

ABETMENT



ABEATMENT OF THINGS UNDER THE PENAL CODE 1860

S.M. SAIFUL HAQUE

CHAPTER V: ABETMENT

- Sections 107-120 of the penal code deals with the issue of abetment.
- Abetment are concerned in three ways, firstly associating before execution of the crime, at the time of execution of that crime, and after the execution of that crime.

what are other
words for
abetment?

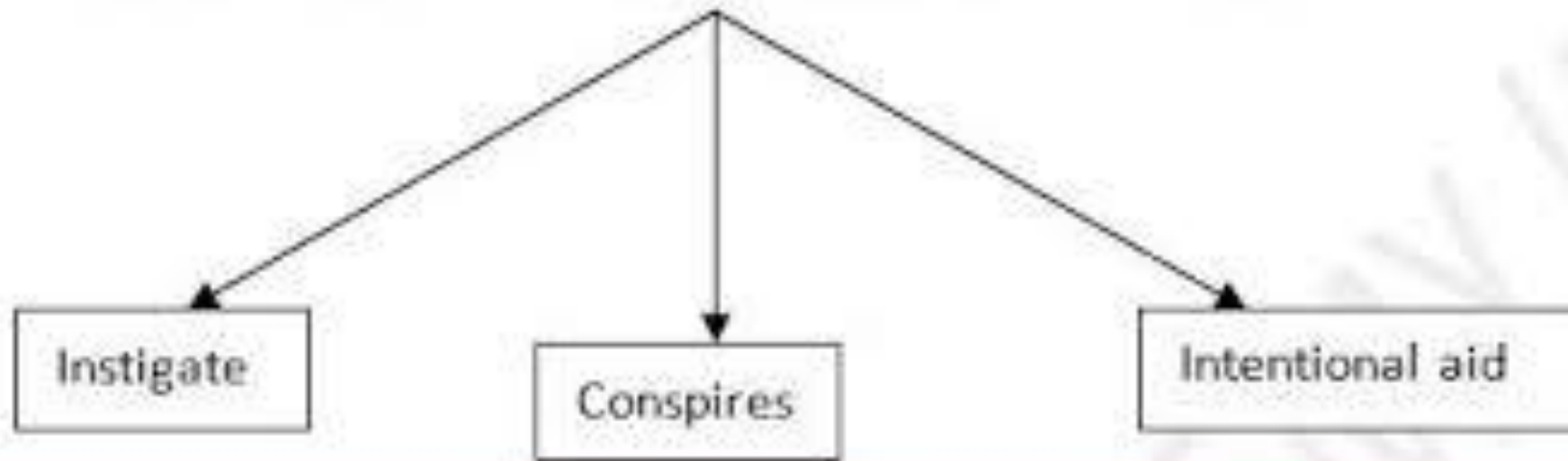


instigation, assistance, aid,
support, help, encouragement,
assist, hand, relief, abettal



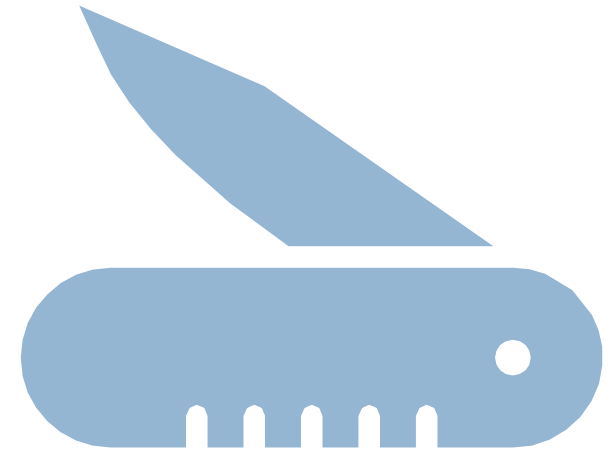
- **Section-107: Abetment of a thing**
- **A person abets the doing of a thing, who**
- **Firstly. Instigates any person to do that thing or**
- **Secondly. Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or**
- **Thirdly, intentionally aids, by any act or illegal omission, the doing of that thing.**
- **Explanation 1.-A person who, by willful misrepresentation, or by willful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.**
- **Illustration**
- **A, a public officer, is authorized by a warrant from a Court of Justice to apprehend Z. B, knowing that fact and also that C is not Z, willfully represents to A that C is Z, and thereby intentionally causes A to apprehend C. Here B abets by instigation the apprehension of C.**
- **Explanation 2.**
- **Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act.**

