periods 27-7-1997 to 12-10-1997 the note book maintained in the office for day time, and charges for Telephone calls were recovered under EX-P.26. The requisition was given to the Manager, Tele Communication, Trichy for seeking the Computer printout for the periods 18-8-1997 to 15-10-1997 regarding the communication to telephone No.705564 and on 17-7-1998 the accused Jafru was remanded to Judicial Custody.

The requisition given under EX-14 to Judicial Magistrate No.VI, Madurai for comparison of the signature of the A 1 & A2 to hand writing Expert Murali (PW-11), Bakhyam Hotel Cash receipt No.2590 dated 29-8-1997 and the English Signature of David was marked as QI. Hotel receipt No.2589 dated 29-8-1997 the Carban Signature of K. Kumar is "Q2" and Carbon signature of David in the lodge attendance register dated 27-8-1997 at Page 564 is "Q3". Carbon signature of K. Kumar in the lodge attendance register dated 27-8-1997 at Page 564 is "Q4". Specimen name of Aslam sent for report containing 10 papers Ex.P.11 letters marked as S1 to S60 as such specimen signature of Abuthakir containing 6 papers which is EX.P 2 the letters were marked as S61 to 144 and after research PW 13 has given an opinion that the letters marked as S1 to S24 were written by a person who has signed Q3, S61 to S 144 letters were written by a person who has signed Q2 and Q4.

Since accused Raja was absconded the case was split up against him before the lower Court. Twenty two witnesses were examined, 39 documents were exhibited and 25 material objects were marked. The trial Court held that the prosecution

A had established the accusations and accordingly convicted and sentenced them. Four of the accused persons filed appeal before the High Court. Before the High Court the primary stand was that PWs 3 and 4 stated to be the two eye witnesses. Identification of the accused by PWs 3 and 4 was not
B established. The so called discovery/recovery at the instance of the accused persons is not believable. No motive was established and no conspiracy was proved. The High Court held that the appeal was sans merit. It did not find any substance in the plea of the appellants that there was an inordinate delay in
C examination of PWs 3 and 4. So far as the identification is concerned the High Court found that the stand of the appellants that the identification was not truthful is not correct. So far as the discovery of the various photos, the High court noted that the circumstances of the recovery on its own may not be
D sufficient to connect the accused, but the cumulative effect of several factors coupled with the evidence of PWs 3 and 4 strengthened the case of the prosecution. It also held that the motive was clearly established and so was the conspiracy.

Apart from re-iterating the stand taken before the High
E Court learned counsel for the appellants submitted that on the purported basis of confession of A-3 that he has informed through STD booth Trichi informing to Batcha Bai on a particular telephone that he finished the matter, there was no corroboration.

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3. Learned counsel for the appellants submitted that incrimination materials were not put to the accused in the examination under Section 313 of the Code of Criminal Procedure, 1973 (in short the 'Code'). Original prosecution
G case was that four accused persons attacked the victim and there were no motor cyclists. The first investigation suspected four different accused. The second investigation came up with five different accused persons without any evidence against them excepting their so called admission before the eye witnesses.

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4. Learned counsel for the respondent on the other hand supported the judgment of the trial Court as affirmed by the High Court.

5. In *Devender Pal Singh v. State of N.C.T. of Delhi and Anr.* (AIR 2002 SC 1661), it was observed as follows:

> "Menace of terrorism is not restricted to one country, and it has become a matter of international concern....Whether the criminal act was committed with an intention to strike terror in the people or section of people would depend upon the facts of each case".

6. In *Hithendra Vishnu Thakur v. State of Maharashtra* (AIR 1994 SC 2623), it is held as follows:

> "It is a common feature that hardened criminals today take advantage of situation and by wearing the cloak of terrorism, aim to achieve acceptability and respectability in the society; because in different parts of the country affected by militancy, a terrorist is projected as a hero by a group and often even by many misguided youth".. "Cynics have often commented that one State's "terrorist" is another State's "freedom fighter."

