



CRIMINAL CONSPIRACY

...Having perused the oral and documentary evidence on record and upon considering the circumstantial evidence on record and the settled position of law, the following points have been considered by this court...:

Legal Aspects of Conspiracy

1) Section 120A of the Indian Penal Code defines criminal conspiracy, which spells that: when the accused agree to do, or cause to be done, an act and when such an act is either illegal or is done by illegal means and when at least one of the accused does any overt act in pursuance of the agreement arrived at, the accused is said to have committed the offence of hatching a criminal conspiracy.

Commission of criminal conspiracy requires that there has to be a common design and the common intention of all the accused to work in furtherance of the common design. Each conspirator plays a separate role in one integrated and united effort to achieve the common purpose. In such a case, each of the accused is hatching a conspiracy.

2) There has to be an association of two or more persons to hatch a criminal conspiracy. The offence of criminal conspiracy consists of an agreement between two or more persons to commit an offence. There has to be unanimity of purpose and for the objects to be achieved. In a way, it is a mental process among the accused.

Section 43 of the IPC defines the word 'illegal', which is applicable to everything which is an offence or is prohibited by law.

3) Hatching of a criminal conspiracy being a mental process among the accused, generally, direct evidence to link the accused with the conspiracy would not be available.

As required under Section 10 of the Indian Evidence Act, where there is reasonable ground to believe that two or more persons have conspired together to commit an offence, anything said or done 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 be 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.

The conduct of the accused prior to the offence and their conduct after the conspiracy is hatched are important factors.

4) The criminal conspiracy remains in existence till the acts or omissions and/or the offences continue to be committed.

It is a matter of common experience that in a conspiracy, the accused are alert, conscious, and would take all necessary care to see to it that the conspiracy should not be proved; hence direct evidence is seldom available to prove criminal conspiracy.

5) Whenever a conspirator commits any offence or act or omission prohibited by law, all the conspirators become

liable for the act or omission, which is their joint liability, and it is for this reason that the offence committed by one of the accused can be used as evidence against a co-conspirator.

6) For any of the charged offences, if there is no express provision for abetment of that particular offence, the provisions for abetment in Chapter V of the IPC would be applicable. Section 109 provides for abetment of any offence when the act abetted is committed in consequence of the abetment. If the act is committed in consequence of instigation or in pursuance of a conspiracy, it is abetment. Thus if a co-conspirator accused does any act in pursuance of a conspiracy or instigation, it would be termed to have been done on account of the abetment by the conspirator who is proved to have abetted or instigated.

7) All the conspirators are liable for illegal acts or omissions by any co-conspirator under the principle of joint liability when the offences are committed because of a collective decision.

The court can always infer about the intentions and objects of the accused where the acts of the co-conspirator before the conspiracy and after the conspiracy assist the court to so conclude.

The presence of the co-conspirator is not a material and necessary ingredient to invoke the principle of joint liability.

Extrajudicial Confession and its Effects

In the facts of the case, to decide whether there was a conspiracy or not, it is essential to discuss confessions and their impact...

8) In the matter of *Mohd Khalid vs State of West Bengal* (2002 Law Suit SC 826), the apex court through a full bench has... explained what a criminal conspiracy is, what are its characteristics and what law has developed on the subject:

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

"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, (d) in the jurisdiction where the statute required an overt act.

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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. For an offence punishable under Section 120B, prosecution need not necessarily prove that the perpetrators expressly agree to do or cause to be done an illegal act; the agreement may be proved by necessary implication. 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 unlawful act by unlawful means. So long as such a design rests in intention only, it is not indictable. When two agree to carry 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, 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 alleged to conspire and the said agreements 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 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 complicity of the accused.

“19. In *Halsbury's Laws of England* (vide 4th ed., Vol. 11, p. 44, p. 58), the English law as to conspiracy has been stated thus: ‘Conspiracy consists in the agreement of two or more persons to do an unlawful act, or to do a lawful act by unlawful means. It is an indictable offence of common law, the punishment for which is imprisonment or fine or both in the discretion of the court. The essence of the offence of conspiracy is the fact of combination by agreement. The agreement may be express or implied, or in part express and in part implied. The conspiracy arises and the offence is committed as soon as the agreement is made; and the of-

fence continues to be committed so long as the combination persists, that is, until the conspiratorial agreement is terminated by completion of its performance or by abandonment or frustration or however it may be. The *actus reus* in a conspiracy is the agreement to execute the illegal conduct, not the execution of it. It is not enough that two or more persons pursued the same unlawful object at the same time or in the same place; it is necessary to show a meeting of minds, a consensus to effect an unlawful purpose. It is not however necessary that each conspirator should have been in communication with every other.’

“20. There is no difference between the mode of proof of the offence of conspiracy and that of any other offence; it can be established by direct or circumstantial evidence.