- Sec.107 provides the 3 method of abetment



- CASE LAW

- The deceased was chased by a person armed knives and when the deceased fall dawn, the order to beat was given by Abdul bapari, who had been convicted under section 302 or section 107 by the session judge. It was contended on behalf of Abdul bapari that he by giving an order “to beat” cannot be said to have abetted the murder of the deceased.
- Held- Order to beat had been passed when the assailants were all armed with knives and Abdul bapari must have known what the consequence of his order would be. It cannot be urged on his behalf that when he gave the order he did not intend to murder of the deceased.
- State Vs Bahar Ali and others 1959 11 DLR 258
- Abatement necessarily means some active suggestion or support to the commission of the offence. AIR 1921 Pat 286



Necessity of Mensrea

If the person who lends his support does not know nor has any reason to believe that the act which he is aiding or supporting was in itself a criminal act, it cannot be said that he intentionally aids or facilitates the commission of an offence and that he is an abettor. AIR 1957 ALL 184

Abetment by instigation

1. Widow deciding to commit sati (suicide) members of funeral procession of her husband apologizing her resolved her by shouting “Sati mata ke joy”-held a kind of instigation to commit sati. AIR 1958 RAJ 169

2. Where a hut was set on fire by one of the members of the unlawful assembly in consequence of the order given by the accused, the conviction of accused under section 436 read with section 109 was not illegal. AIR 1958 SC 813

Proof of Abetment

Where an accused is charged with abetment by instigation there must be proof of the actual word used by way of instigation. In the absence of such proof a conviction for abetment cannot be sustained. AIR 1936 PAT 608

Abetment



Deep Session #2

- Section-108: Abettor
- A person abets an offence, who abets either the commission of an offence, or the commission of an act which would be an offence, if committed by a person capable by law of committing an offence with the same intention or knowledge as that of the abettor.

Explanation 1.-The abetment of the illegal omission of an act may amount to an offence although the abettor may not himself be bound to do that act.

Explanation 2.-To constitute the offence of abetment it is not necessary that the act abetted should be committed, or that the effect requisite to constitute the offence should be caused.

- Illustrations
- (a) A instigates B to murder C. B refuses to do so. A is guilty of abetting B to commit murder.
- (b) A instigates B to murder D. B in pursuance of the instigation stabs D. D recovers from the wound. A is guilty of instigating B to commit murder.
- Explanation 3.-It is not necessary that the person abetted should be capable by law of committing an offence, or that he should have the same guilty intention or knowledge as that of the abettor, or any guilty intention or knowledge.



Illustrations



(a) A, with a guilty intention, abets a child or a lunatic to commit an act which would be an offence, if committed by a person capable by law of committing an offence, and having the same intention as A. Here A, whether the act be committed or not, is guilty of abetting an offence.



(b) A, with the intention of murdering Z, instigates B, a child under seven years of age, to do an act which causes Z's death. B, in consequence of the abetment, does the act in the absence of A and thereby, causes Z's death. Here, though B was not capable by law of committing an offence, A is liable to be punished in the same manner as if B had been capable by law of committing an offence, and had committed murder, and he is therefore subject to the punishment of death.

Explanation 4.-The abetment of an offence being an offence, the abetment of such an abetment is also an offence.

Illustration

A instigates B to instigate C to murder Z. B accordingly instigates C to murder Z, and C commits that offence in consequence of B's instigation. B is liable to be punished for his offence with the punishment for murder; and, as A instigated B to commit the offence, A is also liable to the same punishment.

- Explanation 5.-It is not necessary to the commission of the offence of abetment by conspiracy that the abettor should concert the offence with the person who commits it. It is sufficient if he engages in the conspiracy in pursuance of which the offence is committed.
- Illustration
- A concerts with B a plan for poisoning Z. It is agreed that A shall administer the poison. B then explains the plan to C mentioning that a third person is to administer the poison, but without mentioning A's name. C agrees to procure the poison, and procures and delivers it to B for the purpose of its being used in the manner explained. A administers the poison; Z dies in consequence. Here, though A and C have not conspired together, yet C has been engaged in the conspiracy in pursuance of which Z has been murdered. C has therefore committed the offence defined in this section and is liable to the punishment for murder.