7. In *Mohd. Khalid v. State of West Bengal* (2002 (7) SCC 334) at para 46 it is observed as follows:

> **"46.** Terrorism is one of the manifestations of increased lawlessness and cult of violence. Violence and crime constitute a threat to an established order and are a revolt against a civilised society. "Terrorism" has not been defined under TADA nor is it possible to give a precise definition of "terrorism" or lay down what constitutes "terrorism". It may be possible to describe it as use of violence when its most important result is not merely the physical and mental damage of the victim but the prolonged psychological effect it produces or has the potential of producing on the society as a whole. There may be death,

injury, or destruction of property or even deprivation of individual liberty in the process but the extent and reach of the intended terrorist activity travels beyond the effect of an ordinary crime capable of being punished under the ordinary penal law of the land and its main objective is to overawe the Government or disturb the harmony of the society or "terrorise" people and the society and not only those directly assaulted, with a view to disturb the even tempo, peace and tranquility of the society and create a sense of fear and insecurity.

8. In *Harijana Thirupala and Ors. v. Public Prosecutor Andhra Pradesh* (2002 (6) SCC 470), it was held as follows:

"**11.** In our administration of criminal justice an accused is presumed to be innocent unless such a presumption is rebutted by the prosecution by producing the evidence to show him to be guilty of the offence with which he is charged. Further if two views are possible on the evidence produced in the case, one indicating to the guilt of the accused and the other to his innocence, the view favourable to the accused is to be accepted. In cases where the court entertains reasonable doubt regarding the guilt of the accused the benefit of such doubt should go in favour of the accused. At the same time, the court must not reject the evidence of the prosecution taking it as false, untrustworthy or unreliable on fanciful grounds or on the basis of conjectures and surmises. The case of the prosecution must be judged as a whole having regard to the totality of the evidence. In appreciating the evidence the approach of the court must be integrated not truncated or isolated. In other words, the impact of the evidence in totality on the prosecution case or innocence of the accused has to be kept in mind in coming to the conclusion as to the guilt or otherwise of the accused. In reaching a conclusion about the guilt of the accused, the court has to appreciate, analyse and assess the evidence

placed before it by the yardstick of probabilities, its intrinsic value and the animus of witnesses. It must be added that ultimately and finally the decision in every case depends upon the facts of each case."

9. The prosecution version has to be judged as a whole having regard to the totality of the evidence. In appreciating the evidence the approach of the Court must be *integrated and not truncated or isolated.* The Court has to appreciate in reaching the conclusion about the guilt of the accused, analyse and assess the evidence placed before it by the yardstick of probabilities, its intrinsic value and the animus of the witnesses. Much emphasis has been led by learned counsel for the appellants on the alleged delayed examination of the witnesses. It is well settled that delay in examination of the prosecution witnesses by the police during the course of investigation ipso facto may not be a ground to create a doubt regarding the veracity of the prosecution's case. So far as the delay in recording a statement of the witnesses is concerned no question was put to the investigating officer specifically as to why there was delay in recording the statement. Unless the investigating officer is categorically asked as to why there was delay in examination of the witnesses the defence cannot gain any advantage therefrom. It cannot be laid down as a rule of universal application that if there is any delay in examination of a particular witness the prosecution version becomes suspect. It would depend upon several factors. If the explanation offered for delayed examination is plausible and possible and the Court accepts the same as plausible there is no reason to interfere with the conclusion. (See *Ranbir and Ors. v. State of Punjab* (AIR 1973 SC 1409), *Bodhraj @ Bodha and ors. v. State of Jammu and Kashmir* (2002 (8) SCC 45), *Banti @ Guddu v. State of M.P.* (2004 (1) SCC 414) and *State of U.P. v. Satish* (AIR 1004 SC 261). It is seen that the PWs 3 and 4 disclosed that they had witnessed the incident. Before PW-22 their evidence was recorded. The incident took place on 29.8.1997 and the accused persons were arrested after about

A 8 months. Till the arrest of the accused the statements of PWs 3 and 4 were not recorded under Section 161 of Code. After arrest because their photos were published in the newspapers, that is how PWs 3 and 4 came to the police station on their own accord on two different occasions and gave statements. B It has been submitted by learned counsel for the appellants that PWs 3 and 4 did not disclose the incident to any one. They have no interest either for prosecuting the accused or making a statement in the defence. They are independent witnesses. In such a case it is absurd to hold that investigating officer had C erred in recording the statement of PWs 3 and 4. The investigating agency was making all possible efforts to know the names of the witnesses. This factor cannot be doubted. If really as contended by learned counsel for the appellants the prosecution wanted to tamper some witnesses they could have D immediately done so after the incident.

10. In *Bachittar Singh and Anr. v. State of Punjab* (2002 (8) SCC 125), it was observed by this Court as follows:

> "Man proposes, God Disposes" is exactly what has E happened here. What the accused thought was that they were committing a hidden crime without realizing that they had left behind clinching evidence against themselves."