“21. Privacy and secrecy are more characteristics of a conspiracy, than a loud discussion in an elevated place 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 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.

“22. The provisions of Sections 120A and 120B, IPC, have brought the law of conspiracy in India in line with the English law by making the overt act unessential when the conspiracy is to commit any punishable offence. The English law on this matter is well settled. *Russell on Crime* (12th ed., Vol. I, p. 202) may be usefully noted: ‘The gist of the offence of conspiracy then lies not in doing the act, or effecting the purpose for which the conspiracy is formed, nor in attempting to do them, nor in inciting others to do them, but in the forming of the scheme or agreement between the parties, agreement is essential. Mere knowledge, or even discussion, of the plan is not, per se, enough.’

“Glanville Williams in *Criminal Law* (second ed., p. 382) states: ‘The question arose in an Iowa case but it was discussed in terms of conspiracy rather than of accessoryship. D, who had a grievance against P, told E that if he would whip P, someone would pay his fine. E replied that he did not want anyone to pay his fine, that he had a grievance of his own against P and that he would whip him at the first opportunity. E whipped P. D was acquitted of conspiracy because there was no agreement for ‘concert of action’, no agreement to ‘cooperate’.

“Coleridge, J. while summing up the case to the jury in *Regina vs Murphy* states: ‘I am bound to tell you that although the common design is the root of the charge, it is not necessary to prove that these two parties came together and actually agreed in terms to have this common design and to pursue it by common means and so to carry it into

execution. This is not necessary because in many cases of the most clearly established conspiracies, there are no means of proving any such thing and neither law nor common sense requires that it should be proved. If you find that these two persons pursued by their acts the same object, often by the same means, one performing one part of an act, so as to complete it, with a view to the attainment of the object which they were pursuing, you will be at liberty to draw the conclusion that they have been engaged in a conspiracy to effect that object. The question you have to ask yourselves is, had they this common design, and did they pursue it by these common means, the design being unlawful?

"23. As noted above, the essential ingredient of the offence of criminal conspiracy is the agreement to commit an offence. In a case where the agreement is for accomplishment of an act which by itself constitutes an offence, then in that event, no overt act is necessary to be proved by the prosecution because in such a situation, criminal conspiracy is established by proving such an agreement. Where the conspiracy alleged is with regard to commission of a serious crime of the nature as contemplated in Section 120B read with the proviso to Subsection (2) of Section 120A, then in that event, mere proof of an agreement between the accused for commission of such a crime alone is enough to bring about a conviction under Section 120B and the proof of any overt act by the accused or by any one of them would not be necessary. The provisions, in such a situation, do not require that each and every person who is a party to the conspiracy must do some overt act towards the fulfilment of the object of conspiracy, the essential ingredient being an agreement between the conspirators to commit the crime and if these requirements and ingredients are established, the act would fall within the trappings of the provisions contained in Section 120B.

"24. Conspiracies are not hatched in the open, by their nature, they are secretly planned, they can be proved even by circumstantial evidence, the lack of direct evidence relating to conspiracy has no consequence (See *EK Chandrasenan vs State of Kerala*.)

"25. In *Kehar Singh & Ors vs The State (Delhi Administration)*, this court observed: '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 inquire 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 the 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 vs Paramhans* [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 knowledge of what the collaborator would do, so long as it is known that the collaborator would put the goods or services to an unlawful use. (See *State of Maharashtra vs Som Nath Thapa* [JT 1996 (4) SC 615].)

"26. We may usefully refer to *Ajay Agarwal vs Union of India & Ors*. It was held: '...It is not necessary that each conspirator must know all the details of the scheme nor be a participant at every stage. It is necessary that they should agree for design or object of the conspiracy. Conspiracy is conceived as having three elements: (1) agreement; (2) between two or more persons by whom the agreement is effected; and (3) a criminal object which may be either the ultimate aim of the agreement, or may constitute the means, or one of the means by which that aim is to be accomplished. It is immaterial whether this is found in the ultimate objects. The common law definition of 'criminal conspiracy' was stated first by Lord Denman in the *Jones* case, that an indictment for conspiracy must 'charge a conspiracy to do an unlawful act by unlawful means' and was elaborated by Willies, J. on behalf of the judges while referring the question to the House of Lords in *Mulcahy vs Reg* and the House of Lords in a unanimous decision reiterated in *Quinn vs Leathem*: 'A conspiracy consists not merely in the intention of two or more but in the agreement of two or more to do an unlawful act, or to do a lawful 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 the act of each of the parties, promise against promise, *actus contra actum*, capable of being enforced, if lawful, punishable if for a criminal object or for the use of criminal means.'