Who is an Abettor

It is the essence of the crime of abetment that the abettor should substantially assist the principal culprit towards the commission of the offence. Abettor under this section means the person who abets-

The commission of an offence, or

The commission of an act which would be an offence if committed by a person not suffering from any physical or mental incapacity. In the light of the preceding section he must be an instigator or a conspirator or an intentional helper.

CASE LAW

Abetment under the penal code involves active complicity on the part of the abettor at a point of time prior to the actual commission of the offence. 1961 2 Cr LJ 266

A person may be guilty of abetment even though the person whom he has abetted is not guilty because his act which would have been a criminal act if it had been done with guilty intention or knowledge has not been shown to have been done with such intention or knowledge. 42 DLR

- Section-109: Punishment of abetment if the act abetted is committed in consequence and where no express provision is made for its punishment
- Whoever abets any offence shall, if the act abetted is committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with the punishment provided for the offence. Punishment of abetment if the act abetted is committed in consequence and where no express provision is made for its punishment

Explanation.-An act or offence is said to be committed in consequence of abetment, when it is committed in consequence of the instigation, or in pursuance of the conspiracy, or with the aid which constitutes the abetment.

- Illustrations
- (a) A offers a bribe to B, a public servant, as a reward for showing A some favour in the exercise of B's official functions. B accepts the bribe. A has abetted the offence defined in section 161.
- (b) A instigates B to give false evidence. B, in consequence of the instigation commits that offence. A is guilty of abetting that offence, and is liable to the same punishment as B.

- Distinction between section 109, 120(b) and section 34 of penal code. Section 34 embodies that a principle of joint liability in the doing of a criminal act the essence of that liability being the existence of a common intention.
- Section 109 of the Penal Code on the other hand may be attracted even if the abettor is not present when the offence abated is committed.
- Section 120(b)-criminal conspiracy constitutes of an agreement between two or more persons to do or cause to be done an illegal act or an act which is not illegal by illegal means.
- It differs from other offences in that mere agreement is made an offence even if no step is taken to carry out that agreement. AIR 1971 SC 885
- In Nur mohammed v State of Maharashtra(AIR1971 sc 885) The supreme court elaborated the difference between section 34,109 and 120(b) of Penal Code.....
- “The case involved the conviction of appellant along with three others to a conspiracy to kill a neighbour Md. Yahia with whom the appellant having a dispute over the right of passage and the right to collect water from a tap nearby. The trial court originally found only the person who was alleged to have stabbed the deceased, guilty of offence under section 302 and acquitted the three others. However, on an appeal against the acquittals filed by the state, The appellant and two others were convicted for offence under section 302 writ with sec 34 of the Penal Code and additionally the appellant for offence under section 302 read with section 109 of Penal code and sentenced him to life imprisonment.
- Since the conviction under section 302 read with section 34 and 109 of Penal Code were challenged on the ground of insufficiency of evidence because of which grave injustice was done to the appellant, the supreme court entered into a detailed examination of the evidence on record, which discussing the manner in which the appellant had instigated the killing of the deceased and other circumstances the court elaborated the distinctions between the various sections as follows-

Section-34	Section-109	Section-120B
<p>So far as section 34 of the Penal Code is concerned, it embodies the principle of joint liability in the doing of a criminal act; the essence of that criminal liability being its existence of a common intention, participation in the commission of the offence in furtherance of the common intention invites its application.</p>	<p>Section 109 of the Penal Code, on the other hand may be attracted even if the abettor is not present when the offence abated is committed provided that he has instigated the commission of the offence or has engaged with one or more persons in a conspiracy to commit an offence and pursuant to that conspiracy some act or illegal omission take place or has intentionally aided the commission of an offence by an act or illegal omission.</p>	<p>Criminal conspiracy postulates an agreement between two or more persons to do, or cause to be done, an illegal act or an act which is not illegal by illegal means. It differs from other offences in that mere agreement is made an offence even if no step is taken to carry out that agreement .Though there is a close association of conspiracy with incitement and abetment, the substantive offence of criminal conspiracy is of somewhat in amplitude than abetment by conspiracy as contemplated by sec 107 of Penal Code.</p>

