

An of such persons.
(i) in reference



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An offence or an actionable wrong, Anything said, done, or written by any one of such persons. (i) In reference to their common intention. (ii) After the time when such intention was first entertained by any one of them- Is a relevant fact As against each of the persons believed to be so conspiring, as well as for the purpose of (i) proving the existence of the conspiracy, and (ii) Showing that he was a party to it.

Illustration: Reasonable grounds exist for believing that A has joined in a conspiracy to wage war against the Government of India. The facts that procured arms in Europe for the purpose of the conspiracy, Ñ collected money in Calcutta for a like object, D persuaded persons to join the conspiracy in Bombay, E published writings advocating the object in view at Agra, F transmitted from Delhi to G at Kabul, the money which Ñ had collected at Calcutta, and the contents of a letter written by H giving an account of the conspiracy, are each relevant, both to prove the existence of the conspiracy and to prove A's complicity in it, although he may have been ignorant of all of them, and although the persons by whom they were done were strangers to him, and although they have taken place before he joined the conspiracy or after he left it. Principle: This section is based on the principle that when several persons conspire to commit a crime or a tort, each makes the rest his agents to carry the plan into execution. This section has no bearing on the question as to how far the conspiracy to commit an offence or actionable wrong is an offence under the Indian Penal Code.

Rather, this section describes what facts are relevant to prove a conspiracy and to prove that a person was a member of that conspiracy. When concert has once been proved, each party is the agent of all the others, and the acts

done by him in pursuance of the common design are admissible against his fellow conspirators. The object of the section is to ensure that one person is not made responsible for the acts or deeds of another, until some bond in the nature of agency has been established between them and the act; words or writing of another which it is proposed to attribute vicariously to the person charged must be in furtherance of the common design and after such design was entertained. Scope of Section 10 of the Indian Evidence Act The operation of this section is strictly conditional upon there being reasonable ground to believe that two or more persons have conspired to commit an offence. The section refers to things said or done by a conspirator in reference to the common intention.

Anything said, done or written in reference to the common intention is admissible, and therefore, the contents of letters written by one in reference to the conspiracy are relevant against the others, even though not written in support of it or in furtherance of it. Problems: 1. A and are charged with having conspired to commit the murder of C. At their trial for the said murder, the statement of made after his arrest before a magistrate implicating A in the crime, is sought to be used against A.

Is this permissible? Give reasons. Ans: This is not permissible. Under Section 10 of the Evidence Act, the words " in reference to their common intention" mean in reference to what at the time of the statement, was intended for the future. In this case, the confession made by after his arrest before a magistrate is a statement of a past act, i. e., of the act in connection with murder. Reading S. 10, it appears that narratives coming from conspirators

as to their past acts cannot be said to have reference to their common intention.

The word "intention" implies that the act intended is in the future, whereas in this case the statement related to a past act, and therefore, it is inadmissible in evidence. (Emperor v. Abani Bhusan, 38 Cal. 169) 2. A and are being tried for conspiring to cheat N for the sum of Rs. 2, 400. After the transaction, made certain entries in a diary, showing that each of them had profited to the extent of Rs.

1, 200 in the said transaction. These entries in the diary of are sought to be used as evidence against A. Can they be admissible? Ans: These entries cannot be admissible in evidence. Section 10 relates to anything said, done or written when the common intention of conspiracy is in existence. A statement (in this case an entry) made by a conspirator after the common intention of the conspirators has been achieved, viz., the cheating of C, would not be admissible under section 10 of the Act. Proof of Conspiracy:

The law relating to the proof of conspiracy, as contained in Section 10 of the Act, and also as expounded by authoritative judicial decisions, may be summarised thus: (1) Reasonable ground to believe in the existence of a conspiracy must be shown as a condition precedent to the admission of acts and declarations of a conspirator against his fellow conspirators. However, the judge has a discretion whether or not to insist on prior evidence showing such reasonable ground.

(2) The action of each of those accused with the charge of conspiracy must then be proved, i. e., that the persons charged were parties to it. (3) The

acts, declarations and writings of each conspirator in reference to the common design or intention after the time when such intention was entertained by any of the persons are admissible against each of the others.

(4) "Common intention" signifies a common intention existing at a time when the thing was said, done or written by one of them. Therefore, things said, done or written by a conspirator after the conspiracy had been carried into effect or abandoned, when the common intention was no longer operating, are not admissible against a coconspirator. (Mirza Akbar v.

R., 67 I. A.

336) Narratives coming from the conspirators as to their past acts cannot be said to have a reference to their common intention. The word 'intention' implies that the act intended is in the future, and the section makes relevant statements made by a conspirator with reference to the future. The words "in reference to their common intention" means in reference to what at the time of the statement was intended in the future.

(Emp. v. Vaishampayan, A. I. R. 1932 Bom. 56) In Emperor v.

Vaishampayan above, (also known as the Lamington Road Shooting Conspiracy Case), a Police Officer and his wife were wounded by revolver shots near the Lamington Road Police Station in Mumbai. The shots were fired by some persons in a motor car parked on the opposite side of the road. After several persons were arrested, evidence was sought to be given of a statement of an absconding accused to the approver, that the conspirators had shot a Police Officer, and that a pamphlet should be printed and distributed to start a propaganda in furtherance of the objects of the

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conspiracy. The Court held that a plain reading of S. 10 shows that narratives coming from the conspirators as to their past acts cannot be said to have a reference to their common intention.

However, the statement about publishing a pamphlet would be relevant because the statement furthers the object of the conspiracy. It may also be noted that Section 10 is not intended to remove the restriction which Section 25 of the Evidence Act and the provisions of the Criminal Procedure Code place upon admissibility of the statement made to the Police. Where concert has once been proved, each party is the agent of all the others, and acts done by him in pursuance of the common design are admissible against his fellow conspirators. (Emp.

v. Shafi Ahmed, 31 Bom. L. R. 515) English Law: It may be noted that the law regarding the proof of conspiracy laid down in Section 10 of the Act is wider than the corresponding rule of English law. Under the English law, the statements or acts made by one conspirator in furtherance of the common object are admissible against the other.

However, under Section 10, anything said or done in reference to the common intention, although it may not be in support, or in furtherance, of the conspiracy, is relevant against the other. Secondly, under the English law, statements or acts of a conspiracy after one terminates his connection with the conspiracy are not admissible against the latter, but under Section 10, they are admissible against him.