"This court, in *EG Barsay vs State of Bombay*, held: 'The gist of the offence is an agreement to break the law. The parties to such an agreement will be guilty of criminal conspiracy though the illegal act agreed to be done has not been done. So too, it is an ingredient of the offence that all the parties should agree to do a single illegal act. It may comprise the commission of a number of acts. Under Sec-

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tion 43 of the Indian Penal Code, an act would be illegal if it is an offence or if it is prohibited by law.’

“In *Yash Pal Mittal vs State of Punjab*, the rule was laid as follows: ‘The very agreement, concert or league is the ingredient of the offence. It is not necessary that all the conspirators must know each and every detail of the conspiracy as long as they are co-participants in the main object of the conspiracy. There may be so many devices and techniques adopted to achieve the common goal of the conspiracy and there may be division of performances in the chain of actions with one object to achieve the real end of which every collaborator must be aware and in which each one of them must be interested. There must be unity of object or purpose but there may be plurality of means sometimes even unknown to one another, amongst the conspirators. In achieving the goal, several offences may be committed by some of the conspirators even unknown to the others. The only relevant factor is that all means adopted and illegal acts done must be and be purported to be in furtherance of the object of the conspiracy even though there may sometimes be misfire or overshooting by some of the conspirators.’

“In *Mohammad Usman Mohammad Hussain Maniyar & Ors vs State of Maharashtra* (1981 2 SCC 443), it was held that for an offence under Section 120B, IPC, the prosecution need not necessarily prove that the perpetrators expressly agreed to do or caused to be done the illegal act, the agreement may be proved by necessary implication.

“27. 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 vs State of Maharashtra*.) It can in some cases be inferred from the acts and conduct of parties. (See *Shivanarayan Laxminarayan Joshi & Ors vs State of Maharashtra & Ors*.)”

... ..

Points of Determination Raised

I-A. Point of Determination No. 1

Q: Whether the prosecution proves beyond reasonable doubt that on the date, time and place of the offence, and in the facts and circumstances of this case, any criminal conspiracy has been hatched by the accused (Part 1) and whether any offences were committed in consequence of abetment and/or instigation and/or in pursuance of the conspiracy hatched by the accused or not? (Part 2) If yes, when the conspiracy was hatched, the offences mentioned in this point for determination were committed by which of the accused? (Part 3)

(With reference to Section 120B of the IPC and for the offences committed r/w it.)

I-B. Discussion on Point of Determination No. 1

a) ...It has been proved on record by the oral evidence of numerous victim witnesses and by occurrence witnesses that the proved charged offences were committed throughout the day and the initiation of commission of offences was somewhere from about 9:30 a.m. to 10:00 a.m. on 28.02.2002. The offences continued up to at least 8:00 p.m. It is a proved fact that accused Nos. 1, 2, 5, 10, 18, 20, 21, 22, 25, 26, 27, 33, 34, 38, 39, 40, 41, 42, 44, 45, 46, 47, 52, 55, 58, 62 (26 live), deceased Guddu, Jai Bhavani, Dalpat, Jaswant, Ramesh and A-35 had all assembled under the active leadership of A-37 (27 live accused and six deceased, who were 33 in number) near the Muslim chawls, viz the ST workshop, and the religious place of Muslims, viz Noorani Masjid, on the morning of 28.02.2002. The riotous activities were mainly done at Muslim chawls opposite Noorani, behind Noorani and at Noorani Masjid. This proves the date, time and site of the offences...

b) The classification of morning occurrences, noon occurrences and evening occurrences from the proved fact has been done for an easy and just conclusion. With the said analysis, the judicial soul is satisfied that all the proved charged offences against the human body (except rape and gang rape), offences against the public tranquillity, offences against property, etc. were committed in the morning, in the noon and in the evening with the same modus operandi, using the same means, with the same criminal force and to bring about similar results. Except for the offences of rape and gang rape of Muslim women, committed only in the evening, and offences relating to religion, etc. committed only in the morning, all other proved offences were committed in all the three occurrences.

c) About 81 victim witnesses and about 52 occurrence witnesses thus, in all, about 133 different witnesses had witnessed the morning occurrences from different points. The morning occurrences consisted of slogans being shouted by the majority which were provoking, disturbing the harmony between the two communities, as they were against the minority. The accused uttered slogans of “Kill – Cut”, “Burn the Miyas”, “Not a single Miya should now live”, “Rob the Miyas”, “Go to Pakistan”, etc.

d) Several murders like the murder of Hassan Ali Mirza i.e. brother of PW-135 caused at Hussain Nagar, burning alive the mother of PW-259, stone-pelting, throwing burning rags, were committed by the miscreants of the Hindu mobs in the morning at the site of Noorani Masjid, outside the masjid, near the ST workshop and at the Muslim chawls. The occurrences of police firing took place in the morning, the proved facts reveal, the occurrences of private firing, torching shops, carts, cabins and dwelling houses of Muslims around Noorani and at Muslim chawls, attacks, including burning Noorani Masjid by throwing two carts of kerosene, dashing a tanker of diesel against Noorani, bursting gas cylinders inside Noorani, breaking minarets of Noorani,

etc, were all morning occurrences. For these occurrences, the unlawful assembly of the morning is to be punished.

