

# Chapter - V

## OF ABETMENT

107. **Abetment of a thing.**—A person abets the doing of a thing, who:

*First.* 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

*Explanation 1.* A person who, by wilful misrepresentation, or by wilful 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, wilfully represent 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.

## SYNOPSIS

Abetment.

Presence of mens rea.

Clause first—Abetment by instigation.

Explanation 1.

Explanation 2.

Clause second—Abetment by conspiracy.

By illegal omission.

8. Clause third—Abetment by aid.

9. Proof of abetment.

10. Liability arising from common intention and liability as abettor—Distinctions.

11. Effect of acquittal of principal offender.

12. Procedure.

13. Attempt to abet.

14. Sentence.

**Abetment.** The word 'abet' means to encourage, incite or set another to commit a crime. It is always applied to aiding the commission of a crime. To abet another to commit a murder is to command, procure or counsel him to commit it. If a person instigates another or engages with another in a conspiracy for the doing of an act which is an offence, he abets such an offence and would be guilty of abetment, even if the offence abetted is not committed in consequence of the abetment. The offence of abetment is complete when the alleged abettor has instigated other or engaged with another with a conspiracy to commit the offence. It is not necessary for the offence of abetment that the act abetted must be committed. It is only in the case of a person abetting an offence by intentionally aiding another to commit that offence, that

omission to frame a separate charge for abetment, he can be convicted for abetment even though the charge for the main offence fails. [AIR 1956 Andh 31] Where an accused is charged for committing an offence and the facts disclosed in the allegations show that he is guilty of abetment of the offence, the Court can alter the charge to one of abetment if no prejudice is caused to the accused thereby. The alteration can be done at any stage of the trial if the facts disclosed during the trial show that the accused is guilty of abetment. [AIR 1962 Bom 21] Where the accused is charged with a substantive offence and also with abetment of such offence, but the main offence is found not triable for want of sanction u/s. 196 of Cr.P.C., the accused may nevertheless be convicted of the abetment. [AIR 1940 Cal 277] Where the facts alleged in a complaint disclose an offence of abetment by conspiracy, for taking cognizance of the said offence, no consent or sanction u/s. 196, Cr.P.C., 1973, is necessary. [AIR 1962 SC 876]

**13. Attempt to abet.** Abetment of an offence being itself an offence, an attempt to commit an offence of abetment; if such attempt be legally possible, is also an offence u/s. 511. [1887 Pun Re (Cri) No. 49 p. 127] Where A instigates B to offer a bribe to a public servant, A is guilty of an abetment of abetment under explanation 4 to s. 108. [(1942) 38 Cr LJ 423 (DB) (Nag)] Where it was evident from the testimony of the prosecution witness's that the attack by the first accused on the deceased was sudden and the accused alleged to have abetted him did not utter any word indicating their intention to help the first accused, in the circumstances the accused cannot be charged for offence u/s. 109 of the Code. [(1988) 1 Crimes 848]

**14. Sentence.** Generally the charge of abetment fails if the substantive offence is not established against the principal accused. [AIR 1950 S.C. 1210] However, this rule has exceptions. If a person instigates another or engaged with another in a conspiracy for the doing of an act, which is an offence, he abets such an offence and would be guilty of abetment u/s. 115 or s. 116 of the Code even if the offence abetted is not committed in consequence of the abetment. The offence of abetment is complete when the alleged abettor has instigated another or engaged with another in a conspiracy to commit the offence. It is not necessary for the offence of abetment that the act abetted must be committed. It is only in the case of a person abetting an offence by intentionally aiding another to commit that offence that the charge of abetment against him would be expected to pay when the person alleged who has committed the offence is acquitted of that offence. [AIR 1967 S.C. 553] Where an accused abducted a woman to compel her to marry another person and that other person committed rape and then murdered the woman, but he was acquitted because of inadequacy of evidence to establish his identity, while the co-accused was convicted u/s. 366 read with s. 109, held, the acquittal of other person would not render the conviction of the present co-accused illegal as the acquittal was for lack of identity and not on the ground that no offence was committed. [AIR 1990 S.C. 209] The offence of abetment does not involve the actual commission of the crime abetted but is a crime apart. [AIR 1925 PC 1] However, non-acquisition of financial gains may be a mitigating circumstance. Where accused abetting the illegal act of the superior authority furthering the common intention of the main accused without application of independent mind. It is proved on record that the accused acquired no financial gain nor appearing to have contributed in any equal measure to the fulfilment of the common object. Sentence of an abettor cannot, in propriety be greater than that of the principal accused. Conviction accordingly upheld but while maintaining the sentence of fine of Rs. 2.00 million his sentence/imprisonment was reduced to one already undergone. [1999 SCMR 2760]

**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 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 that 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 ago, 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.

(c) A instigates B to set fire to a dwelling-house. B, in consequence of the unsoundness of his mind, being incapable of knowing the nature of the act, or that he is doing what is wrong or contrary to law, sets fire to the house in consequence of A's instigation. B has committed no offence, but A is guilty of abetting the offence of setting fire to a dwelling-house, and is liable to the punishment provided for that offence.

(d) A intending to cause a theft to be committed, instigates B to take property belonging to Z out of Z's possession, in good faith, believing it to be A's property. B, acting under his misconception, does not take dishonesty, and therefore does not commit theft. But A is guilty of abetting theft, and is liable to the same punishment as if B had committed theft.

**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 commit the offence, A is also liable to the same punishment.

**Explanation 5.** It is not necessary to the commission of the offences 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 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.

## SYNOPSIS

1. Abettor.
2. Explanation 1.
3. Explanation 2.
4. Explanation 3.
5. Explanation 4.
6. Explanation 5.
7. "Same intention or knowledge".
8. Act aided not criminal—Abettor cannot be penalized for criminal act ultimately committed by accused.

