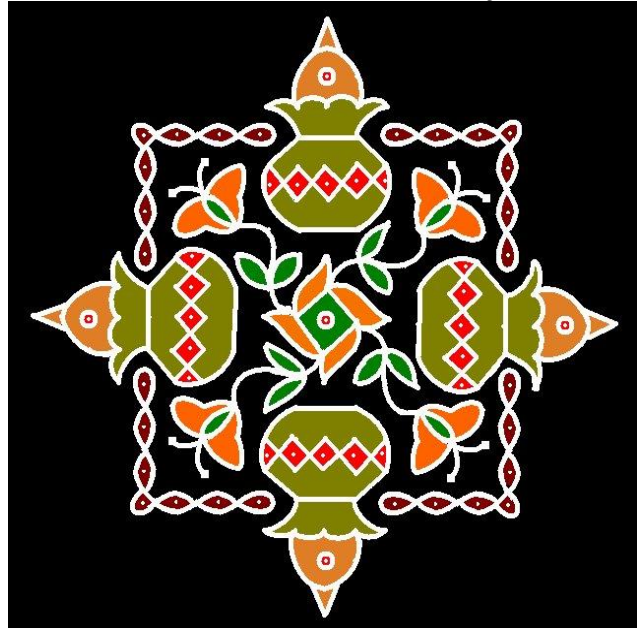


PROSECUTION REPLENISH

(An Endeavour for learning and excellence)

Vol- II Part I

January, 2013



2013 (MMXIII) will be a common year starting on a Tuesday in the Gregorian calendar. It will be the 2013th year of the Common Era (CE) and *Anno Domini* (AD) designations; the 13th year of the 3rd millennium and the 21st century; and the 4th of the 2010s decade. It will also be the first year to be denoted by four different digits in 26 years (since 1987).

It is said that a day started with good thoughts will cause good effects throughout the day, so let us start this New Year with a good thought to reap good effects throughout. We feel it opportune to remember an anecdote, The Blind boy, which goes as under.

A blind boy sat on the steps of a building with a hat by his feet. He held up a sign which said: "I am blind, please help." There were only a few coins in his hat.

A man was walking by. He took a few coins from his pocket and dropped them into the hat. He then took the sign, turned it around, and wrote some words. He put the sign back so that everyone who walked by would see the new words.

Soon the hat began to fill up. A lot more people were giving money to the blind boy.

That afternoon the man who had changed the sign came to see how things were. The boy recognized his footsteps and asked, "Were you the one who changed my sign this morning? What did you write?"

The man said, "I only wrote the truth. I said what you said but in a different way." "I wrote: "Today is a beautiful day, but I cannot see it."

Both signs told people that the boy was blind. But the first sign simply said the boy was blind. The second sign told people that they were so lucky that they were not blind. Should we be surprised that the second sign was more effective?

Moral of the Story: Be thankful for what you have. Be creative. Be innovative. Think differently and positively. When life gives you 100 reasons to cry, show life that you have 1000 reasons to smile. Face your past without regret. Prepare for the future without fear. Keep the faith and drop the fear.

The most beautiful thing is to see a person smiling. And even more beautiful, is knowing that you are the reason behind it!!! Just think... God can live anywhere in the universe, and He chose your heart!

Wishing you a year that is filled with all the fragrance of roses, illuminated with all the lights of the world and be blessed with all the smiles on the planet. Hope this year will be the year when all your dreams come true. **Happy New Year 2013 and a very Happy Makara Sankranthi.**

We Remain,
Yours faithfully,
Editorial Team

LANDMARK JUDGMENT

**Bachan Singh Vs. State of Punjab
AIR 1980 SC 898 = (1982) 3 SCC 24**

Section 302 of the Penal Code in so far as it provides for the death sentence as also S.354(3) of Cr.P.C., 1973 is constitutionally valid

Article 21 of the Constitution of India clearly brings out the implication that the Founding Fathers recognized the right of the State to deprive a person of his life or personal liberty in accordance with fair, just and reasonable procedure established by valid law. There are several other indications also in the Constitution which show that the Constitution makers were fully cognizant of the existence of the death penalty for murder and certain other offences in the Indian Penal Code. Entries 1 and 2 in the Concurrent List of the Seventh Schedule specifically refer to the Indian Penal Code and the Cr.P.C. as in force at the commencement of the Constitution. Article 72 (1) (c) specifically invests the President with power to suspend, remit or commute the sentence of any person convicted of any offence, and also "in all cases where the sentence is a sentence of death". Likewise, under Article 161, the Governor of a State has been given power to suspend, remit or commute, inter alia, the sentence of death of any person convicted of murder or capital offence relating to a matter to which the executive power of the State extends. Article 134, in terms, gives a right of appeal to Supreme Court to a person who, on appeal, is sentenced to death by the High Court, after reversal of its acquittal by the trial court. In view of the aforesaid constitutional postulates, death penalty under section 302, Penal Code, either per se or because of its execution by hanging constitutes an unreasonable, cruel or unusual punishment. As such, it cannot be said that death penalty for the offence of murder violates the basic structure of the constitution

