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**(2012) 03 JH CK 0086**

**In the Jharkhand High Court**

**Case No :** Criminal Appeal (DB) No. 77 of 2007 and Criminal Appeal (DB) No's. 288, 299, 262, 273, 303, 320 of 1998 (R)

Md. Yaqub Ansari @ Md. Ayub Ansari

APPELLANT

Vs

The State of Jharkhand <BR> Mantu Das Vs The State of Bihar (now Jharkhand)

RESPONDENT

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**Date of Decision :** 22-03-2012

**Acts Referred:**

Arms Act, 1959 — Section 27

Evidence Act, 1872 — Section 10

Penal Code, 1860 (IPC) — Section 120A, 120B, 302, 379, 411

**Citation :** (2012) 2 JLJR 428

**Hon'ble Judges :** R.K. Merathia, J;Dhrub Narayan Upadhyay, J

**Bench :** Division Bench

**Advocate :** B.M. Tripathy, Mr. A.S. Dayal and Mr. MB. Lal, in Cr. Appeal Nos. 262, 273 and 320 of 1998, Mr. Ramawatar Sharma and Mr. Jay Prakash Pandey, in Cr. Appeal No.77 of 2007 Mr. P. Chatterjee, in Cr. Appeal No.288 of 1998, Mr. P.C. Roy, in Cr. Appeal No. 299 of 1998, Mr. J. P. Pandey, in Cr. Appeal No.303 of 1998, for the Appellant; Nikki Sinha, Assistant Public Prosecutor for the State, for the Respondent

**Final Decision :** Dismissed

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## Judgement

D.N. Upadhyay, J.—Criminal appeal No.77 of 2007 has been preferred against the judgment of conviction and sentence dated 20.11.2006 passed by the 1st Additional Sessions Judge, Dhanbad in Sessions Trial No. 405 of 1998, arising out of Govindpur (Barwadda) P.S. Case No. 175 of 1996 corresponding to G.R. Case No. 2657 of 1996 whereby the appellant has been held guilty for the offence punishable under Sections 302 read with 120B of the Indian Penal Code and Section 27 of the Arms Act and sentenced to undergo R.I. for life u/s 302 read with 120-B of the Indian Penal Code and R.I. for three years u/s 27 of the Arms Act, however, all the sentences were directed to run concurrently.

AND

Criminal appeal Nos.288, 299, 262, 273, 303 & 320 of 1998 have been preferred against the judgment of conviction and sentence dated 26.8.1998 & 31.8.1998 respectively passed by 3rd Additional Sessions Judge, Dhanbad in Sessions Trial No. 112 of 1997, arising out of Govindpur (Barwadda) P.S. Case No. 175 of 1996 corresponding to G.R. Case No. 2657 of 1996 whereby all the appellants have been held guilty for the offence punishable u/s 302 read with 120B of the Indian Penal Code and sentenced to undergo R.I. for life whereas appellant Mantu Das and Paiki Ramm @ Poki Ramm have further been held guilty u/s 379 of the Indian Penal Code and sentenced to undergo R.I. for two years, one of the convict Mustak Khan, who has been held guilty for the offence punishable u/s 411 of the Indian Penal Code and sentenced to undergo R.I. for two years, has not preferred any appeal before this Court.

Since all the appeals referred to above arise out of a common F.I.R. i.e. Govindpur (Barwadda) P.S. Case No.175 of 1996, lodged on 06.09.1996 at 20.30 hours by the informant Dr. Gopal Prasad Sinha, this common judgment shall be applicable. We are aware of the fact and the law that evidence adduced in two separate sessions trial followed by two separate judgments shall require to be discussed and appreciated according to the evidence available against appellants in their respective sessions trial and that principle will be followed in this judgment. The common witnesses in the aforesaid two sessions trial are Dr. Gopal Prasad Sinha (informant), Mithilesh Kumar, Arvind Kumar, Ghanshyam Pandey, Parmeshwar Mahto and Dr. D.K. Dhiraj out of whom the informant Dr. Gopal Prasad Sinha, Mithilesh Kumar, Arvind Kumar and Dr. D.K. Dhiraj are material witnesses. The Investigating Officer Jagdish Prasad was not examined in S.T. No.405 of 1998 in which Md. Yaqub Ansari @ Md. Ayub Ansari is appellant.