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committing an offence. [1946 Jaipur LR 372 (Minor)] Where X having given his daughter M who was only aged 8 years in marriage to Y, again gives her in marriage to Z during the lifetime of her first husband, it was held that he was guilty of abetting an offence u/s. 494 of the Code, even though M had not the knowledge and intelligence necessary to enable her to commit an offence u/s. 494 of the Code. [(1902) 6 Cal WN 343 (DB)] The fact that the principal cannot be brought to trial does not prevent a charge of abetment against the abettor. [AIR 1952 Cal 759] Where a clerk in a post office was convicted for having abetted the commission of offence of cheating, forgery and use of forged documents as genuine by the co-accused, and the principle offenders were acquitted because their identity could not be established, the contention that the abettor should also be acquitted was repelled, the Court observing that it cannot be held as a general rule that the charge of abetment must fail when the substantive offence is not established against the principal accused. [ILR 1974 Punj 449]

5. **Explanation 4.** According to Explanation 4, the abetment of an offence being an offence, the abetment of such an abetment is also an offence. An abetment of an abetment of an offence is an offence even if the abetment abetted is not committed and is ineffective. [AIR 1950 Mad 827] The abetment of an offence u/s. 165-A which is, itself, an abetment of an offence u/s. 161, is an offence under this section. [AIR 1954 Punj 228] The abetment of an abetment of an offence is punishable under this section. [AIR 1934 Pesh 110]

6. **Explanation 5.** This Explanation applies to abetment by conspiracy. A person may constitute himself an abettor by the intervention of a third person without any direct communication between himself and the person employed to do the thing. [AIR 1950 All 412] Where the accused intentionally gave false evidence in support of the false evidence of X, it was held that the accused were guilty of abetment by conspiracy under Explanation 5 of this section. [(1874) 21 Suth WR (Cri) 35 (2) (DB)]

7. **"Same intention or knowledge".** The commission of offence of abetment depends upon the intention of the person who abets and not upon the knowledge or intention of the person he implies to act for him. Where an Electric Inspector demanded bribe in order to install an electric connection and sent one of his labourer to collect the money, the labourer cannot be held guilty of abetment when he was just an innocent carrier of the bribe money. Intention to aid the commission of crime is the gist of the offence of abetment and in the absence of necessary intention the offence is not made out. [AIR 1977 S.C. 666]

8. **Act aided not criminal—Abettor cannot be penalized for criminal act ultimately committed by accused.** Main accused with his son was being thwarted in maintaining his possession over his paddy field which was being damaged by the complainant party. He handed over his *doa* to his son directing him to strike one of the complainant party. The blow on the neck inflicted by the son proved fatal. The main accused being entitled to the right of private defence of property and the direction to strike could not amount to be an offence because an injury short of death, caused by them was protected and lawful. Accused making over the tree taping *doa* to his son with direction to strike cannot constitute abetment of an unlawful or criminal act. The accused was thus not liable u/s. 111 of the Code for which he did and could not be held responsible for what his son did in excess of his direction, obviously within the limits of law as protected by the right of private defence. [1970 P.Cr.L.J. 776]

**108-A. Abetment in Pakistan of offences outside it.**—A person abets an offence within the meaning of this Code, who, in Pakistan, abets the commission of any act without and beyond Pakistan which would constitute an offence committed in Pakistan.

#### Illustration

A, in Pakistan, instigates B, a foreigner in Goa, to commit a murder in Goa. A is guilty of abetting murder.

## SYNOPSIS

## 1. Scope.

**1. Scope.** Section 108-A of the Code provides for the punishment of abetment of the commission of an offence outside Pakistan. It says, "a person abets an offence within the meaning of this Code, who, in Pakistan, abets the commission of any act without and beyond Pakistan which would constitute an offence committed in Pakistan. This section was introduced in the Code by the Penal Code (Amendment) Act (IV of 1898). Prior to this amendment in the Code an abetment in British India by a British subject of an offence committed in a foreign territory had been held not to be an offence punishable under the Code. [(1880-81) ILR 5 Bom 338 (FB)] Under section 108-A, a child marriage celebrated outside Pakistan not being an offence under the Code (but under a special Act) its abetment in India is not an abetment within the meaning of this section. [AIR 1938 Nag 235] Where the act attributed to the accused does not constitute "abetment" as defined in s. 107, this section will not apply. [(1900) ILR 24 Bom 287 (DB)] Where a subject of a foreign territory is charged with abetting an offence committed in Pakistan and the alleged abetment consists entirely of what the accused did or said at a place within foreign territory, he cannot be tried in a Court in Pakistan for such abetment. [AIR 1919 Lah 459]

## 2. Procedure.

**2. Procedure.** Section 108-A of the Code falls within the domain of s. 196, Cr.P.C. by virtue of its specifically mentioned therein. Therefore, sanction of the Government would be required for taking cognizance of offence under this 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 the Code, for the punishment of such abetment, be punished with the punishment provided for the offence.

[Provided that, except in case of Ikrah-i-Tam, the abettor of an offence referred to in Chapter XVI shall be liable to punishment to ta'zir specified for such offence including death.]

**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.

## Illustration

- (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 function. 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 punishments as B.
- (c) A and B conspire to poison Z. A, in pursuance of the conspiracy, procures the poison and delivers it to B in order that he may administer it to Z. B, in pursuance of the conspiracy, administers the poison to Z in A's absence and thereby causes Z's death. Here B is guilty of murder. A is guilty of abetting that offence by conspiracy, and is liable to the punishment for murder.

<sup>1</sup> Added by Cr. Law (Third Amendment) Ordi. X of 1992 PLD 1992 Cent. St. 262. Reinforced by Ordi. XVII of 1992. PLD 1993 Cent. St. 70. Ordi. XCIX of 1995. Act II of 1997.

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**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.

**Illustration**

(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 function. 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 punishments as B.

(c) A and B conspire to poison Z. A, in pursuance of the conspiracy, procures the poison and delivers it to B in order that he may administer it to Z. B, in pursuance of the conspiracy, administers the poison to Z in A's absence and thereby causes Z's death. Here B is guilty of murder. A is guilty of abetting that offence by conspiracy, and is liable to the punishment for murder.

1 Added by Cr. Law (Third Amendment) Ord. X of 1992 PLD 1992 Cent. St. 262. Reinforced by Ord. XVII of 1992. PLD 1993 Cent. St. 70. Ord. XCIX of 1995. Act II of 1997.

