

CONSPIRACY TO MURDER

To Plan a Death - An Article by Aziz Rahman, Solicitor and Jonathan Lennon, Barrister

The essence of this offence is in the 'agreement'; - the agreement to kill - there need not in fact be a dead body. On the other hand prosecutors sometimes like to use this charge when there is more than one person in the dock and all are alleged to have played a different role in an unlawful killing. In those circumstances it is sometimes easier to charge conspiracy to murder even though there is a body. The authors, for example, were involved in a gang-land case where the defendant had been charged with conspiracy to murder (he was later acquitted) - the murder victim had been shot by an unknown male who was with a group of other masked males. The police made several arrests and tried them all for conspiracy to murder.

DEFINITION OF CONSPIRACY

Conspiracy to murder is just like any other conspiracy. So just what does it mean to be charged with a conspiracy offence? Under section 1 of the Criminal Law Act 1977 it is an offence "if a person agrees with any other person or persons that a course of conduct shall be pursued which, if the agreement is carried out in accordance with their intentions." results in the commission of an offence. That means simply that, just as it is a criminal offence to rob or murder or steal, so it is a criminal offence for two or more persons to agree with one another to rob or murder or steal - or whatever the offence maybe.

The course of conduct proposed must be something that will be done by one or more of the parties to the agreement - the other parties to the agreement must take some role and must know that murder is in mind.

PROVING THE 'AGREEMENT'

Judges will remind juries that for the prosecution to prove an 'agreement' they do not have to produce a signed contract agreeing to commit an offence. Juries are invited to make inferences from the evidence - for example, circumstantial evidence of a series of suspicious meetings or links to other co-defendants by telephone calls and so on. Often these factual assertions are agreed, but the inferences that can be drawn from these facts are not agreed. Tactical care and skill is required to identify how best to attack the prosecution's case - i.e. does that a series of calls or meetings equate to participation in some unlawful agreement? Is there another explanation? The fact is that the defence may, either through cross-examination

or through the defendant's evidence, show that there are other 'co-existing circumstances' which explain the issues and can weaken the prosecution's inference. The defence lawyers can consider asking the Judge to give a jury direction on circumstantial evidence. This simply means that the Judge will remind the jury that, as a matter of law, it should distinguish between arriving at conclusions based on reliable circumstantial evidence, and mere speculation. Juries are often told that speculating in a case amounts to no more than guessing.

ACTS AND DECLARATIONS

In conspiracy cases there will often be significant areas of evidence which, on the face of it, seem damning but which in fact are not admissible against a particular Defendant. A basic rule of evidence is that, ordinarily, acts done or words uttered by 'A' cannot be evidence against 'B'. But in conspiracy cases there is the so-called 'acts and declarations' rule. This provides that the acts or declarations of any conspirator or co-accused made in furtherance of the alleged common design may be admitted as part of the evidence against any other conspirator.

To be admissible against a co-defendant the declaration in question must be in furtherance of the common design; it must "be demonstrated to be one forming an integral part of the machinery designed to give effect to the joint enterprise" - *R v Reeves*, unrep. Dec 4, 1998. Descriptions of past events for example are not made in furtherance of the common design and are therefore not admissible against anyone other than the maker. For example, say an undercover officer covertly records a suspect X discussing the preparations for an offence where Y is mentioned. This could be admissible evidence in a conspiracy case against both X and Y. The acts and declarations rule can, and very often should, be tested by the defence, see e.g. *R v Gray and Liggins* [1995] 2 Cr. App. R 100.

Difference Between Murder and Conspiracy to Murder

The main difference of course is that no one needs to be killed. This comes up often in so called 'honour-killing' plots where the accused will all be members of a family who are accused of taking steps to kill another family member - usually a female with plans to marry outside the family race or religion. The police will get wind of the case and either make arrests or even, in a case which Rahman Ravelli Solicitors were involved in, employ an undercover officer to pretend to be a potential hit-man.

The intention in a murder charge is an intent to kill or to cause grievous bodily harm (GBH). The intention to actually kill must be present in a conspiracy to murder charge; it is not enough to have an intention to commit GBH only. However, when there is an actual death and there is more than one defendant in the dock the Crown will sometimes prefer a straight murder charge as the intention element may be easier for them to prove than that in a conspiracy charge - i.e. charge murder on a joint enterprise basis; see below.

Another significant difference is of course the sentence. We all know that there is only one sentence for the offence of murder and that is the mandatory life sentence for adult offenders. That is not true in conspiracy cases, the sentence is open - though, depending on the facts, a conspiracy to murder case may well attract a life sentence. Provocation is a partial defence to murder. It cannot be a defence to conspiracy to murder - you cannot plan to be provoked and lose your senses so much you kill your provoker.

JOINT ENTERPRISE

This topic is not strictly one for this article which considers conspiracy cases rather than joint enterprise. However, no discussion on murder involving more than one Defendant would be complete without some mention of the complex law on murder charged on a joint enterprise basis.

Joint enterprise simply means two or more persons embarking on a course of action together so that each is responsible for the outcome - e.g. the getaway driver in a bank robbery is guilty of robbery even if he never set foot in the bank.

In *R. v. Powell and another*; *R. v. English* [1999] 1 A.C. 1, H.L. the House of Lords considered the vexed question of the liability of secondary parties in joint enterprise homicide allegations. In *Mr. English's* case the defence of the secondary party - i.e. English, was that he contemplated that GBH would occur to the victim (who was in fact a police sergeant) using a wooden post but did not know that the principle offender would pull out a knife and stab the victim. The trial Judge directed the jury in effect that they could convict English even if he did not know about the knife if he nevertheless knew there was a substantial risk that the principal might cause GBH with the wooden post. The House of Lords did not approve of this direction and the conviction was quashed. However, that does not mean that a difference in the final weapon used always exempts secondary parties from liability to murder, it all depends on the facts and specifically what sort of different weapon was used - i.e. using a gun instead of a knife might be held to make no difference as each is a highly dangerous weapon to use and so even a secondary party not knowing about the gun could be convicted; see generally *R v Rahman* [2007] 3 ALL ER 396.

Where two or more persons embark on a joint enterprise each is liable for the acts done in pursuance of that joint enterprise - this is so even if unusual results follow. But if the principle offender commits acts which were beyond the understanding or tacit agreement of the group - i.e. of the joint enterprise, then the other participants would not be liable for the consequences of that unauthorised act. These are matters for the jury on the proper direction of the Judge - it is for them to decide whether they are sure what was done was part of the joint enterprise or whether it may have been an act outside the scope of the joint enterprise. Where, the principal does an act which the accessory agrees to, but with an intent outside the contemplation of the accessory, it has been held by the Northern Ireland Court of Appeal in *R. v. Gilmour (Thomas Robert)* [2000] 2 Cr. App. R. 407, that the accessory is not blameless; in such circumstances, he may be found guilty of a lesser offence - so, for example, a principle throws a petrol bomb into a house with the assistance of a secondary party. The principle wants to kill but the secondary party has no such intention - believing perhaps the property to be empty and intending only to start a fire. In such circumstances the accessory could be convicted of manslaughter.

CONCLUSION

Just as in any conspiracy case the essence of the defence lies in a clear understanding of what inferences are going to be made from primary facts, and knowing how to tackle them - and in this case having a clear understanding of the law.

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