Exercise of discretion under section 354(3), Cr.P.C should be exceptional and grave circumstances and imposition of death sentence should only be in **rarest of rare cases.**

This Edition is sponsored by Sri J.V.Narsing Rao,
Spl.P.P. S.C. & S.T. (POA) Act Court, R.R.District.

Latest Judgments Decisions reported in ALT (Crl)

Sessions Court or High Court cannot pass orders that on surrendering of accused before Magistrate, he shall be released on bail.

Court cannot issue a blanket order restraining arrest and it can only issue an interim order which must conform to the requirement of the section **Rashmi Rekha Thatol & anr Vs. State of Orissa & ors 2012 (3) ALT (Crl) 408 (SC)**

Every omission in FIR is not fatal. Court is required to examine the role that has been attributed to an accused by prosecution. FIR need not be encyclopedia of all facts and circumstances.

Judging the time of death from contents of stomach may not always be the determinative test. If prosecution is able to prove its case beyond reasonable doubt it may not be appropriate for the court to reject the case of prosecution.

Delay in lodging FIR cannot be a ground by itself for throwing away the entire prosecution case. **Jitender Kumar Vs. State of Haryana 2012 (3) ALT (Crl) 456 (SC)**

Confession given to Police Officer is not totally prohibited for all purposes.

Confessional statement though not provable against accused will not invalidate registration of case **Akula Bhoomaiah & anr State of A.P. rep by Public Prosecutor, High Court of A.P & ors 2012 (3) ALT (Crl) 258 (AP)**

If intention is proved and death is caused, then it would amount to culpable homicide.

Punishment to a drunken driver is at least a deterrent for other such persons

Law demands that the offender should be adequately punished for crime. **State Vs. Sanjeev Nanda 2012 (3) ALT (Crl) 424 (SC)**

Every statement of witnesses must be examined in its entirety. Court not to rely on one sentence from depositions. **Atmaram & ors V. State of Madhya Pradesh 2012 (3) ALT (Crl) 385 (SC)**

Decisions reported in S.C.C.(Crl.)

Omission to obtain Serologist report in respect of crime articles – where recovery of crime articles duly proved and prosecution case supported by evidence of eye witnesses, failure to obtain the report would not be fatal to prosecution

Contradiction between oral and medical evidence – Minor variations which are so insufficient and immaterial that same would not give any benefit to accused, should be ignored **Gajoo Vs. State of Uttarakhand 2012 (3) SCC 1200**

Holding of T.I.Parade not necessary in every case. Identification in court is a good identification in the eye of law and need not always be preceded by T.I.Parade.

Statement of witnesses to be read as a whole. Court not to pick up a sentence in isolation from the entire statement and use it ignoring its proper reference and context **Ravi Kapur Vs. State of Rajasthan 2012 (3) SCC 1107**

Illegality of search does not vitiate seizure of article. **State of Haryana Vs. Rajnal & anr. 2012 (3) SCC 1328**

Court has no means to enter in the mind of a person to find out motive. Case where there is no discernible motive but facts and circumstances overwhelmingly point to accused guilt – conviction – sustainable. **Ajit Singh Harnamsingh Gujral Vs. State of Maharashtra 2012 (3) SCC 1349**

Citations reported in ALD (Cri)

Sec 313 Cr.P.C. examination- Accused bound by statement made or defence raised by him- court at liberty to examine it in light of evidence produced on record.

Oral Dying Declaration made by deceased, disclosure made by accused and consequence recovery of weapon used in crime and own version of accused in relation to incident-conviction held-proper. FIR does not lose its evidentiary value and relevancy, even if the informant turned hostile. Can be looked into for any purpose.

2012 (2) ALD (Cri) 952 (SC) Bable @ Gurdeep singh vs S.O. Chhattisgarh.

Sec 202(2) Cr.P.C. comes into play only when the magistrate acts u/Sec 202 Cr.P.C. and not when the case is referred to U/Sec 156(3) Cr.P.C.

The Second complaint on same facts is maintainable provided earlier complaint was decided without full consideration of the case and has been decided on the basis of insufficient material or some new facts were detected after the disposal of the first complaint.

2012 (2) ALD (Cri) 881 (AP) DB; Ani Reddy Surender Reddy & others Vs Circle Inspector of police, Godavarikhani, PS-II, Karimnagar District.