2. Since the material witnesses are common in both the Sessions trial, we would like to bring on record the gist of the prosecution case adduced by them. According to fardbeyan Dr. Gopal Prasad Sinha (informant) along with his brother Sant Kumar Sinha (deceased) was going to Rajganj from Kumar Medical Hall, situated within combined building, Dhanbad on his motorcycle bearing registration No. BR 17C 4288 on 06.09.1996. At about 8 p.m. when they reached near Sant Nirankari Chowk, they saw a scooter and a motorcycle Kawasaki parked at the side of the road and the persons standing near the place signaled them to stop. The informant accordingly followed the instructions and after being stopped at the place, identified the appellants namely Md. Yaqub Ansari, Dhiren Mahto, Gulam Sarbar, Mantu Das, Asgar Mian and Paiki Ramm in the vapor light affixed on the Nirankari Bhawan. The informant then inquired the reason for their stay at the place but till then appellants Yaqub Ansari, Dhiren Mahto took out pistol from their waist, pointed it towards them and asked, as to why they are disturbing their partner Binod in running the institute. They threatened them to remain away from the institute and failing to obey the instructions they will have to face the consequences. It is disclosed that Sant Kumar Sinha, (deceased) then got down from the motorcycle and told that how they are related with the running of the institute and what interest they have. Thereafter exchange of hot

words took between them. It is alleged that appellant Asgar, by hurling blow by means of a knife told his companion to do the task for which they have come. Simultaneously the appellant Yaqub opened fire from a point blank range on the left side of the neck of Sant Kumar Sinha (deceased) after which he fell down. The informant, apprehending danger, ran away from the place after which a shot was fired from behind but it did not hit him. At the time of running away from the place he had seen appellant Dhiren Mahto and Asgar Mian fleeing on scooter No. BR 17B 4455, appellants Yaqub and Gulam Sarbar on Kawasaki motorcycle No. DEV 2626 towards Dhanbad and appellants Mantu Das and Paiki Ramm towards south on the motorcycle left by the informant. In course of fleeing the informant met with the police patrolling party to whom he disclosed about the incident and returned back to the place of occurrence along with them on the police jeep. They found Sant Kumar lying dead at the place of occurrence situated near Nirankari Bhawan. The informant raised allegation that appellant Binod Kumar hatched out a conspiracy, hired criminals and committed murder of Sant Kumar Sinha.

3. On the basis of fardbeyan of Dr. Gopal Prasad Sinha a case u/s 302/120B and 379 I.P.C. and Section 27 of the Arms Act against the appellants was registered and accordingly, investigation proceeded. During investigation stolen motorcycle was recovered from the house of Mustak Khan @ Chanda Khan and he was also made accused in addition to the accused named in the F.I.R. At the conclusion of the investigation all the accused persons were chargesheeted showing appellant Yaqub @ Ayub as an absconder in red ink in column-2 of the chargesheet. All the apprehended seven accused were put on trial vide S.T. No.112 of 1997 whereas appellant Yaqub Ansari @ Ayub Ansari who was apprehended later, was put on trial vide S.T. No.405 of 1998.

4. The fact which has come up from the evidence of material witnesses, is that Sant Kumar Sinha (deceased) along with appellant Binod Kumar had been running a private mining institute at Hirapur since the year 1991. In the said institute a lady known as Shipra Sen Choudhery was appointed as a clerk with whom appellant Binod Kumar developed illicit relation. The deceased raised objection against the illicit relation which the duo were having. Lastly the deceased did not allow the indecent activities of Binod in the institute run at Hirapur and Shipra Sen Choudhery was terminated from the service but Binod Kumar (appellant) did not restrict himself and continued his relation with Shipra Sen Choudhery. It is disclosed by the witnesses that another institute was opened by Binod Kumar at Bekar Bandh of which Shipra Sen Choudhery was a Director. This new institute came in existence some times in the year 1995. The deceased did not consider said illicit relation of Shipra and Binod congenial for the running of an academic institute and being a well wisher of his partner Binod, he made the wife of Binod acquainted with the said illicit relation. On the celebration of Sarswati Puja in the year 1996 an altercation took place between the wife of Binod and Shipra within the institute and they scuffled with each other. They were separated only after intervention of the appellant and deceased

and from that point of time appellant Binod developed grudge in his mind against Sant Kumar Sinha. The activities of Binod Kumar, after the incident, was noticed by the deceased and he was apprehending danger from his hand and this fact was disclosed by him to his family members. To take precaution Sant Kumar Sinha was being accompanied by any member of his family whenever he used to go out either from the institute or from the house.