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**21. Acquittal of principal offender.** It cannot be laid down as a general rule that in no case can an abettor of an offence be convicted if the principal accused is acquitted of the substantive offence in as much as there may be a case where an abettor on his own confession or plea of guilty to the charge may be convicted of the offence of abetment although the principal is acquitted for insufficient evidence. [PLD 1966 Dacca 269] The accused who abetted the offence of abduction of a woman for purpose of compelling to marry another person cannot escape conviction simply because the other person who committed rape and murder of such woman has been acquitted for want of identity. [AIR 1981 SC 852] Where A was charged for the offence of rape and B was charged for abetment of the offence and A was acquitted on the ground that the prosecutrix might have had voluntary intercourse with A, B was also acquitted of the offence of abetment. [(1982) 1 Bom CR 894] Complaint by a Muslim against the wife for offence u/s. 494 and her relatives as abettors u/s. 109. Complainant failing to prove ingredients of offence u/s. 494 against wife. Relatives could not be convicted for main offence u/s. 109. [1981 All LJ 365 (366)] Where the offence of bigamy is compounded with the husband and he earns an order of acquittal, the offence itself for all intents and purpose stands wiped out and consequently there cannot be any scope for offence of abetment of an offence which in the eye of law was not committed in view of the acquittal recorded against the husband. [(1983) 87 Cal WN 1000 (1001)]

**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.

### SYNOPSIS

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|-----------------------------------|---------------|
| 1. Scope.                         | 3. Procedure. |
| 2. Common intention and abetment. | 4. Quashment. |

**1. Scope.** Section 110 of the Code provides a case where the abettor commits the act abetted but with a different intention or knowledge from that of the abettor. The liability of the person abetted is not affected by this section. In such a situation the abettor is liable for the act done in the same manner and to the same extent as if they had directly abetted. This section applies where the abetted person does the very act abetted but with a different intention from that of the abettor. If the act is done with the intention or knowledge of the abetted person constitutes one offence, and if done with the intention or knowledge of the abettor, another offence, the abettor would be liable only for the latter offence. [AIR 1950 All 418] Where the common intention of the member was to cause only grievous hurt, but one of them committed murder it was held that the members other than the one who committed the murder, would be punishable only u/s. 326 read with s. 149 and not u/s. 302 (old) read with s. 149. [AIR 1936 Pat 481 (489)] Where during a wrangle A called for a knife which B gave him but B never intended that it should be used for causing death, and A employed the knife for causing death it was held that B could not be convicted u/s. 304 read with s. 109. [(1897-1901) 1 UBR 249] Where the abettor only intends that simple hurt to A should be caused but the persons abetted nevertheless be liable only for simple hurt u/s. 323/110 and not for culpable homicide u/s. 304/110. [AIR 1935 Oudh 473 (474)] Co-accused exhorted main accused to kill deceased by using abusive term 'maro sale ko'. Main accused assaulting deceased with knife on his

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abdomen. Conviction of main accused for offence of murder, proper. However, co-accused cannot be said to have shared common intention with main accused to cause death though words 'maro sale ko' were used by him in abusive way. Co-accused held guilty for abetment of offence of hurt. [AIR 1999 SC 138 (141)]

2. **Common Intention and abetment.** Abetment as a matter of fact does not in itself involve the actual commission of the crime abetted but it is a crime by itself; it is, therefore, substantive offence under the Penal Code and not merely appurtenance of the principal offence. The complicity of the offender for the crime u/s. 114, Penal Code, 1886, depends upon:

- (i) if absent would be liable to be punished as an abettor;
- (ii) if present when the act or offence is committed;

Provisions contained in this section are evidentiary and not punitive nor wide enough to include all accessories of act. To bring home a charge under this section against an accused, it is incumbent upon the prosecution first to make out the circumstances which constitute the abetment of the offence so that if absent he would have been liable to be punished as an abettor and then to show that he was also present when the offence was committed. Commission of the offence of abetment as a matter of fact is *sine qua non* for the commission of offence u/s. 34 to prove liability. The abetment must be complete sometime before commission of offence and then also the abettor is to be present at the time when the offence is committed.

A clear distinction can be drawn between ss. 109 and 114 of the Code. Section 109 is punitive and provide for punishment of abetment of offence. On the contrary s. 114, P.P.C is punitive one but raises presumption to bring the case within ambit of s. 34, P.P.C. [PLD 1986 Quetta 26]

3. **Procedure.** The offence under S. 110, P.P.C., is cognizable if arrest for the offence abetted may be made without warrant but not otherwise, it is bailable when the offence abetted is bailable, it entails punishment as for the offence abetted. It is triable by the Court where offence abetted is triable.

4. **Quashment.** Allegation vague in nature, no instances quoted, no witness from village or area where petitioner lived produced, no reliance can be placed on one pending case to support vague allegation. [1986 P.Cr.L.J. 2565]

### 111. Liability of abettor when one act abetted and different act done.—

When an act is abetted and a different act is done, the abettor is liable for the act done, in the same manner and to the same extent as if he had directly abetted it:

Proviso. Provided the act done was a probable consequence of the abetment, and was committed under the influence of the instigation, or with the aid or in pursuance of the conspiracy which constituted the abetment.

#### Illustrations

(a) A instigates a child to put poison into the food of Z, and gives him poison for that purpose. The child, in consequence of the instigation, by mistake puts the poison into the food of Y, which is by the side of that of Z. Here if the child was acting under the influence of A's instigation, and the act done was under the circumstances a probable consequence of the abetment, A is liable in the same manner and to the same extent as if he had instigated the child to put the poison into the food of Y.

(b) A instigates B to burn Z's house. B sets fire to the house and at the same time commits theft of property there. A, though guilty of abetting the burning of the house is not guilty of abetting the theft; for the theft was a distinct act and not a probable consequence of the burning.