e) The presence of the accused with weapons, severe damage, ransacking, arson, robbing, burning, etc, of households and other materials like TVs, embroidery machines, sewing machines, clothes, cupboards, vehicles, furniture, tape recorders, fridges, washing machines, vessels, gas stoves, gas cylinders, mattresses, bedrolls, grocery, ornaments, cash, etc, prove offences against property throughout the day in all the occurrences. About 68 PWs and about 25 occurrence witnesses, in all about 93 PWs have testified on damages. *Panchnamas* of damages, and other documents, are on record. For these offences, every member of the unlawful assembly is responsible whether s/he was present and had participated in the morning, noon and/or evening, as these offences took place in all the three occurrences hence none of the members of the unlawful assembly is such who did not remain present and did not participate in the offences committed by the assembly.

f) ...It stands revealed ... that on that day about 222 different properties, including 134 dwelling houses, shops, etc and 88 different properties, had been burnt, destroyed, damaged and/or ransacked at the site. These 222 properties were only of the Muslim chawls situated opposite Noorani over and above many vehicles, household properties, dwelling houses, which were burnt to ashes. These figures show that huge amounts of damages had been sustained by the victims in all the three occurrences. This establishes that offences against property had been committed throughout the day hence that part of the charge stands proved against all the members of the unlawful assembly, as none of the members of the unlawful assembly, whether of the morning, noon or evening occurrence, is such who did not participate in any one of the occurrences, causing mischief, damage, etc.

g) Moreover, the injuries sustained by members of the minority community in the morning ranged from simple hurt to grievous hurt which can be held to be attempt to commit murder. The deaths that occurred in the morning, through injury by blunt weapons, like that of one deceased, Mr Mohammad Shafiq, who was thereafter killed by bullet injury; and by burning dwelling houses wherein victims like Sakina Babubhai, Razzak, etc were grievously hurt while inside the burning houses and who ultimately succumbed to their injuries, are clearly cases of attempt to murder as provided u/s 307 of the IPC.

g-1) In the noon the murders of Moiyuddin, the son of Mullaji, Aiyub, the lame wife of PW-74, the parents of PW-65, etc, had been committed. The Jawan Nagar wall was broken, numerous persons were attempted to be murdered, grievous hurt, simple injuries, were also caused to the victims there and damage to the dwelling houses of Muslims was also caused.

g-2) In the evening the murders of Kausarbanu, Sharif, Siddique, Nasim and of 13 Muslims as witnessed by PW-

158, the six murders proved by PW-198, the murder of family members of PW-156, torching houses of Muslims, attempts to murder all those who were admitted to hospital, clearly stand proved. The offences u/s 302, 307, 323 to 326, etc were committed even in the evening occurrences as they were committed in the morning and the noon.

h) Putting all of the above and what has been discussed in the previous parts of this judgement together, then it is proved beyond all reasonable doubt that the accused who were identified by different victim witnesses had assembled near Noorani Masjid and near the Muslim chawls at about 9:00 a.m. to 9:30 or 10:00 a.m. on 28.02.2002; they possessed deadly weapons, were shouting provoking slogans, etc, which all continued for the whole day.

i) The common time at which all the accused had assembled proves that an agreement had already been arrived at among the accused before meeting there. Had there not been agreement, all the accused would not have assembled at the place at a fixed time within the range of an hour or so. This conduct is a strong circumstance suggesting the existence of a conspiracy among the accused – agreement to do illegal acts.

j) As has been testified by many of the eyewitnesses, the accused were armed with deadly weapons, inclusive of inflammable substances, stones, swords, tridents, iron pipes, firearms, containers of inflammable substances, burning rags, spears, sticks, hockey sticks, etc. This preparation by the accused clearly links them, with preconcert or premeditation having been successfully attained among the accused, as, had there not been agreement, premeditation or preconcert before they met at the site, the accused ought not to have come to the site in the possession of deadly weapons and shouting provoking slogans against the minority.

k) The possession of deadly weapons is suggestive of preparation by the accused which is even an overt act. This would not have been possible without their arriving at an agreement among themselves to commit illegal acts. It is a matter of common experience that without any cause, nobody comes out of the house with deadly weapons in hand, knowing that it is prohibited, and still the accused came to the site with deadly weapons, which speaks of their oneness, their commitment and their dedication to the common intentions and objects they shared.