5. The aforesaid three common material witnesses namely Mithilesh, Arvind and Gopal Prasad Sinha have further stated that they had noticed visit of Dhiren Mahto, Asgar and some other appellants in the institute between Sarswati Puja occurrence and the present incident.

6. Dr. Gopal Prasad Sinha, the informant, had deposed during trial in both the sessions case that on 06.09.1996 he along with the deceased was going to Rajganj from Kumar Medical, Dhanbad on his motorcycle bearing registration No. BR 17 C 4288 and they were intercepted by the appellants except Binod and Mustak near Nirankari Bhawan situated at Barwadda Road at about 8 p.m. The deceased was threatened to leave the institute in favour of Binod otherwise he will have to face the consequences. In the meantime, appellant Asgar uttered to complete the task for which they had assembled and hurled a knife blow on the deceased. Simultaneously, appellant Yaqub @ Ayub opened fire from a point blank range causing injury on the neck of deceased as a result he fell down. The informant, in order to save his life, ran from the place of occurrence and a fire was also aimed at him but it did not hit. He had noticed fleeing of the appellants from the place of occurrence towards the respective directions on the respective vehicles. On the way he met with the police patrolling party and again returned back to the place of occurrence with them and gave his fardbeyan.

7. The other two witnesses Mithilesh Kumar and Arvind Kumar, who are related with the deceased, have corroborated the story that Binod and the deceased had been running a private mining institute at Hirapur in which Shipra Sen Choudhery was employed as a clerk with whom appellant Binod developed illicit relation and it was objected by the deceased. Not only that, the illicit relation prevailing between Binod and Shipra was brought to the notice of wife of Binod after which the Sarswati Puja occurrence took place. They have also supported this fact that Shipra was removed from the earlier institute run at Hirapur but appellant Binod in order to accommodate her opened another institute at Bekar Bandh, Dhanbad under the directorship of said Shipra.

8. Learned counsels, appearing on behalf of appellants have assailed the impugned judgment on the ground that the informant, who is said to be an eye witness was not at all present at the scene of occurrence and the deceased was not accompanied by him at the time of incident. The evidence of solitary witness is not wholly reliable and truthful which would be apparent from the contradictions appearing in his statement. On behalf of appellant Md. Yaqub Ansari @ Md. Ayub Ansari much stress has been given by learned counsel Mr. Ramawatar Sharma that this appellant was not known to the informant and he

was not knowing him from before. The conduct of, the informant is also suspicious when he did not disclose the incident to his brothers and family members with whom he spent the said unfortunate night. The I.O. as well as the Investigating Officer namely Sri C.K.P. Yadav have not been examined in S.T. No.405 of 1998 and non-examination of such important witness has caused great prejudice to the appellant Md. Yaqub Ansari @ Md. Ayub Ansari. Had they been examined, the actual incident which the informant had narrated to them, would have come on record. There was no sufficient light at the place of occurrence which is also indicative from the evidence that the police officials had used torch light at the time of inspecting the dead body and place of occurrence. The informant has brought on record specific motive behind the alleged murder but no investigation has been done to prove the motive alleged.

9. Learned counsels appearing for rest of the appellants have though adopted the aforesaid argument advanced on behalf of appellant Yaqub @ Ayub but they have pointed out more points in addition to that.