(c) A instigates B and C to break into an inhabited house at mid-night for the purpose of robbery, and provides them with arms for that purpose. B and C break into the house, and being resisted by Z, one of the inmates, murder Z. Here, if that murder was the probable consequence of the abetment. A is liable to the punishment provided for murder.



because an injury short of death, caused by them was protected and lawful. Accused making over the tree tapping *doa* to his son with direction to strike cannot constitute abetment of an unlawful or criminal act. The accused was thus not liable u/s. 111 of the Code for which he did and could not be held responsible for what his son did in excess of his direction, obviously within the limits of law as protected by the right of private defence. [1970 P.Cr.L.J. 776] [Chap. V]

**112. Abettor when liable to cumulative punishment for act abetted and for act done.**—If the act for which the abettor is liable under the last preceding section is committed in addition to the act abetted, and constitutes a distinct offence, the abettor is liable to punishment for each of the offences.

#### Illustration

*A instigates B to resist by force a distress made by a servant. B, in consequence, resists that distress. In offering the resistance. B voluntarily causes grievous hurt to the officer executing the distress. As B has committed both the offence of resisting the distress, and the offence of voluntarily causing grievous hurt, B is liable to punishment for both these offences; and if A knew that B was likely voluntarily to cause grievous hurt in resisting the distress, A will also be liable to punishment for each of the offences.*

### NOTES

**Scope.** Section 112 of the Code provides for a case where the abettor is held liable for cumulative punishment for the act abetted and for the act done. It provides that if the act for which the abettor is liable under the last preceding section is committed in addition to the act abetted, and constitutes a distinct offence, the abettor is liable to punishment for each of the offences. As illustrated where *A* instigates *B* to resist by force a distress made by a servant. *B*, in consequence, resists that distress. In offering the resistance. *B* voluntarily causes grievous hurt to the officer executing the distress. As *B* has committed both the offence of resisting the distress, and the offence of voluntarily causing grievous hurt, *B* is liable to punishment for both these offences; and if *A* knew that *B* was likely voluntarily to cause grievous hurt in resisting the distress, *A* will also be liable to punishment for each of the offences. This section extends the principles enunciated in section 111 and pre-supposes that the person abetted commits two acts, namely, the one abetted and also a different one and that the latter constitute a distinct offence. In such cases if the abettor can be held liable for latter act u/s. 111, then he is liable to punishment for each of the offences under this section. [AIR 1957 Andh Pra 231]

**113. Liability of abettor for an effect caused by the act abetted different from that intended by the abettor.**—When an act is abetted with the intention on the part of the abettor of causing a particular effect, and an act for which the abettor is liable in consequence of the abetment, cause a different effect from that intended by the abettor, the abettor is liable for the effect caused, in the same manner and to the same extent as if he had abetted the act with the intention of causing that effect, provided he knew that the act abetted was likely to cause that effect.

#### Illustration

*A instigates B to cause grievous hurt to Z. B, in consequence of the instigation, causes hurt to Z. Z dies in consequence. Here if A knew that the grievous hurt abetted was likely to cause death. A is liable to be punished with the punishment provided for murder.*

**NOTES**

**Scope.** Section 113 of the Code deals with the case where the act done is the same as the act abetted but its effect is different from that intended by the abettor; the abettor is liable for the consequences of the act of his principal. It says, "when an act is abetted with the intention on the part of the abettor of causing a particular effect, and an act for which the abettor is liable in consequence of the abetment, cause a different effect from that intended by the abettor, the abettor is liable for the effect caused, in the same manner and to the same extent as if he had abetted the act with the intention of causing that effect, provided he knew that the act abetted was likely to cause that effect. As illustrate where A instigates B to cause grievous hurt to Z. B, in consequence of the instigation, causes hurt to Z. Z dies in consequence. Here if A knew that the grievous hurt abetted was likely to cause death. A is liable to be punished with the punishment provided for murder. Section 113 is to be read in conjunction with s. 111 which provides that when an act is abetted and a different act is done, the abettor is liable for the act done in the same manner and to the same extent as if he had directly abetted it. Per terms of s. 112, if the act for which the abettor is liable u/s. 111 is committed in addition to the act abetted, and constitute a distinct offence, the abettor is liable to be punished for each of the offence. Section 111, 112 and 113 make it abundantly clear that if a person abets another in the commission of an offence and the principal goes further thereafter and does something more which has a different result from that intended by the abettor and makes the offence an aggravated one the abettor is liable for the consequences of the acts of his principal. The crux of the problem in an enquiry of this sort is whether the abettor as reasonable man at the time of his instigation or intentionally aiding the principal would have foreseen the probable consequences of his abetment. [AIR 1957 Andh Pra 231] Where the act of the person abetted is not the probable consequence of the act abetted or the abettor has not the knowledge that his act was likely to cause the effect caused he will not be liable for the effect caused by the act of the person abetted. [1892 All WN 233 (DB)]

**Procedure.** The offence under S. 113, P.P.C., is cognizable if arrest for the offence abetted may be made without warrant but not otherwise, it is bailable when the offence abetted is bailable, it entails punishment as for the offence abetted. It is triable by the Court where offence abetted is triable.

**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.

**SYNOPSIS**

- |   |   |
|---|---|
| 1. Scope.                                       | 6. Section 114 read with s. 109, P.P.C. |
| 2. Charge.                                      | 7. Section 114 read with s. 148, P.P.C  |
| 3. Procedure.                                   | 8. Proof of conspiracy.                 |
| 4. "Act or offence".                            | 9. Conviction.                          |
| 5. Section 114 read with ss. 34 and 149, P.P.C. |   |

**1. Scope.** There are circumstances in which mere presence at the scene of the crime is a sufficient overt act to support a conviction, by the application of section 114, P.P.C. e.g. shouting of a *lalkara* may, in such circumstance, have effect as a further overt act of abetment. [PLD 1967 S.C. 340] Section 114 of the Code is based on the theory that actual presence at the scene of occurrence plus prior abetment would mean nothing but actual participation. It

**9. Conviction.** Principal offence not made out charge of abetment must also fail. [PLD 1960 Dacca 723] There is no general rule that an abettor charged with having abetted the principle in the commission of an offence cannot be convicted if the principal is acquitted. There must be a case where an abettor on his own confession or plea of guilty to the charge may be convicted of the offence of abetment although the principal is acquitted for insufficient evidence. [PLD 1966 Dacca 269] No direct evidence establishing that accused have impersonated, misrepresented themselves as traffic constables and extorted money from truck drivers. Presence of accused at the place of occurrence at relevant time also doubtful. Conviction found to be based on hearsay evidence, set aside. [1987 MLD 847; PLD 1958 Kar 18 ref.]