11. It was noted by this Court in *Vemireddy Satyanarayan Reddy and Ors. v. State of Hyderabad* (AIR 1956 SC 379) that F it requires a courage in case of atrocity for a simple man to come forward and proclaim the truth unmindful of the consequences to himself. A witness is normally considered to be an independent witness unless he springs from the sources which are likely to be tainted such as enmity. Here again it G would depend upon the facts of each case. In the instant case, as PWs 3 and 4 have no enmity with the accused they are independent and natural witnesses. They are not under the control of the police and do not have in any sense any obligation to the police. Since they have revealed the truth after H long time after seeing the photos of the accused persons, that

cannot be a factor to discard their evidence. In *Sardul Singh v. State of Haryana* (AIR 2002 SC 3462) it was held as follows:

> "There cannot be a prosecution case with a cast iron perfection in all respects and it is obligatory for the courts to analyser sift and assess the evidence of record, with particular reference to its trustworthiness and truthfulness, by a process of dispassionate judicial scrutiny adopting apt objective and reasonable appreciation of the same, without being obsessed by an air of total suspicion of the case of the prosecution. What is to be insisted upon is not implicit proof. It has been often been said that evidence of interested witnesses should be scrutinized more carefully to find out whether it has a ring of truth... Courts have a duty to undertake a complete and comprehensive appreciation of all vital features of the case and the entire evidence with reference to the broad and reasonable probabilities of the case also in their attempt to find out. proof beyond reasonable doubt".

12. PW-3 was a mason by profession and PW-4 was a petty seller of sarees. Their courage in coming forward to depose against the accused persons needs to be appreciated. Here are two persons from the lowest status of the society who had taken courage to stand up, picked and identified the accused persons. PWs 2 and 3 have stated that they witnessed the incident from a place which is just near the Central Jail. In a bright day light the murder took place. Therefore, there is no infirmity in the identification.

13. Section 27 of the Indian Evidence Act, 1872 (in short the 'Evidence Act') deals with discovery. The same reads as follows:

> *"How much of information received from accused may be proved-* Provided that when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police

A officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved."

In the instant case the following documents were relied upon:

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1. Bakkim Lodge record.

2. Handwritings of first and third appellants in the registers.

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3. Impersonation as Kumer and David.

14. The evidence of PWs 10, 19 and 22 clearly proved the aforesaid recoveries and discoveries. Apart from that there has been recovery of the material objects. The investigator was able D to locate the STD booth from where the accused talked with others. This also is an important factor which was discovered at the instance of known accused persons. The concept of conspiracy has been dealt with by this Court in several cases. In *Mohd. Khalid's* case (supra), it was held as follows:

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"17. It would be appropriate to deal with the question of conspiracy. Section 120-B IPC is the provision which provides for punishment for criminal conspiracy. Definition of "criminal conspiracy" given in Section 120-A reads as follows:

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"120-A. When two or more persons agree to do, or cause to be done,—

(1) an illegal act, or

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(2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy:

Provided that no agreement except an agreement to commit an offence shall amount to a criminal

H conspiracy unless some act besides the agreement

is done by one or more parties to such agreement in pursuance thereof."

The elements of a criminal conspiracy have been stated to be: (a) an object to be accomplished, (b) a plan or scheme embodying means to accomplish that object, (c) an agreement or understanding between two or more of the accused persons whereby, they become definitely committed to cooperate for the accomplishment of the object by the means embodied in the agreement, or by any effectual means, and (d) in the jurisdiction where the statute required an overt act. The essence of a criminal conspiracy is the unlawful combination and ordinarily the offence is complete when the combination is framed. From this, it necessarily follows that unless the statute so requires, no overt act need be done in furtherance of the conspiracy, and that the object of the combination need not be accomplished, in order to constitute an indictable offence. Law making conspiracy a crime, is designed to curb immoderate power to do mischief which is gained by a combination of the means. The encouragement and support which co-conspirators give to one another rendering enterprises possible which, if left to individual effort, would have been impossible, furnish the ground for visiting conspirators and abettors with condign punishment. The conspiracy is held to be continued and renewed as to all its members wherever and whenever any member of the conspiracy acts in furtherance of the common design. (See *American Jurisprudence,* Vol. II, Sec. 23, p. 559.) For an offence punishable under Section 120-B, the prosecution need not necessarily prove that the perpetrators expressly agreed to do or caused to be done an illegal act; the agreement may be proved by necessary implication. The offence of criminal conspiracy has its foundation in an agreement to commit an offence. A conspiracy consists not merely in the intention of two or more, but in the agreement of two or more to do an

A unlawful act by unlawful means. So long as such a design rests in intention only, it is not indictable. When two agree to carry it into effect, the very plot is an act in itself, and an act of each of the parties, promise against promise, actus contra actum, capable of being enforced, if lawful, B punishable if for a criminal object or for use of criminal means.