The similar acts of all the accused, of coming to the same site, to the same place, with similar inciting slogans, with deadly weapons, and then committing similar offences as designed, very clearly and undoubtedly establish the commonality of their perceived intentions and this confirms the agreement beyond any doubt.

l) The above discussion shows that different charged offences which have been proved to have been committed in the morning occurrences were committed with common intentions, objects, and were based on the agreement the

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accused had arrived at. The presence of all these mentioned accused clearly proves their oneness.

m) The presence and participation of A-21 has also been inferred by this court, which is found to be quite trustworthy, based upon the proved, voluntary, free and lawfully acceptable extrajudicial confession of A-21. As has been discussed in the section on the sting operation, one revelation by A-21 is to the effect that though many gas cylinders were burst, the mosque was not much shaken. The fact has been undoubtedly proved that the attack or assault on Noorani took place only once on 28.02.2002 and that was in the morning, after A-37 came to the site. The revelations and expressions of A-21 in the sting show that he does not give a hearsay account but he speaks from his personal knowledge, which shows that he was himself present at the site of Noorani and nearby in the morning. It is therefore clear that A-21 was present at the site right from the morning itself. A-21 is inferred to be one of the conspirators, based upon relevant substantial oral evidence like that of PW-322 and circumstantial evidence. Aid, then, is called upon from the sting operation. Moreover, his confession is that he "cut off the hands and legs" of victims who were escaping from the Muslim chawls. A-21 confessed that he was outside the Muslim chawls and had cut off the legs and hands of Muslims. This goes with his agreement to do illegal acts with the remaining co-conspirators who were inside the Muslim chawls. This combination of commission of offences, viz overt acts inside the Muslim chawls and outside the Muslim chawls, leads to only one inescapable conclusion: that A-21 was one of the conspirators and was working as per a common design in pursuance of the preconcerted conspiracy hatched with his co-accused. Even his knowledge about the plight of the victims inside the Muslim chawls without going inside the chawls and his counter-role outside the chawls undoubtedly prove that a criminal conspiracy had been hatched where A-21 was also a conspirator. His presence at the site stands proved by his extrajudicial confession where he confesses his overt acts. There is no reason to doubt the extrajudicial confession when he himself is the maker of it.

m-1) The offences of attacking the Muslim chawls took place throughout the day in all the three occurrences and when A-21 is inferred to be one of the conspirators, his abetment, instigation and overt acts in pursuance of the conspiracy stand proved. It is needless to express that the prosecution could not examine any eyewitnesses qua the role of A-21 but that does not diminish the importance of PWs like PW-322 or the FSL scientist or the official of All India Radio and even the extrajudicial confession of A-21 himself. It is scientifically proved to have been recorded in his voice without any tampering. The reliance on the extrajudicial confession qua the accused himself, and not qua the co-accused he involves, are on a different footing. No doubt is created about the truthfulness, genuineness and voluntariness of the said confession. It can safely be acted

upon when not a single defence was raised or put up against the sting which was almost unchallenged as far as A-21 is concerned.

m-2) An extrajudicial confession in this case possesses a high probative value, as it emanates from a person who has committed a crime, and that, as discussed in the section on the sting operation, is free from every doubt. PW-322, before whom confessions were given by A-18, A-21 and A-22, is an independent and disinterested witness who bore no enmity against any of the accused. This extrajudicial confession, in the case of all the three accused, is relevant and admissible in law under Section 24 of the Indian Evidence Act. Law does not require that the evidence of an extrajudicial confession should in all cases be corroborated. In the instant case, PW-322 is not a person in governmental authority or in any manner an authority. There is no ambiguity in the version given... The extrajudicial confessions of all the three accused do not lack plausibility and they inspire the confidence of the court. This court is therefore of the opinion that though an extrajudicial confession is in the very nature of things a weak piece of evidence, in the instant case, in the very peculiar facts and circumstances, these extrajudicial confessions need absolutely no corroboration as far as A-18, A-21 and A-22 being makers of the confessional statements is concerned. It stands proved by the substantial evidence of PW-322, the CDs, VCDs and the oral evidence of the FSL scientist, etc. Hence this extrajudicial confession, considering the foregoing discussion on its own merits, is found very dependable, reliable, having contents full of probability and it is found absolutely safe to convict the accused on the basis of this extrajudicial confession.

m-3) Hence he is liable for all the offences committed during the entire day, to be read with Section 120B. His overt acts clearly prove that having hatched the conspiracy, he then became a member of an unlawful assembly right in the morning itself when attacks on Noorani and the Muslim chawls were started, knowing it to be unlawful to execute the conspiracy. The presence of A-21 in the morning occurrence stands proved. He shared at that time the common objects of the unlawful assembly. The attacks and assaults were ongoing in the Muslim chawls right from 10:00 a.m. to about 6:00 p.m. His knowledge of the attack on Noorani proves his presence in the morning and his participation in the attack at the Muslim chawls proves his presence in the noon and evening. His revelation shows his admiration for the patronage of A-18 and acceptance of the heroism of A-22. All his acts need to be accordingly read and held as those of a principal offender; he is liable for the offences committed, to be read with Section 120B of the IPC. He shall also be held liable for the offences committed while he was present and when he has participated as a member of the unlawful assembly, to be read with Section 149.