**115. Abetment of offence punishable with death or imprisonment for life if offence not committed—**if act causing harm be done in consequence.—Whoever abets the commission of an offence punishable with death or <sup>2</sup>[imprisonment for life], 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 either description for a term which may extend to seven years, and shall also be liable to fine;

and if any act for which the abettor is liable in consequence of the abetment, and which causes hurt to any person, is done, the abettor shall be liable to imprisonment of either description for a term which may extend to fourteen years, and shall also be liable to fine.

#### Illustration

*A instigates B to murder Z. The offence is not committed. If B had murdered Z, he would have been subject to the punishment of death or imprisonment for life. Therefore A is liable to imprisonment for a term which may extend to seven years and also to a fine; and, if any hurt be done to Z in consequence of the abetment, he will be liable to imprisonment for a term which may extend to fourteen years, and to fine.*

### SYNOPSIS

1. Scope.
2. Charge.
3. Procedure.

**1. Scope.** Section 115 of the Code provides for the case of abetment of offence punishable with death or imprisonment for life, if that offence be not committed in consequence of the abetment. It says, "whoever abets the commission of an offence punishable with death or imprisonment for life, 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 to the extent of seven years and also fine, and if in consequences of the abetment, hurt to any person is caused, the abettor shall be liable with imprisonment to the extent of 14 years and also fine".

Sections 115 and 116, P.P.C, deal with abetment not otherwise provided for in both cases the abetment is abortive and not result in the commission of the offence abetted. When an offence punishable with death or imprisonment for life is abetted different situation may arise:

- (1) Where the very offence abetted is committed in consequence of the abetment (ss. 109 & 110).

<sup>2</sup> Subs. by Ord. XII of 1972.

- (2) Where the offence abetted is not committed (ss. 115, first para).  
 (3) Where the offence abetted is not committed but an act in the attempt to commit the offence abetted, causes hurt to any person (s. 115, second para).

The first class of cases falls u/ss. 109 and 110 of the Code and not under this section. [AIR 1939 Bom 452] The second class of cases falls under the first paragraph of this section. The third class of cases falls under the second paragraph of this section. [AIR 1931 Cal 757] Where *B* is charged with an offence punishable with death or imprisonment for life and *A* is charged with abetment of such offence and *B* is acquitted. *A* cannot obviously be convicted u/s. 109 of the Code inasmuch as the acquittal of *B* is equivalent to a finding that the offence is not committed by *B*. But *A* will nevertheless be liable under this section for abetment which itself is an offence under this section. [AIR 1967 SC 553] Where a person was charged with the offence of abetment of conspiracy of commission of offence of theft by his officer and substantive offence against principal offender was not established alleged abettor also has to be acquitted. [AIR 1990 SC 1210] Where the abetment was of the public generally or of a class or number of persons exceeding 10 and the offence abetted was punishable with death or imprisonment for life, the case might also fall u/s. 117 but as the punishment prescribed by that section was less than that prescribed by s. 115. Section 115 was the more appropriate section to apply. [AIR 1939 Bom 452]

- 1.1 **Offence falling under first paragraph.** If a case falls under the first paragraph of this section, the punishment cannot exceed 7 years. A sentence of 10 years is illegal. [AIR 1937 Cal 578 (581)]  
 1.2 **"Such abetment".** The words "such abetment" refer to the abetment to the offences specified in the section itself namely an offence punishable with death or imprisonment for life and only sections 121 and 131 provide for the punishment of the abetment of such offences. [AIR 1939 Bom. 452]

2. **Charge.** I \_\_\_\_\_ (Name and office of Magistrate/Sessions Judge) hereby charge you \_\_\_\_\_ (name of accused) as follows:

That you, on or about the \_\_\_\_\_ day of \_\_\_\_\_, at \_\_\_\_\_, abetted the commission by one *A B* of an offence of \_\_\_\_\_ punishable with death or imprisonment for life, which said offence was not committed in consequence of the abetment, and thereby committed an offence punishable u/s. 115 of the Penal Code, and within the cognizance of this Court.

And I hereby direct that you be tried by this Court on the said charge.

3. **Procedure.** The offence under S. 115, P.P.C., (both parts) is cognizable, the first part is not bailable and entails imprisonment of either description for 7 years and fine the second part is also not bailable, it entails imprisonment of either description 14 years and fine. It is triable by the Court where offence abetted is triable.

**116. Abetment of offence punishable with imprisonment—**If offence be not committed.—Whoever abets an offence punishable with imprisonment shall, if that offence be not committed in consequence of the abetment, and no express provisions is made by the 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 the offence; or with such fine as is provided for that offence, or with both;

and if abettor or person abetted be 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.

(b) A instigates B to give false evidence. Here, if B does not give false evidence. A has nevertheless committed the offence defined in this section, and is punishable accordingly.

(c) A, a police-officer, whose duty it is to prevent robbery, abets the commission of robbery. Here, though the robbery be not committed. A is liable to one-half of the longest term of imprisonment provided for that offence, and also to fine.

(d) B, abets the commission of robbery by A, a police-officer, whose duty it is to prevent that offence. Here though the robbery be not committed, B is liable to one-half of the longest term of imprisonment provided for the offence of robbery, and also to fine.

## SYNOPSIS

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|----------------------------------|--|
| 1. Scope.                        | 7. Illustration (a)—Abetment of an offence of bribery. |
| 2. Charge.                       | 8. Abetment to suicide.                                |
| 3. Procedure.                    | 9. Section 116 read with s. 165-A.                     |
| 4. "Abets an offence".           | 10. Punishment.  |
| 5. Dangerous Drug Act, 1930.     |  |
| 6. Act of defrauding Government. |  |

**1. Scope.** Section 116 of the Code, provides for cases of abetment of offence punishable with imprisonment and provides for the punishment of such abetment where the act abetted is not committed in consequence of the abetment. It gives the abettor the benefit of reduced punishment because of the failure of his attempt. [AIR 1955 Bom 61 (62)] The section says that whoever abets an offence punishable with imprisonment shall, if that offence be not committed in consequence of the abetment, and no express provisions is made by the 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 the offence; or with such fine as is provided for that offence, or with both. As illustrated where 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. Likewise where A instigates B to give false evidence. Here, if B does not give false evidence. A has nevertheless committed the offence defined in this section, and is punishable accordingly.