10. On behalf of appellant Binod Kumar specific argument has been advanced that he was not present at the place of occurrence which is admitted by the prosecution witnesses. It was also submitted that the document's which were seized on the production of the informant and the evidence on record clearly indicates that no dispute between Binod and deceased ever occurred against running of the institute. They were jointly and happily running both the institute. It is not that after removal of Shipra from the former institute, the deceased had broken his business relation with the appellant Binod rather the second institute in which Shipra was director, the deceased had joined hand with Binod and signed the agreement. Therefore, it is crystal clear that no dispute against running of institute was prevailing between Binod and the deceased. The next point left is that the objection raised by the deceased against the relation which Binod and Shipra were having, could not be considered as grave that Binod would make a plan to eliminate him. It was repeatedly pointed out by the concerned counsel that Binod has been held guilty purely with the aid of Section 120-B I.P.C. and the investigation is completely silent on this point. The I.O. had conducted perfunctory investigation. He did not bother to examine any of the staff of either of the institute, he did not record statement of either Shipra or wife of Binod. The conviction of appellant Binod on a very weak piece of evidence, i.e. utterance made by Asgar at the time of occurrence is not sufficient to hold him guilty for the offence like murder in which he has been inflicted with a sentence of life imprisonment. Let us examine the utterance made by Asgar, as disclosed by the informant, in the fardbeyan as well as in his statement in Court. Appellant Asgar had not uttered against deceased as to why he has been disturbing the conjugal life of Binod. What he uttered was that don't disturb Binod in running the institute and keep yourself away from it, failing which you will be saddled with dire consequences. By submitting above, it was argued that the impugned judgment is liable to be set aside at least in respect of appellant Binod. Learned counsel for the appellants has placed reliance on the case law

reported in: State (N.C.T. of Delhi) Vs. Navjot Sandhu @ Afsan Guru, , [ 1995 (1) East Cr.C.51 (SC) ],P.K. Narayanan Vrs. State of Kerala (SC).

11. Learned counsels, appearing for rest of the appellants have further added that the evidence of Jagdish Prasad (I.O.) who is PW-8 in S.T. No.112 of 1997 is required to be scrutinised with care and caution. It was submitted that non-examination of the then Officer-in-charge C.K.P. Yadav is fatal to the prosecution. Had he been examined, the grey part of the prosecution case would have been unfolded. He has hammered on the recording of fardbeyan and submitted that Jagdish Prasad (PW-8, I.O.) has claimed that the fardbeyan was recorded in his handwriting but the head note appended indicates that it was recorded by the then Officer-in-charge, Barwadda Police Station Shri C.K.P. Yadav. According to evidence of this witness he had left the Police Station for the purpose of vehicle checking at 17.05 hours after making station diary entry. It is deposed by him that at about 8.05 p.m. rider of a motorcycle did not obey the signal and after breaking the barrier started fleeing away. They were chased by this witness and constable Badre Alam and they -succeeded to apprehend the pillion rider who tried to escape by jumping from the motorcycle. The apprehended accused disclosed his identity as of appellant Gulam Sarbar and the identity of the person who absconded with motorcycle as of Md. Yaqub @ Ayub, Gulam Sarbar was brought back to the place of occurrence because this witness had heard rumour about an incident of firing which had taken place on Barwadda road near Nirankari Bhawan. The admitted case of the prosecution is that appellant Gulam Sarbar was brought to the place of occurrence where dead body of Sant Kumar Sinha was lying and the informant with the police patrolling party, consist of Officer-in-charge C.K.P. Yadav was present. Surprisingly enough the fardbeyan of the informant did not indicate that Gulam Sarbar was apprehended by the police before his fardbeyan was recorded. To corroborate this fact constable Badre Alam has also not been examined. During trial, the informant has tried to fill up the lacuna by introducing a fact that he had seen Gulam Sarbar who was brought on a motorcycle by a police officer of the rank of double star. By pointing out above, it was submitted that the informant was not at all present at the time of occurrence at the place and the evidence of solitary witness is not wholly truthful and no reliance can be placed on his testimony.

12. Learned counsel appearing for the State has vehemently opposed the argument advanced by learned counsels appearing on behalf of the appellants. It is submitted that the fardbeyan of the informant was recorded promptly without any delay to which the informant has proved in Court. The motive for committing murder for which a conspiracy was hatched out at the instance of appellant Binod Kumar has duly been proved and participation of rest of the appellants in the commission of alleged murder has been specifically pointed out by the witnesses. The evidence on record clearly indicate that murder of Sant Kumar had occurred in persuasion of conspiracy hatched out by the appellants and it was actively executed. The impugned judgments of conviction need no interference.