- A conspiracy from its very nature is generally hatched in secret .It is, therefore, extremely rare that the direct evidence in proof of conspiracy can be forthcoming from wholly disinterested quarters or from utter strangers. But like other offences, criminal conspiracy can be proved by circumstantial evidence, in fact because of the difficulties in having direct evidence of direct conspiracy once reasonable ground is shown for believing that two or more persons have conspired to commit an offence then anything done by any one of them in reference to their common intention after the same is entertained, becomes according to the law of evidence relevant for proving both conspiracy and the offences committed pursuant thereto.
- In the facts of the above case, the appellant is shown to have actively instigates other to murder the deceased. The conspiracy to kill the deceased was also held to have been established. Hence the Supreme Court confirmed the conviction for offences under section 302 read with section 109.
- However the issue of conviction under sections 302 and 34 of Penal Code, the court held that the appellant was not present on the spot of occurrence himself. Thus he was seen going behind the deceased in the company of three other men. Therefore the conviction under section 302 read with section 34 of Penal Code alone was set aside.

- Section 109 under Muslim Family Law Ordinance
- Accused contracted another marriage on 17-8-1975 during the subsistence of the existing marriage. After dissolution of local bodies by presidents' order 7 of 1972 an amendment in the definition of "Arbitration council, Chairman and Union council" having been made and no person having been appointed to discharge the functions of the chairman under the sections 6 and 7 of the ordinance. It had been rendered that there was no competent authority from whom the accused was required to take permission for the second marriage and can not be convicted as offence for section 6(5) of MFLO 1961. The provision of abetment has got no application with Muslim Family Laws Ordinance. 1 BLD 165

-

Section-110: Punishment of abetment if person abetted does act with different intention from that of abettor

Whoever abets the commission of an offence shall, if the person abetted does the act with a different intention or knowledge from that of the abettor, be punished with the punishment provided for the offence which would have been committed if the act had been done with the intention or knowledge of the abettor and with no other.

CASE LAW

Where the abettor only intends that simple hurt to A should be caused but the person abetted attracts A in such a way that their offence amounts to culpable homicide. The abettor will nevertheless be liable only simple hurt under section 323/110 and not for culpable homicide under section 304/110.

- Section-114: Abettor present when offence is committed
- Whenever any person, who if absent would be liable to be punished as an abettor, is present when the act or offence for which he would be punishable in consequence of the abetment is committed, he shall be deemed to have committed such act or offence.
- CASE LAW
- When the abetment is completed prior to the commission of the offence and the abettor is also present at the commission of offence, the abettor is deemed to have committed the offence himself. AIR 1956 SC 177
- Section 34, 114 and 149 of the penal code provide for criminal liability viewed from different angle as regards actual participants, accessories and person acquitted by a common object or a common intention. AIR 1956 SC 116

Section-116: Abetment of offence punishable with imprisonment– if offence be not committed; if abettor or person abetted be a public servant whose duty it is to prevent offence

Whoever abets an offence punishable with imprisonment shall, if that offence be not committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with imprisonment of any description provided for that offence for a term which may extend to one-fourth part of the longest term provided for that offence; or with such fine as is provided for that offence, or with both; If the abettor or the person abetted is a public servant, whose duty it is to prevent

And if the abettor or the person abetted is a public servant, whose duty it is to prevent the commission of such offence, the abettor shall be punished with imprisonment of any description provided for that offence, for a term which may extend to one-half of the longest term provided for that offence, or with such fine as is provided for the offence, or with both.

Illustrations

(a) A offers a bribe to B, a public servant, as a reward for showing A some favour in the exercise of B's official functions. B refuses to accept the bribe. A is punishable under this section.

Section Analysis

Essential ingredients of this section are-

- The accused abetted the commission of an offence punishable with imprisonment.
- The offence abetted was not committed.
- There is no express provision in the penal code for the punishment of such offence.
- Where the case falls under the second limb the following additional fact has to be established:
- The accused abetted is a public servant whose duty is to prevent the commission of an offence.

CASE LAW

In a charge under the section 116 the point to be considered is not the guilty mind of mensrea of the public officer, but mensrea of the bribe giver ⁴ DLR 543

Section-119: Public servant concealing design to commit offence which it is his duty to prevent, Whoever, being a public servant intending to facilitate or knowing it to be likely that he will thereby facilitate the commission of an offence which it is his duty as such public servant to prevent,

voluntarily conceals, by any act or illegal omission, the existence of a design to commit such offence, or makes any representation which he knows to be false respecting such design,

If offence be committed: shall, if the offence be committed, be punished with imprisonment of any description provided for the offence, for a term which may extend to one-half of the longest term of such imprisonment, or with such fine as is provided for that offence, or with both; If offence be punishable with death, etc: or, if the offence be punishable with death or imprisonment for life, with imprisonment of either description for a term which may extend to ten years;

If offence be not committed: or, if the offence be not committed, shall be punished with imprisonment of any description provided for the offence for a term which may extend to one-fourth part of the longest term of such imprisonment or with such fine as is provided for the offence, or with both.