18. No doubt in the case of conspiracy there cannot be any direct evidence. The ingredients of the offence are that there should be an agreement between persons who are C alleged to conspire and the said agreement should be for doing an illegal act or for doing by illegal means an act which itself may not be illegal. Therefore, the essence of criminal conspiracy is an agreement to do an illegal act and such an agreement can be proved either by direct D evidence or by circumstantial evidence or by both, and it is a matter of common experience that direct evidence to prove conspiracy is rarely available. Therefore, the circumstances proved before, during and after the occurrence have to be considered to decide about the E complicity of the accused.

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21. Privacy and secrecy are more characteristics of a conspiracy, than of a loud discussion in an elevated place F open to public view. Direct evidence in proof of a conspiracy is seldom available, offence of conspiracy can be proved by either direct or circumstantial evidence. It is not always possible to give affirmative evidence about the date of the formation of the criminal conspiracy, about the G persons who took part in the formation of the conspiracy, about the object, which the objectors set before themselves as the object of conspiracy, and about the manner in which the object of conspiracy is to be carried out, all this is necessarily a matter of inference."

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15. In *Devender Pal Singh's* case (supra) it was held in paras 50 and 51 as follows:

"50. In *Kehar Singh v. State (Delhi Admn.)* (AIR 1988 SC 1883 at p. 1954) this Court observed: (SCC pp.732-33 para 275)

"275. Generally, a conspiracy is hatched in secrecy and it may be difficult to adduce direct evidence of the same. The prosecution will often rely on evidence of acts of various parties to infer that they were done in reference to their common intention. The prosecution will also more often rely upon circumstantial evidence. The conspiracy can be undoubtedly proved by such evidence direct or circumstantial. But the court must enquire whether the two persons are independently pursuing the same end or they have come together to the pursuit of the unlawful object. The former does not render them conspirators, but the latter does. It is, however, essential that the offence of conspiracy required some kind of physical manifestation of agreement. The express agreement, however, need not be proved. Nor actual meeting of two persons is necessary. Nor is it necessary to prove the actual words of communication. The evidence as to transmission of thoughts sharing the unlawful design may be sufficient."

Conspiracy can be proved by circumstances and other materials. (See *State of Bihar v. Paramhans Yadav* (1986 Pat LJR 688)

"To establish a charge of conspiracy knowledge about indulgence in either an illegal act or a legal act by illegal means is necessary. In some cases, intent of unlawful use being made of the goods or services in question may be inferred from the

knowledge itself. This apart, the prosecution has not to establish that a particular unlawful use was intended, so long as the goods or services in question could not be put to any lawful use. Finally, when the ultimate offence consists of a chain of actions, it would not be necessary for the prosecution to establish, to bring home the charge of conspiracy, that each of the conspirators had the knowledge of what the collaborators would do, so long as it is known that the collaborator would put the goods or services to an unlawful use." (See: *State of Maharashtra v. Som Nath Thapa* (1996 (4) SCC 659)

51. Where trustworthy evidence establishing all links of circumstantial evidence is available, the confession of a co-accused as to conspiracy even without corroborative evidence can be taken into consideration. (See *Baburao Bajirao Patil v. State of Maharashtra* (1971 (3) SCC 432). It can in some cases be inferred from the acts and conduct of the parties. (See *Shivnarayan Laxminarayan Joshi v. State of Maharashtra* (1980 (2) SCC 465)."

16. There is a minor discrepancy pointed out as to what PWs 3 and 4 have spoken about the manner of arrival of the motor riders. PW-3 stated that they came when the deceased was crossing the road while PW-4 stated that they were already there. This is too a trivial matter to corrode the credibility of the witnesses who were being examined after a length of time. The impugned judgment does not suffer from any infirmity to warrant interference.

17. The appeal is dismissed.

D.G. Appeal dismissed.