13. The first and foremost question which has come up before us is whether the conviction recorded on the testimony of sole eye witness can be upheld and the informant is wholly truthful? To consider this issue we have carefully scrutinised the evidence available on record and also examined the events and progress in the investigation which had taken place in quick succession after the incident took place. According to the informant the occurrence took place at about 8.00 p.m. near Mrankari Bhawan situated at Barwadda road. The informant met with the police patrolling party in course of fleeing from the place and returned back to the place of occurrence with police patrolling party within 15-20 minute and the fardbeyan was recorded at 8.30 p.m. Since the fardbeyan was recorded promptly without giving chance to the informant to import thought or suggestion from other brain or being influenced from any corner, the statement so given cannot be doubted and that too when it is being corroborated from the other facts and circumstances, such as arrest of the accused persons, recovery of the vehicles used in the crime from the houses of named accused, recovery of the stolen motorcycle of the informant and so on. The informant had clearly disclosed the names of each pair of the appellants who at the time of fleeing from the place used which particular vehicle. He has stated that Yaqub Ansari and Gulam Sarbar were fleeing towards Dhanbad on motorcycle No. BEV 2626 whereas Dharendra Chandra Mahto and Asgar Man fled on scooter No. BR 17B 4455 and Paiki Ramm @ Poki Ramm and Mantu Das were fleeing on the motorcycle bearing registration No. BR 17C 4288 which was left by the informant. The seizure list (Exhibit-6) relates to recovery of motorcycle No. BEV 2626 from the house of accused Yaqub @ Ayub on which he along with Gulam Sarbar had left the place. Exhibit 6/1 relates to seizure of LML Vespa No. BR 17B 4455 from possession of appellant Dharendra Chandra Mahto while he was apprehended by the police (PW-8 Para-14). This scooter was used by Dharendra Chandra Mahto and Asgar Mian at the time of fleeing from the place. The stolen motorcycle used by Mantu Das and Poki Ramm for making their escape good was recovered from the house of Mustak Khan @ Chand Khan, Exhibit-6/3. Thus, it is very clear that the vehicles which were used by respective set of accused at the time of their fleeing from the place have been recovered from their possession which fully corroborate the contention of the informant made in the fardbeyan.

14. In this context arrest of Gulam Sarbar within half an hour of the incident is also an important link which further strengthen the evidence of informant. We do not think that non-mention of name of appellant Gulam Sarbar in the fardbeyan is fatal to the prosecution. It was explained by the I.O. (PW-8) that in what circumstances Gulam Sarbar was apprehended. PW-8 who had apprehended Gulam Sarbar, was not knowing at the relevant point of time that the accused was fleeing after committing murder rather Gulam Sarbar was arrested because the checking barrier was broken by him and his associate. This has come in evidence that Gulam Sarbar was brought to the place by a police officer. It was not expected from the informant to disclose his name in the fardbeyan because process was going on from before Gulam Sarbar was brought to the place. The

informant has clearly stated in his deposition that Gulam Sarbar was brought to the place to whom he had seen while the enquiry by the police officer was going on. Again, we would like to point out that everything had taken place in quick succession after the incident took place and therefore, such minute detail, if missing in the fardbeyan would not be sufficient to disbelieve the testimony of informant which is otherwise fully intact. The station diaries which have been marked exhibit at the instance of defence are also corroborating the incident and the quick progress in the investigation.

15. In view of the above, we do not find that the statement of informant, suffers from any material contradictions on the point of occurrence, the manner in which the accused persons appeared at the scene of occurrence, the injury caused to the deceased by gun shot corroborated by P.M. report, the specific role played by the appellants who participated in the murder and description of the vehicles which each pair of accused appellant used at the time of their fleeing from the place. We just want to pause at this juncture in order to consider the evidence adduced by appellant Md. Yaqub Ansari in his defence. He has tried to prove that he was not present at the place of occurrence rather he was engaged in collecting food grains from the F.C.I. godown. The time indicating presence of the appellants at the F.C.I. and the purpose for which he had been there are not as such to disbelieve the evidences of prosecution witnesses. Yaqub was fleeing from the place along with Gulam Sarbar find corroboration from the arrest of latter. It is also pertinent to note that place of occurrence and manner of occurrence are more or less admitted by the defence witnesses when they have deposed that a person was moving on a motorcycle, he was intercepted near Nirankari Bhawan by the persons who had reached to the place on a scooter and one out of them opened fire causing injury on the neck of the person who was going on a motorcycle. After having injury that person fell down at the place of occurrence and the miscreants fled away with the motorcycle of the deceased. What we mean to bring on record is that the place of occurrence, manner of occurrence, weapon used, part of the body of the deceased on which a gun shot injury was caused and the theft of the motorcycle of the deceased which was taken away by the miscreants, are not disputed.