- Illustration

A, an officer of police, being legally bound to give information of all designs to commit robbery which may come to his knowledge, and knowing that B designs to commit robbery, omits to give such information, with intent to facilitate the commission of that offence. Here A has by an illegal omission concealed the existence of B's design, and is liable to punishment according to the provision of this section.

- Essentials of this section

- 1. There should exist a design to commit an offence.
- 2. The accused must be a public officer.
- 3. It must have been the duty of the accused as a public servant to prevent the commission of the said offence.
- 4. The accused have concealed the existence of such a design by his overt act or illegal omission or false representation.
- 5. He must have done so voluntarily **with** intent to facilitate the commission of the offence.

- Section-120A: Definition of criminal conspiracy
- 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.
- Explanation.-It is immaterial whether the illegal act is the ultimate object of such agreement or is merely incidental to that object.
- Section-120B: Punishment of criminal conspiracy
- (1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.
- (2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both.

Definition of conspiracy:

Conspiracy is one of the forms of abetment and it differs from other offences in this respect that unlike other offences, the intention to do a criminal act is itself sufficient no matter whether it is done or not section 120-A and 120-B of P.C have brought the law of conspiracy in the country in line with the English law by making the overt act unessential when the conspiracy is to commit any offence.

Essential ingredients of section 120A

The main ingredients of section 120A are as follows-

1. There should be two or more persons,
2. There must be an agreement between the persons who are alleged to conspire; and
3. The agreement should be
 - I. For doing of an illegal act, or
 - II. For doing by illegal means an act which may not itself be illegal.

- The proviso in this section amplifies the scope of liability as follows-
- 1. In the case of conspiracy to commit an offence the mere agreement is sufficient to impose liability without the requirement that some overt act in furtherance of conspiracy, should have been committed.
- 2. However, in the case of conspiracy to do a legal act by an illegal means, there ought to be some overt act which should have been committed by one or more parties to the agreement apart from the agreement itself.
- CASE LAW
- The law of criminal conspiracy as outlined in the penal code takes the following two forms-
- 1. Where overt act is not necessary and an agreement per se is made punishable; and
- 2. Where overt act is necessary.

Nature and Scope of the Law of Criminal Conspiracy in S.120 (B), PC 1860

1. Conspiracy is a substantive offence. The offence of criminal conspiracy exists in the very agreement between two or more persons to commit a criminal offence, irrespective of the further consideration whether or not the offence has actually been committed. AIR 1956 SC 469
2. Agreement is the rock bottom of criminal conspiracy. Its essence is the unlawful combination. It consists of the scheme or adjustment between two or more persons which may be expressed or implied or partly expressed or partly implied. Agreement is the sine qua non for constituting the offence of the criminal conspiracy. It is complete when the combination is framed, that commits an offence. AIR 2002 SC 1661
3. It is immaterial whether anything has been done in pursuance of the unlawful agreement. AIR 1956 SC 469
4. To constitute a conspiracy meeting of minds of two or more persons for doing an unlawful act or an act by illegal means is the first and primary condition and it is not necessary that all the conspirators must know each and every details of the conspiracy. Neither it is necessary, every one of the conspirator takes active part in the commission of each and every conspiratorial acts. AIR 1999 SC 2640
5. Conspirators may appear & disappear from stage to stage in course of conspiracy. AIR 1987 SC 149

What is Difference B/W Criminal Intimidation and Abetment?



6. If there are more than two persons involved in a conspiracy and if it is shown that the object of the conspirators has been achieved and even if some of the other accused had been acquitted, the remaining accused (Even if it is one) could be convicted under section 120(b) of the penal code. AIR 1956 SC 469

7. The gist of the offence of the criminal conspiracy is to break the law. There is no condition imposed in the provision that all parties aggrieved to do a single illegal act. The conspiracy may comprise the commission of a number of illegal acts. It is sufficient if the agreement to commit the illegal acts is established, in such a case, all of them will be held liable for the offence of conspiracy.