n) The presence of A-37 has now been proved a fact. A-37 was admittedly the MLA from the Naroda constituency

then; complaint Exh-1773 contends about the provocation by BJP leaders, etc. A-37 was an MLA of the BJP then, the presence of the MP of the area or of some minister of the government was nil. In these circumstances, it is crystal clear that the only leading personality of the BJP present was A-37. It has come on record as a fact accepted by the defence that A-2, A-20, A-38 and A-41 (who are all Sindhis) were canvassers, propagators and election workers for A-37. It is also now a fact accepted by the defence that the office of A-44 was very much situated on the site and was used as an election office for BJP candidates. In addition to A-37, A-44, A-2, A-20, A-38, A-41 and A-18, etc have been identified as workers and leaders of the BJP, RSS, Bajrang Dal, VHP, etc. A-18 has been proved to be a very active worker of the VHP then. It is an admitted position that it is the VHP which gave the call for a 'Gujarat Bandh' for 28.02.2002 to oppose the Godhra train carnage which took place on 27.02.2002.

o) In his extrajudicial confession, A-18 has confessed to having decided, during his visit to Godhra and after having seen the corpses at Godhra, that he would show results on the next date, viz 28.02.2002, at Naroda Patiya by raising the death toll by about four times in comparison to the Godhra carnage. He confessed to having collected 23 firearms for the offences to be committed on 28.02.2002, as preparation, and having prepared a team of about 29-30 persons, both done during the intervening night of 27.02.2002 and 28.02.2002. As is clear on the record, about 33 accused, including the deceased accused, were assembled at the site on the morning of 28.02.2002 when A-37 came. The confession of A-18 in the sting operation tallies with the number of miscreants, conspirators, assembled at the site, their possession and use of weapons, firearms, and the offences committed during the entire day to raise the death toll of Muslims to many times more than the death toll of Hindus in Godhra, all of which support the conclusion of the hatching of a criminal conspiracy among the accused. The occurrences spread over the entire day were totally linked with the criminal conspiracy hatched amongst the 33 accused.

p) It is well known that a conspiracy is hatched in secrecy and direct evidence is seldom available. It is quite natural that direct evidence of the agreement to do illegal acts would not be available. In the facts of the case, it is inferred from the proved facts and circumstances as permissible in law.

q) It is true that the prosecution has not proved the connection of mobile phone calls in the conspiracy hatched but that does not mean that it proves that the accused conspirators had no inter se communication with one another. It is an admitted position that they were all workers of the BJP, VHP, RSS, etc. Their affiliation, intimacy and relationship with one another are inferred, as their organisational belonging is common. It has also been proved on

record that all of them had common intentions and objects which stands proved from their working pattern, their time of assembling, their choice of the site of offence to be Noorani and the Muslim chawls, their modus, their weapons and their overall conduct. This court therefore inferred that through any means of communication, including their phones, no matter what the phone number, the accused had contacted each other at any time after the visit of A-18 to the site of the Godhra carnage on 27.02.2002 and at any time before the morning meeting of the accused at the site on 28.02.2002.

r) This court firmly believes that the large-scale commission of offences by the accused on that day, the exhibition and use of weapons, preparations made by all of them, the conduct of the accused before the occurrence, during the occurrence and after the occurrence, are all speaking evidences of a criminal conspiracy having been hatched amongst all of them.

s) It is proved beyond all reasonable doubt that A-37, A-18, A-44, A-41, A-2, A-20, Guddu, his brothers A-1, A-10, Bhavani, were leaders and A-22, A-26, etc were present at the site with preparation and on account of the conspiracy hatched. In fact, they were well-known leaders of the area, as proved beyond reasonable doubt, when about 24 reliable PWs saw A-22, about 12 reliable PWs saw A-26, about 11 reliable PWs saw A-37, about 15 reliable PWs saw A-41, about 23 reliable PWs saw A-44, about 26 reliable PWs saw Guddu, about 17 reliable PWs saw Bhavani and even A-1, A-10, A-18 and A-20 were seen by numerous witnesses.