16. The next point is the conspiracy because the appellants have been held guilty for the offence punishable u/s 302 read with 120-B of the I.P.C. The fardbeyan though is clear that except Binod rest of the appellants were present at the place of occurrence at the time of commission of murder of Sant Kumar and the specific role played by them also find mentioned in the fardbeyan and evidence of informant. As conspiracy is primary charge against accused persons, we shall now feel inclined to advert the law relating to conspiracy, essential features and proof. Section 120A of the Indian Penal Code defines criminal conspiracy which is as under:

When two or more persons agree to do, or cause to be done,-

(1) an illegal act, or

(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 conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof

Section 120B of the Indian Penal Code provides punishment for criminal conspiracy and the following facts require to be proved by the prosecution for a criminal conspiracy:

- (1) That there was an agreement between two or more persons;
- (2) That the accused was agreed with another to do act, or caused it to be done;
- (3) That such act was illegal or was to be done by illegal means;
- (4) That such an act done or caused to be done was an offence under the code or any special or local law.

17. Thus the gist of the offence is an agreement to break the law. The parties to such an agreement will be guilty of criminal conspiracy. The essence of the offence of conspiracy is the fact of combination by agreement and that agreement may be expressed or implied or in part expressed and in part implied. Mostly, the conspiracies are proved by the circumstantial evidence as the conspiracy is seldom an open affair. Usually both, existence of the conspiracy and its objects have to be inferred from the circumstances and the conduct of the accused. Every incriminating circumstance must be clearly established by reliable evidence and the circumstance so proved must form a chain of events from which the only irresistible conclusions about the guilt of the accused can be safely drawn and no other hypothesis against the guilt is possible. It is simultaneously correct that in most cases, proof of conspiracy is largely inferential and the inference must be founded on solid facts. Direct evidence with regard to conspiracy in most of the cases is remote. Therefore, the entire facts and circumstances and the evidence on record is to be visualised and scrutinised with care and caution so that no innocent should be punished or the inference, if drawn, should not cause miscarriage of justice. One more important thing in a case of conspiracy is that the perpetrator of conspiracy may not in all cases would disclose the actual motive to the executant of conspiracy. Normally, the perpetrator of the crime in a case of conspiracy does not take part in the execution but it depend on the circumstances and the motive behind the said conspiracy. It is often noticed that the conspirator hire some criminals either directly or through agent to execute the evil design planned by him. In such cases, it is always expected that he would not disclose actual motive or the reason or the object for which the conspiracy is hatched out. Particularly, in a case where the motive is purely personal or as such, which may lower down the prestige or reputation of the conspirator, he would not disclose it to the person to whom he engaged for doing that illegal act. There may be other circumstances

where the conspirator is vigilant to conceal his identity he would not disclose the actual motive behind the conspiracy.

18. Now coming to the facts and circumstances of the case in hand. The evidence on record indicates that some of the appellants had started visiting the institute after Sarswati Puja incident. According to the evidence on record appellant Binod had developed illicit relation with Shipra Sen Choudhery who was appointed as a clerk in the institute. When the deceased raised objection against indecent act of appellant Binod, he did not agree to amend himself rather established another institute in which Shipra was designated as Director. The deceased then informed the wife of Binod so that he may come to right path but such act of deceased gave birth to a grudge because the wife of Binod and Shipra Sen Choudhary scuffled with each other and created a seen in the institute. Certainly that incident somehow lowered down the image and reputation of appellant Binod. The suspicious activities of Binod was noted by the deceased and expecting untoward from his hand, he brought the same to the notice of his family members which fact has been brought on record by the informant and other witnesses. Learned counsel has given much stress on the non-examination of Shipra Sen Choudhary and the wife of Binod by the investigating officer. It was always expected, had they been examined, they would not have supported the case of the prosecution as it would have exposed their personal and family lives and therefore, examination or non-examination of those two ladies is of no importance.