AIR 1961 SC 1762

8. The essence of the agreement to break the law is the agreement to do an illegal act. This implies that to establish the charge of conspiracy, knowledge about the involvement or indulgence either an illegal act or a legal act by illegal means is necessary. AIR 1996 SC 1744

9. The essentials of a single conspiracy required that there must be a common design and a common intention of all the common design. A single conspiracy is separate and distinct from separate acts committed by different people without a common purpose. AIR 1970 SC 45

10. When an offence is committed by different persons acting in same manner but independent, it can not be said that there was necessarily a conspiracy.

AIR 1967 SC 1326

11. It is not necessary for all the conspirators to know each other. They may adopt many devices to achieve the common goal of the conspiracy and there may be division of performance in the chain action with one object to achieve real aim of which every collaborator must be aware of and in which one of them must be interested. There may unity of object and purpose but there may be plurality of means, sometimes even unknown to one another, amongst the conspirators.

AIR 1977 SC 2433

12. Every conspirator is liable for all the acts of the co-conspirator if they are towards attaining the end of the conspiracy even if the some of them had not actively participated in the commission of the offence.

AIR 1987 SC 773

13. Conspiracy is a continuing offence and it continues to subsist and committed, whenever one of the conspirators does an act or a series of act. So long as its performance continues, it is a continuing offence till it is executed or frustrated by choice or necessity.

Proof of conspiracy

In order to prove criminal conspiracy punishable under section 120B there must direct or circumstantial evidence to show that there was an agreement between two or more persons to commit an offence. Conspiracy can be inferred even from circumstances giving rise to conclusive or irresistible inference of an agreement between two or more persons to commit an offence. AIR 1980 SC 1382

The evidence must show a common concerted plan so as to exclude a reasonable possibility of the acts of the conspirators having been connected by coine-sideness. AIR 1979 SC 1266

Relation between conspiracy and unlawful assembly

The accused (five in number) were found in a temple in the middle of night with the house breaking implements and guns in their possession. It was held that they were guilty under section 143 of the penal code, as they must have been therewith a common object of a unlawful crime, but the facts didn't suffice to support a conviction under section 120B of the penal code.

Distinction between criminal conspiracy and abetment

Following are the difference between criminal conspiracy and abetment.

Gist Of Offence

The gist of the offence of criminal conspiracy is a bare agreement to commit an offence. The offence of abetment requires that an act or illegal omission must take place in pursuance of the conspiracy.

II. Form: Abetment is a total complete offence.

Conspiracy is one of the forms of abetment.

III. Punishment:

Section 109 P.C is concerned only with the punishment of abetments for which no express provision is made under the penal code. A charge u/sec 190, should therefore be along with some other substantive offence committed in consequence of abetment.

The offence of criminal conspiracy is an independent offence. It is made punishable u/sec 120-B.

Distinction between criminal conspiracy and abetment

IV. Scope:

Abetment by conspiracy is narrow in scope.

Criminal conspiracy is wider in scope.

Relation between Criminal Conspiracy and Abetment:

- 1. Conspiracy is a form of abetment. Abetment is committed in various ways enumerated in sections 107-108 and conspiracy is one.**
- 2. Abetment is a genus of which the offence of conspiracy is a species.**
- 3. Abetment is not per se a substantive offence, while criminal conspiracy is a substantive offence by itself and is punishable as such.**

Conclusion:

To conclude, we can say that the offence of criminal conspiracy is a substantive offence and is punishable as such. It has nothing to do with abetment although it is one of the ways by which offence of abetment may be committed. It is wider in scope and covers acts which do not amount to abetment by conspiracy within the meaning of sec. 107.

Distinction between criminal conspiracy and abetment by conspiracy

1. So far as an agreement to commit an offence is concerned, is that whereas, for abetment by conspiracy mere agreement is not enough and an illegal act or omission must take place in pursuance of the conspiracy and in order to doing of the thing conspired to be done in the offence of criminal conspiracy, the agreement is enough.

1962 SC 876

2. It is the settled law that conspiracy to commit an offence is itself an offence and a person can be separately charged for that. There is an element of abetment in conspiracy but conspiracy is something more than an abetment. AIR 1961 SC 1241

ABETMENT