Paragraph second of this section further provides that if the abettor or person abetted be 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 that offence, extending to one half of the longest term or with fine as is provided for the offence or with both. As illustrated (illustration c) A, a police-officer, whose duty it is to prevent robbery, abets the commission of robbery. Here, though the robbery be not committed. A is liable to one-half of the longest term of imprisonment provided for that offence, and also to fine. A person offering the bribe is guilty of abetment irrespective of the fact whether the public servant is able to do the work for which the bribe is offered or he has become *functus officio*. [AIR 1953 S.C. 179]

**2. Charge.** I \_\_\_\_\_ (Name and office of Magistrate/Sessions Judge) hereby charge you \_\_\_\_\_ (name of accused) as follows:

That you, on or about the \_\_\_\_\_ day of \_\_\_\_\_, at \_\_\_\_\_, abetted the commission by one A B of an offence of \_\_\_\_\_ punishable with imprisonment, which said offence was not committed in consequence of the abetment, and thereby committed an offence punishable u/s. 116 of the Penal Code, and within the cognizance of this Court.

And I hereby direct that you be tried by this Court on the said charge.

Conviction of accused without framing of charge is not illegal. [1972 SCMR 255]

**117. Abetting commission of offence by the public or by more than ten persons.**—Whoever abets the commission of an offence by the public generally or by any number or class of persons exceeding ten, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

### Illustration

A affixes in a public place a placard instigating a sect consisting of more than ten members to meet at a certain time and place, for the purpose of attacking the members of an adverse sect, while engaged in a procession. A has committed the offence defined in this section.

### SYNOPSIS

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|---|--|
| 1. Scope.                               | 6. "Presiding a meeting".                          |
| 2. Charge.                              | 7. "Offence".                                      |
| 3. Procedure.                           | 8. "Public".                                       |
| 4. Abets the commission of an offence.  | 9. Application of s. 117 to special or local laws. |
| 5. Section 117 read with s. 121, P.P.C. |  |

**1. Scope.** Section 117 of the Code is meant to cover all offences of abetment committed by the public generally or by more than 10 persons. It provides, "whoever abets the commission of an offence by the public generally or by any number or class of persons exceeding ten, shall be punished with imprisonment of either description to the extent of three years, or with fine, or with both".

Though this section contemplates the abetment of the commission of an offence by the public generally, or by any number or class of persons exceeding ten it does not necessarily follow that the offence is to be committed by all the ten or more persons at one and the same time or that there should be an unlawful assembly. Hence, it does not necessarily involve an offence u/s. 143 of the Code. [AIR 1941 Sindh 186] Where in pursuance of the common object of an unlawful assembly one of them instigates the public generally to commit an offence, all the members will be liable to be proceeded against under this section. [1957 Nag LJ 63] Instigating the formation of an unlawful association and contributing towards it is an abetment and if the instigation is to a class of persons exceeding ten it is an offence u/s. 117 of the Code. [AIR 1924 Lah 440] Exhorting the Sikhs to form *jathas* for the purpose of going to a certain place and collecting funds for a committee which was declared as unlawful by the Government is an offence under this section as the accused instigated people to become members of a *jatha* under the orders of the said committee which *jatha* would be an unlawful association within the meaning of s. 16 of the Criminal Law Amendment Act. [AIR 1926 Lah 115]

**2. Charge.** I \_\_\_\_\_ (Name and office of Magistrate/Sessions Judge) hereby charge you \_\_\_\_\_ (name of accused) as follows:-

That you, on or about the \_\_\_\_\_ day of \_\_\_\_\_, at \_\_\_\_\_, abetted the commission of an offence of \_\_\_\_\_ by \_\_\_\_\_ numbering more than ten persons, by (state the act done by the accused in instigation), and thereby committed an offence punishable u/s. 117 of the Penal Code, and within the cognizance of this Court.

And I hereby direct that you be tried by this Court on the said charge.

**3. Procedure.** The offence under S. 117, P.P.C., is cognizable if arrest for the offence abetted may be made without warrant but not otherwise, it is not bailable, it entails imprisonment of either description of 3 years or fine or both. It is triable by the Court where offence abetted is triable.

118. Concealing design to commit offence punishable with death or imprisonment for life—If offence be committed; if offence be not committed—Whoever intending to facilitate or knowing it to be likely that he will thereby facilitate the commission of an offence punishable with death or <sup>3</sup>[imprisonment] for life,

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,

shall, if that offence be committed, be punished with imprisonment of either description for a term which may extend to seven years, or, if the offence, be not committed, with imprisonment of either description for a term which may extend to three years; and in either case shall also be liable to fine.

#### Illustration

A, knowing that dacoity is about to be committed at B, falsely informs the Magistrate that a dacoity is about to be committed at C, a place in an opposite direction, and thereby misleads the Magistrate with intent to facilitate the commission of the offence. The dacoity is committed at B in pursuance of the design. A is punishable under this section.

### SYNOPSIS

1. Scope.

2. Charge.

3. Procedure.

4. Appreciation of evidence.

13 1. **Scope.** Section 118 of the Code and the following sections i.e., ss. 119 and 120, P.P.C deal with concealment of existence of a design to commit an offence prior to the commission of an offence. So far as subsequent concealment is concerned, it is dealt with by ss. 202 and 203, P.P.C. Section 118 recognizes concealment as of two kinds:

(a) Concealment by non-disclosure; and

(b) Concealment by misrepresentation.