19. The next point raised on behalf of the appellants is that the utterance made by appellant Asgar at the "time of incident. It was argued that he had not stated anything about the illicit relation which Binod was having with Shipra Sen Choudhary rather threatened the deceased to keep himself away from the institute and let Binod be allowed to run the institute peacefully. We have already pointed out that if the motive is as such which may lower down the prestige and reputation of perpetrator/conspirator, he would not disclose it to the persons whom he hired to execute the agreement of conspiracy. Therefore, it is very important in a case of conspiracy to consider all the circumstances and events to draw an inference and for that we would again like to go back to the part of the fardbeyan where the informant has said that he along with his brother Sant Kumar (deceased) was going from Kumar Medical, Dhanbad on motorcycle bearing registration No. BR 17C 4288 and that when they reached near Nirankiari Chowk situated near Barwadda road, they were stopped by six appellants named in the F.I.R. and that they threatened "the deceased to keep himself away from running of the institute and let it be run by Binod without hindrance and that appellant Asgar at the same time uttered to do the task for which they had come and hurled knife blow and that another appellant Md. Yaqub Ansari @ Md. Ayub Ansari opened fire from a point blank range causing injury to the deceased on his neck.

20. Thus the words spoken by appellant Md. Yaqub Ansari, Dhiren Mahto and

Asgar Mian at the time of commission of the offence clearly indicate that appellant Binod is a co-conspirator and therefore, Section 10 of the Evidence Act will come into play which speaks as under:-

Things said or done by conspirator in reference to common design- Where there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong, anything said, done or written by any one of such persons in reference to their common intention, after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to so conspiring, as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it.

21. In the preceding paragraphs we have already discussed and described the role played by six appellants except Binod and their participation in the alleged murder of Sant Kumar Sinha which is sufficient to hold them guilty u/s 302/34 of the Indian Penal Code because the evidence on record conclusively suggest that they all had shared common intention and there was pre-meeting of mind. We are satisfied from the evidence on record and there is reason to believe that more than two persons have conspired together to commit an offence. Once such a reasonable ground exists, anything said, done or written by one of the conspirator in reference to the common intention, after which such intention was entertained, is relevant against others, not only for the purpose of proving the existence of the conspiracy but also for proving that other person was a party to it. The evidenciary value of the said act is limited by two circumstances, namely, that the acts shall in reference to their common intention and in respect of a period after such intention was entertained by anyone of them. Therefore, the words and sentence spoken by the appellants at the time of commission of offence clearly indicate that they had conspired with Binod whose name was uttered by them. These proved facts leads to an irresistible inference that the participation of six appellants in the commission of murder was the persuasion of that conspiracy hatched out by appellant Binod.

22. It is needless to say that each and every case is to be decided on its own facts and circumstances. We have carefully gone through the judgments cited by the learned counsels appearing for the appellants but we do not consider the facts and circumstances on which those cases were decided in any way tally with the facts appearing in the case at hand. Though the facts appearing in the judgment reported in (2011) 9 SC Cases 272, Mohan Singh Vrs. State of Bihar is not identical to the facts of the case in hand but application of Section 10 of the Evidence Act as observed in the said judgment is relevant to the instant case.

23. In view of the discussions, made above, we are of the considered opinion that there was a conspiracy of which the appellants were parties and they all have agreed to do the illegal act which they did by committing murder of Sant Kumar Sinha and therefore, the requirements of Section 120B of the Indian Penal Code stood fully satisfied with the evidences on record and we do not feel

inclined to interfere with the impugned judgments of conviction and sentence passed against all the appellants. In the result, all the appeals, referred to above, stand dismissed. The bail bond of appellants, namely, Binod Kumar, Asgar Mian @ Asgar Ansari, Dhirendra Chandra Mahto @ Dhiren Mahto, Gulam Sarbar, Paiki Ramm @ Poki Ramm and Mantu Das stand cancelled. They are directed to surrender before the Court below within one month from the date of this judgment to serve out the sentence failing which the convicting/successor Court is directed to take all coercive steps to secure their attendance.