Making request to magistrate to forward complaint to Police U/Sec 156(3) is against the spirit of the provision. No cognizance of such complaints should be taken- on the other hand such complaints should be returned when filed. All judicial Magistrates of first class should adhere to this proposition.

Accused approached the complainant and got a loan by virtue of his acquaintance with him promising to repay within a month- but accused failed to keep up his word and retained the amount with malafide intention once for all- ingredients of Sec. 415 & 420 IPC prima facie made out. **2012 (2) ALD (Cri) 952 (SC) Md Mazhar Pasha vs State of AP & Anr.**

313 Cr.P.C. Documents filed by accused during 313 examination cannot be given exhibit numbers without formal proof. In case the accused wants to rely upon those documents, he has to prove them by formally examining persons relating to those documents.

2012 (2) ALD (Cri) 941 (AP) A.Brahmananda Reddy vs State of A.P. & Anr.

Distinction between Conviction and Sentence- Conviction is the proof of the guilt. The punishment component is the sentence.

2012 (2) ALD (Cri) 982 (SC) Guru Basvaraj @ Benne Settappa Vs State of Karnataka.

Departmental disciplinary proceedings exonerated- cannot be base to reject the Criminal case.

2012 (2) ALD (Cri) 1001 (SC) State of NCT (Delhi) Vs Ajay Kumar Tyagi.

Mere minor omissions in 164 Cr.P.C. statement recorded by Magistrate, not sufficient to disbelieve his evidence before the court. WHAT ALL WITNESS STATES IN COURT ALONE IS SUBSTANTIVE EVIDENCE. **2012 (2) ALD (Cri) 921 (AP) Ch Vishwesam Vs. State.**

THE COPY RIGHT ACT, 1957

Construction of a building or other structure which infringes or which, if completed, would infringe the copyright in some other work shall not be an offence under this section.

It is unnecessary for the prosecution to track on and trace out the owner of the copyright to come and adduce evidence of infringement of copyright. The absence thereof does not constitute lack of essential element of infringement of copyright; *State of Andhra Pradesh v. Nagoti Venkataramana*, (1996) 6 SCC 409.

- ✓ All offences are triable by JMFC as per sec 70.
- ✓ Offences are cognizable

- ✓ All offences are bailable.
- ✓ Seizure by police officer not below the rank of Sub-Inspector.
- ✓ Sec 52- depicts the acts which does not amount to infringement of Copyright.
- ✓ Section 64(2) provides safeguards when the person aggrieved can make an application to the Magistrate within 15 days of such seizure by the police officer for restoring the seized copies to him.
- ✓ As per sec 66, the court trying any offence under this Act may, **whether the alleged offender is convicted or not**, order that all copies of the work or all plates in the possession of the alleged offender, which appear to it to be infringing copies, or plates for the purpose of making infringing copies, **be delivered up to the owner of the copyright.**

Sec	Offence	Punishment
63. Offence of infringement of copyright or other rights conferred by this Act	Any person who knowingly infringes or abets the infringement of— (a) the copyright in a work, or (b) any other right conferred by this Act, [except the right conferred by section 53A]	with imprisonment for a term which shall not be less than six months but which may extend to three years and with fine which shall not be less than fifty thousand rupees but which may extend to two lakh rupees
	where the infringement has not been made for gain in the course of trade or business	for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months or a fine of less than fifty thousand rupees.
63A. Enhanced penalty on second and subsequent convictions (committed after 1984)		for the second and for every subsequent offence, with imprisonment for a term which shall not be less than one year but which may extend to three years and with fine which shall not be less than one lakh rupees but which may extend to two lakhs rupees
	where the infringement has not been made for gain in the course of trade or business] the court may	for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than one year or a fine of less than one lakh rupees:
63B. Knowing use of infringing copy of computer programme to be an offence		with imprisonment for a term which shall not be less than seven days but which may extend to three years and with fine which shall not be less than fifty thousand rupees but which may extend to two lakh rupees
	where the computer programme has not been used for gain or in the course of trade or business, the court may	for adequate and special reasons to be mentioned in the judgment, not impose any sentence of imprisonment and may impose a fine which may extend to fifty thousand rupees.
65. Possession of plates for purpose of making infringing copies	Possess or makes any work in which copyright subsists	shall be punishable with imprisonment which may extend to two years and shall also be liable to fine.
67. Penalty for making false entries in register, etc., for producing or		shall be punishable with imprisonment which may extend to one year, or with fine, or with both.

tendering false entries		
68. Penalty for making false statements for the purpose of deceiving or influencing any authority or officer.		shall be punishable with imprisonment which may extend to one year, or with fine, or with both.
68A. Penalty for contravention of section 52A	publishes a sound recording or a video film in contravention of the provisions of section 52A	with imprisonment which may extend to three years and shall also be liable to fine.