To attract the provisions of the section it must be shown that there was an omission of an act which the accused was legally bound to perform and which facilitated the commission of an offence. A person who is aware of the intention of the commission of a serious offence like murder and does not lay information to the nearest Magistrate or the Police Station, is guilty of an offence. Such a person is practically a consenting party to the crime and an accomplice. [AIR 1956 Hyd 99 (105)] An offence u/s. 118 requires proof of the following particulars:

(i) The existence of the design to commit an offence;

(ii) Which offence was one punishable with death or imprisonment for life;

(iii) That accused concealed the existence of such design:

(a) by his act, or

(b) by an illegal omission, or

(c) by his knowingly making false representation;

(iv) That the concealment was made voluntarily; and

(v) Intending thereby to facilitate or knowing that he would thereby facilitate the commission of such offence;

(vi) That the offence concealed was committed.

<sup>3</sup> Subs. by Ord. XII of 1972.

Mere knowledge of person about existence of bad blood between two parties. Does not lead to conclusion that such person knew that one of the parties intended to commit murder. Neither s. 118, nor s. 176 applicable. [PLD 1962 Kar 873]

Where it is not proved that accused's intention in omitting to report a plot u/s 39, Criminal Procedure Code was with a view to aiding the waging of war, the accused cannot be convicted of the offence of abetment of waging war. [(1913) 14 Cri LJ 610 (615) (DB) (Low Bur)]

2. Charge. 1 \_\_\_\_\_ (name and office of Magistrate, or Sessions Judge), hereby charge your \_\_\_\_\_ (name of the accused) as follows:

"That you, \_\_\_\_\_ on or about the \_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_, with the intention of facilitating or with the knowledge that you will thereby facilitate the commission of the offence of \_\_\_\_\_ (specify the act) or omit to do \_\_\_\_\_ (specify the omission) to conceal the existence of the design to commit the said offence, and thereby committed an offence punishable u/s 118 of the Pakistan Penal Code, and within cognizance of this Court.

"And I hereby direct that you be tried on the said charge."

3. Procedure. The offence under S. 118, P.P.C., (both parts) is cognizable, the first part is not bailable and entails imprisonment of either description for 7 years and fine, the second part is bailable, it entails imprisonment of either description 3 years and fine. It is triable by the Court where offence abetted is triable.

4. Appreciation of evidence. Trial Court after holding that claim of complainant having identified accused was not reliable and trustworthy and that accused were not responsible for the murder of deceased, could not legally convict accused persons u/s. 118, P.P.C for which no charge is framed against them and no evidence is produced to connect them with the act of concealing the design to commit offence of murder of which names of real culprits were not known. [PLD 2004 Pesh 193] 14

**119. Public servant concealing design to commit offence which it is his duty to prevent—If offence be committed.**—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 an 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,

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 <sup>4</sup>(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.

<sup>4</sup> Subs. by Ord. XII of 1972.



**3. Procedure.** The offence under S. 119, P.P.C., (three parts) is cognizable, the first part is bailable if the offence abetted is bailable and entails imprisonment extended to half of the longest term and of any description provided for the offence or fine or both. Second part is not bailable, it entails imprisonment of either description for 10 years. Third part is bailable and entails imprisonment extending to a quarter part of the longest term and of any description provided for the offence or fine or both. All the three parts are triable by the Court where the offence abetted is triable.

**4. Proof.** The facts necessary to establish an offence under this section are the following:

- (i) The existence of the design to commit an offence;
- (ii) That the accused was a public servant;
- (iii) That it was his duty to prevent the commission of that offence;
- (iv) That he concealed the existence of such design:-
  - (a) by his act, or
  - (b) by his illegal omission, or
  - (c) by his knowingly making false representation;
- (v) That the accused thereby intended to facilitate, or knew that he would thereby facilitate the commission of such offence, to which may be added the aggravating circumstance if the facts warrant it;
- (vi) That the offence concealed was committed.

**120. Concealing design to commit offence punishable with imprisonment.**—Whoever, intending to facilitate or knowing it to be likely that he will thereby facilitate the commission of an offence punishable with imprisonment,

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

### SYNOPSIS

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|---------------|----------------------------------|
| 1. Scope.     | 4. Infringement of trade mark.   |
| 2. Charge.    | 5. Stay of criminal proceedings. |
| 3. Procedure. |                                  |

**1. Scope.** Sections 118, 119 and 120 of the Code embody the same principle. Section 118 deals with concealment and existence of a design to commit an offence by person not public servant, the same principle is extended under this section to public servant found concealing design to commit offence which it is his duty to prevent. Since commission of offence under this section amounts to breach of public duty, it entails severe penalty. Section 120 of the Code deals with offences punishable with imprisonment, while s. 118 dealt with offences

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# Chapter – V-A

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## CRIMINAL CONSPIRACY

**120-A. 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 ultimate object of such agreement, or is merely incidental to that object.

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### SYNOPSIS

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| 1. Introduction.  | 7. English law.                                    |
| 2. Criminal Conspiracy.   | 8. Act becoming illegal by subsequent legislation. |
| 3. "To do, or cause to be done, an illegal act, or an act which is not illegal by illegal means".   | 9. Provision of s. 196, Cr.P.C.                    |
| 4. Proviso—Agreement to commit an offence—No overt act is necessary.                                | 10. Conspiracy and abetment.                       |
| 5. Explanation—"It is immaterial whether the illegal act is the ultimate object of such agreement". | 11. Conspiracy and common intention.               |
| 6. Charge framed disclosing one single conspiracy to cheat members of public.                       | 12. Abetment by conspiracy.                        |
|   | 13. Proof of conspiracy.                           |
|   | 14. Conspiracy between husband and wife.           |
|   | 15. Conviction.                                    |

1. **Introduction.** The Criminal Law (Amendment) Act (Act VIII of 1913) introduced a new offence in the Penal Code namely, the Offence of Criminal Conspiracy.