This presence of all the accused, as discussed, shows the agreement to do illegal acts amongst the accused, which is strengthened by the proved fact that they assembled at the site at the same time in the same spirit only because of the conspiracy hatched. This was the first overt act the conspirators did, as proof of their preconcerted agreement or premeditation.

t) Oral, documentary and circumstantial evidences available on record prove the existence of a criminal conspiracy amongst the accused beyond all reasonable doubts, under the active leadership of A-37, who was obviously the kingpin, and where the main actors were A-18, A-41, A-2, A-20, A-44, etc. It was carried out with the full-fledged involvement of all those accused whose presence and participation in the morning occurrences stood proved beyond all reasonable doubts, like A-22, A-26, Bhavani, Guddu, etc.

u) The previous conduct of all the accused in having possessed deadly weapons, their provocation and incitement while approaching the site, their inciting slogan shouting, their conduct in reaching the site between 9:00 a.m. to 9:30 or 10:00 a.m., their selection of sites of a religious place for Muslims and chawls dominated by Muslim inhabitants, are all their proved overt acts. The overt acts of A-37 were to come to the site on time, to provoke and instigate

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the co-conspirators by lecture and by presence to form an unlawful assembly and to instigate mobs to beat and kill Muslims, to attack Noorani and to demolish dwelling houses of Muslims and settle an account with Muslims, as proved by at least more than 10 to 11 eyewitnesses. This gets strength from the circumstance of her having given a false explanation [in her further statement]. A-37 is proved to have made rounds at the site during the entire day to back up the co-conspirators by ensuring her backing to continue the riot, etc.

Obviously, these are acts besides the agreement, done in pursuance of the agreement amongst the accused, all of which have been proved by the oral evidence of the PWs and clearly supported by the sting operation, viz confessions of the co-conspirators.

v) Moreover, the conduct of committing and participating in different offences against Muslims while being at the site, which were offences against the public tranquillity, the human body, property, relating to religion, etc, are proved facts committed by the co-conspirators. These proved facts, inclusive of oral, documentary and circumstantial evidence, built up an unbreakable chain, tightened by the extrajudicial confessions and identification of the accused by different eyewitnesses, proving the presence and involvement of the accused. This proves the hatching of a criminal conspiracy by the accused beyond all reasonable doubts.

w) It is worthy to be noted that the conduct of the accused before coming to the site, while coming to the site, after coming to the site, clearly reveals their preconcerted agreement, their premeditation to commit illegal acts. The way in which different offences under the IPC had been committed on that day, the way in which the law was broken, the way in which the Muslims were done to death wantonly, the way in which different proved charged offences were committed at the site, proves beyond all reasonable doubts that the agreement arrived at amongst the accused was of nothing but to do illegal acts. In pursuance of the said agreement, all the accused in fact did overt acts.

x) It is obvious that for the commission of such offences, direct evidence is seldom available. However, the trustworthy chain of circumstances, oral evidences, the documents, and even the corroboration from the confessions of co-accused A-18, A-21 and A-22, bring home the charge of a conspiracy having been hatched by the accused and the co-accused, as all the necessary ingredients of Sections 120A and 120B of the IPC stand proved beyond all reasonable doubt in the acts and omissions committed by the accused present at the site in the morning.

It is needless to add that the offences for which the criminal conspiracy was hatched were not punishable for a term of two years hence no formality of sanction is needed.

It is notable that the offences committed were such for which no express provision is made for the conspiracy to commit such offences.

y) In these circumstances, Section 120B of the IPC requires that the offenders shall be punished in the same manner as if they have abetted the offences committed.

In the light of Section 109 of the IPC, as discussed hereinabove, the presence of abettor accused is not necessary hence whether the presence of all the above-referred accused, including A-37, has been proved at the site or not is indeed not material, since the hatching of a criminal conspiracy among the accused and their overt acts stand proved, including commission of the proved charged offences in pursuance of the conspiracy.

It is therefore held that all the conspirators accused, referred to hereinbelow, shall be held liable for having instigated and abetted the other accused and one another to commit the charged offences. A-37 and other leaders have actively stimulated the co-conspirators to commit the charged offences.

All the accused can be inferred to have known the probable consequences of their abetment and their acting in pursuance of the conspiracy.

z) Many of the conspirators have also committed the offences abetted by remaining present at the site and by actively involving themselves in executing the conspiracy hatched and thus have also committed the offences abetted; hence all such conspirators shall be liable for commission of offences u/s 120B and the same punishment which may be inflicted on the principal offenders for committing other offences shall also be imposed on the accused, to be read with Section 149 of the IPC and also read with Section 120B.

In the sting operation, A-18, A-21 and A-22 confessed a common point: that A-37 was present at the site, she backed up, encouraged, the accused, provided them with mental strength to continue the violence, provoked and instigated the co-accused. She praised their commission of offences when the co-conspirators and the co-accused were committing the offences, A-37 came many times, met the co-accused, she made rounds at the site in her car, etc. She also said: "Continue, I am at your back and shall remain at your back." In her speech, she instigated them to kill Muslims, to destroy the masjid, etc... All this is nothing but instigation and acting in pursuance of the conspiracy by A-37 hence it is held that she has abetted the offences committed and has acted in pursuance of the conspiracy. She is therefore needed to be held guilty as an abettor.

aa) As has been discussed, when instigation is provided by any of the co-conspirators and when the offences were committed in pursuance of the conspiracy, it is said to have been abetted by the accused. It is now a proved fact that A-37 came to the site, she had instigated and provoked the miscreants of the Hindu mobs there... The entire scenario was a result of instigation, provocation, abetment, by A-37, A-18, etc of the mob, and the preparation by the accused, the arrival of the accused at the site and their commission of offences were all in pursuance of the conspiracy arrived at amongst the accused.