Conspiracy is a scheme which germinates in the dark alleys of sinister minds and comes to light only when its external results becomes known. Direct evidence for hatching of conspiracy is hard to come by and it would be proved by indirect evidence which could falter and could not result in conviction of conspirators. Happening of an event or existence of a state of affair is one thing and proving, at a subsequent stage the particular manner in which it had happened or had prevailed are altogether different things. Non proving of conspiracy through sufficient evidence of acceptable legal standards would never mean that such an event had not taken place. [2000 MLD 77]

provision to that effect such a repugnancy is not by itself a sufficient ground for quashing a conviction. [AIR 1956 SC 469 (472, 473)] In the absence of a distinct finding that the evidence led on behalf of the prosecution was unreliable, a person can be convicted on the same evidence of conspiracy when others have been given the benefit of doubt and acquitted. [AIR 1956 SC 469 (475)]

- 13.4 Motive.** Evidence of motive is not evidence of conspiracy. [AIR 1937 Cal 756 (758)]
- 13.5 Mere association.** A mere association of the accused person with another is not sufficient to lead to an inference of conspiracy. [1972 Raj LW 675 (Pr 25)]
- 13.6 Chance witness.** Evidence as to conspiracy by chance witness and eaves droppers is not worth to be relied upon. [1969 SCMR 621]
- 13.7 Conspirators—May be tried in one trial.** Two accused carrying out a single scheme by a successive act and the offences linked together with the threat of continuity running through them so as to present a continuous whole. It was not a case of repetition of similar offences if and when an occasion arose. All the offences were committed in the course of same transaction. There was, therefore, no misjoinder of charges and the trial was not vitiate on that score. [PLD 1962 Lah 244]

**14. Conspiracy between husband and wife.** No prosecution for criminal conspiracy is maintainable against husband and wife "because they are esteemed but one person in law and are presumed to have but one will. [PLD 1957 P.C. 92]

**15. Conviction.** It is not essential that more than one person should be convicted of the offence of criminal conspiracy. It is enough if the Court is in a position to find that two or more persons were actually concerned in the criminal conspiracy. When the Court is not satisfied that the acquittal of the other accused are correct, the conviction of the convict can be maintained though the evidence against all the accused was the same. [PLD 1957 S.C. (India) 68]

**15.1 Acquittal of some of the accused.** By the terms of the definition of conspiracy, there ought to be two or more persons who must be parties to such an agreement. One person alone can never be held guilty of criminal conspiracy for the simple reason that one cannot conspire with oneself. If, therefore, four named individuals are charged u/s. 120-B of the Code and if three out of these four are acquitted of the charge, the remaining accused can never be held guilty for the offence of criminal conspiracy. [PLD 1956 S.C. (India) 215] It cannot be held in law that a person cannot ever be convicted of abetting a certain offence when the person alleged to have committed that offence in consequence of the abetment has been acquitted. The question of the abettor's guilt depends upon the nature of the act abetted and the manner in which the abetment was made. [AIR 1967 SC 553 (554, 555)]

**15.2 Whether agreement by itself punishable.** The offence of criminal conspiracy consists in the very agreement between two or more person to commit a criminal offence irrespective of the further consideration whether or not those offences have been actually committed. The very fact of the conspiracy constitutes the offence and it is immaterial whether anything has been done in pursuance of the unlawful agreement. [PLD 1957 S.C. (India) 68]

**120-B. 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.

[S. 120-B]

**SYNOPSIS**

1. Scope.
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1. **Scope.** Section 120-B of the Code deals with punishment of criminal conspiracy where the offence conspired to be committed is a offence punishable with death, imprisonment for life, or rigorous imprisonment for a term of two years or upwards. The punishment in such cases is the same as in case of abetment of such offences. Where the offence conspired to be committed is not an offence punishable with death, etc., as referred to above, the offender is to be punished for a term not exceeding six months or with fine or with both.

Where the conspiracy alleged is with regard to commission of a serious crime of the nature as contemplated in s. 120-B read with the proviso to sub-section (2) of s. 120-A of the Penal Code 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 u/s 120-B and the proof of any overt act by the accused or by any one of them would not be necessary. [AIR 1994 SC 2420] Where in respect of serious defalcation of the properties of a co-operative society entering into conspiracy by the accused to cause defalcation was one of the charges and that charge failed, conviction of the chairman of the Managing Committee of the society u/ss. 408, 409, 467 and 471 on the basis of vicarious liability was improper when he was not charged u/s 120-B and there was no direct evidence connecting the accused chairman, with the acts of commission and omission for which he was convicted. [AIR 1984 SC 151] The goods of a firm were unloaded at the siding of Railway Station for which only ground charges were payable, and not wharfage charges because goods were no unloaded in the shed. Criminal conspiracy to cheat Railway between Secretary or firm, Station Master and Commercial Inspector who was deputed to look into the matter is not established all the three are not guilty of offence u/s. 120-B. [1980 UPLT (NOC) 198] There are cases of criminal conspiracy in which evidence adduced by the prosecution for proving criminal conspiracy is the same as evidence for establishing the offence which is alleged to be the object of the criminal conspiracy. In such cases if the prosecution is not able to establish its case so far as the main offence constituting the object of criminal conspiracy is concerned it will be extremely unsafe to find the accused persons guilty of abetment of the said offence with the aid of s. 120-B, P.P.C. [1982 Cri LJ 856] In the absence of any satisfactory evidence to bring home the guilt of an accused a conviction u/s. 120-B cannot be sustained. [1980 WLN 17 (DB) (Raj)] Article 23 of the Qanun-e-Shahadat Order, 1984, introduces the doctrine of agency in the matter of proof of conspiracy and if the conditions laid down in that section are satisfied, evidence of an act done by one conspirator is admissible against his co-conspirators. But the section will come into play only when the Court is satisfied that there are reasonable grounds to believe that two or more persons have conspire together to commit an offence or an actionable wrong. [AIR 1974 SC 898] Though conspiracy can be inferred from criminal acts done in pursuance of a common purpose there can be no conviction u/s 120-B unless there is specific proof against each of the accused that he participated in a particular design to do a particular thing. [1977 Chand LR (Cri) 25 (Punj)] Proof of participation in one dacoity or robbery is not sufficient to support a charge of conspiring to commit dacoities and robberies. [AIR 1934 Oudh 106] In the case of a charge of conspiracy to carry on the business of common cheats cumulative instances are necessary to prove the offence. [(1808) 170 ER 999] Conspiracy to commit an offence is by itself distinct from the offence to which the conspiracy is entered into. Where the evidence against the accused merely consists of the commission of the particular offences themselves by others, the charge of conspiracy cannot be held to be proved against the accused. [AIR 1961 Patna 451]

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