No doubt is left in concluding that A-37 instigated and abetted the formation of an unlawful assembly and the commission of all the proved charged crimes, which were all done in pursuance of the conspiracy hatched.

ab) The place, time, conduct of the accused, all very clearly prove the fact that all the proved charged offences were undoubtedly committed in pursuance of the conspiracy hatched amongst the accused. The abetment by A-37 and other accused of the commission of the offences stands proved beyond all reasonable doubts, as it is proved that A-37 and other leaders had instigated the mob of miscreants at the site. It is also proved that the offences abetted were committed in consequence of the abetment, by instigation and by acting in pursuance of the conspiracy hatched. The presence of the abettors is hence not necessary to be proved. The meeting of the accused, with preparation, incitement and commitment at the site, was on account of the agreement to do illegal acts already arrived at amongst the accused at any time prior to their gathering at Noorani Masjid on 28.02.2002 and at any time after the occurrence of the Godhra carnage on 27.02.2002.

From all the above discussion, it is held to have been proved beyond all reasonable doubt that all these who had assembled in the morning on the date, at the time and site of the occurrence, are all conspirators in the criminal conspiracy, who had agreed to do illegal acts like to strike terror amongst Muslims, to kill many times more Muslims than the Hindus who were killed at Godhra, to disturb the public tranquillity, to damage, ruin and destroy the property of Muslims, to do away with and to injure Muslims, offences relating to religion, etc. As proved from oral, documentary and circumstantial evidence, the conspirators were A-1, 2, 5, 10, 18, 20, 21, 22, 25, 26, 27, 33, 34, 37, 38, 39, 40, 41, 42, 44, 45, 46, 47, 52, 55, 58, 62 and deceased A-35, Guddu, Bhavani, Dalpat, Jaswant and Ramesh (27 live accused and six deceased accused who had all hatched the criminal conspiracy).

The requisites of an agreement for doing illegal acts and/or breaking the law among the mentioned accused, the commission of offences abetted, punishable under the IPC, and with reference to the agreement, having done overt acts, etc, stand proved beyond reasonable doubt.

At the cost of repetition, let it be noted that A-37 and A-18 are principal conspirators whereas many other leading

conspirators were there. A-18 is a principal conspirator as well as an executor of the conspiracy.

In the light of the foregoing discussion, Point of Determination No. 1 needs to be replied in the affirmative, which has been accordingly replied, holding that the prosecution proves beyond all reasonable doubt that:

I-C. Point No. 1

Part 1: In the facts and circumstances, on 28.02.2002 when the accused met at the Muslim chawls, opposite Noorani Masjid, at Noorani and at the ST workshop, the conspiracy was already hatched by the 27 accused. *In the affirmative.*

Part 2: An offence u/s 120B of the IPC has been committed hence all other offences, if proved to have been abetted, instigated, or to have been committed in pursuance of the conspiracy by the accused, the 27 accused shall be punishable for commission of those offences for the respective offences r/w Section 120B of the IPC.

The conspiracy was hatched at any time after the Godhra occurrence on 27.02.2002 and before 9:30 a.m. on 28.02.2002 when the conspirators met at the site.

Part 3:

a) Guilty: The criminal conspiracy was hatched by A-1, 2, 5, 10, 18, 20, 21, 22, 25, 26, 27, 33, 34, 37, 38, 39, 40, 41, 42, 44, 45, 46, 47, 52, 55, 58, 62 and deceased A-35, Guddu, Bhavani, Dalpat, Jaswant and Ramesh (27 live accused and six deceased accused have hatched the criminal conspiracy). These live accused are held guilty and shall be punished u/s 120B of the IPC and also shall be punished for the proved offences r/w Section 120B of the IPC.

b) Guilty: These 27 accused shall also be liable to be punished for all the offences committed during the entire day, whether committed in the presence of the accused or not, r/w Section 120B of the IPC.

c) Benefit: All the other accused charged shall be entitled to the benefit of the doubt qua the charge of conspiracy, viz A-3, A-4, A-6, A-7, A-8, A-9, A-11, A-12, A-13, A-14, A-15, A-16, A-17, A-19, A-23, A-24, A-28, A-29, A-30, A-31, A-32, A-36, A-43, A-48, A-49, A-50, A-51, A-53, A-54, A-56, A-57, A-59, A-60, A-61 (34 live accused)...