NEWS

- The following APPs have passed the JCJ mains examination. Prosecution replenish wishes them all the very best for their interview.

Neelam Kavitha of 2012 batch	Arpitha of 2012 batch
Sheik Rehana of 2008 batch	Borra Sirisha of 2008 batch.
- The following (17) Senior Assistant Public Prosecutors (Category-6) have been promoted as Additional Public prosecutors Grade-II (Category-5) vide G.O.Rt.No.2417 Dated:29 -12-2012.

Post held	Promoted as Addl. Public Prosecutor Grade-II
1 K.Rama Rao, Sr.APP, II AJFCM Court, Rajahmundry, East Godavari District.	Assistant Sessions Court, BHIMAVARAM, West Godavari District.
2 G.V.Sita Ram, Sr.APP (A) II AJFCM Court, Eluru, W.G.Dist	Prl. Assistant Sessions Court, ELURU West Godavari District
3 M.Lakshmana Rao, Sr.APP, III ACMM Court, Hyderabad	Assistant Sessions Court, MEDAK
4 GSV.Prasad Rao, Sr.APP (A) JFCM Court, Nizamabad	I Addl. Assistant Sessions Court, Kakinada, East Godavari District.
5 M.Malleswara Rao, Sr.APP (A) JFCM Court, Mahaboobnagar	Assistant Sessions court, Nagarkurnool, Mahboobnagar District.
6 Smt. C.Sarala Devi, Sr.APP, I ACMM Court, Hyderabad	Prl.Assistant Sessions Court, L.B.Nagar, Ranga Reddy District.
7 Smt. BG.C.Sobha, Sr.APP, II ACMM Court, Hyderabad.	Additional Assistant Sessions Judge Court, Ongole, Prakasam District.
8 Smt. P.Shailaja, Sr.APP, On OD as ALA, CID, Hyderabad	Legal Adviser-cum-Spl. Public Prosecutor, CID, Hyderabad.
9 C.Ramu, Sr.APP,(A) II MM Court, Ranga Reddy	Assistant Sessions Court, VIKARABAD, Rangareddy District.
10 S.Ramesh, Sr.APP, (A) JFCM Court, Nalgonda	Assistant Sessions Court, NIZAMABAD.
11 Smt. M.K.Vijaya Lakshmi, Sr.APP, AJFCM Court, Dharmavaram, Ananthapur	Prl.Assistant Sessions Court, Tirupathi, Chittoor District (In relaxation of native district rules)
12 C.Srinivasa Murthy, Sr.APP, On OD as FM, PTC, Anantapur.	Prl. Assistant Sessions Court, Chittoor.
13 K.Ajay, Sr.APP, On OD as ALA, CID, Hyderabad	Legal Adviser-cum-Spl. Public Prosecutor, CID, Hyderabad.
14 S.Tarakeswarlu, Sr.APP, II AJFCM Court, Madanapalle, Chittoor.	Assistant Sessions Court, Madanapalle, Chittoor District.
15 H.Venkatesh, Sr.APP, On OD as ALA, ACB, Hyderabad	Legal Advisor cum-Special Public Prosecutor, ACB, Hyderabad
16 V.Ahezkiel, Sr.APP, JFCM Court, Gudur, Nellore Dist.	Prl. Assistant Sessions Court, Kavali, Nellore District.
17 N.Khadiron, Sr.APP, (A) I AJFCM Court, Kadapa	Assistant Sessions Court, Puttur, Chittoor District (In relaxation of native district rules)

Justice verma Committee Invites Suggestions from Public

- The public in general and particularly the eminent jurists, legal professionals, NGOs, Women's Groups and civil Society members are requested to share with this Committee their views, knowledge and experience suggesting possible amendments in the criminal laws and other relevant laws to provide for quicker investigation, prosecution and trial as also enhanced punishment for criminals accused of committing sexual assault of extreme nature against women. The suggestions can be sent by e-mail to justice.verma@nic.in or through fax at 011-23092675. The suggestions should be sent by January 05, 2013

ON A LIGHTER VEIN

In U.S. they invented a machine that catches thieves; they took it out to different countries for a test.

In U.S.A, in 30 minutes, it caught 20 thieves;

In UK, in 30 minutes it caught 50 thieves;

Spain, in 30 minutes it caught 65 thieves;

Ghana, in 30 minutes it caught 600 thieves;

And the last but not least

India, in 15 minutes the machine was stolen.

EXPERT'S SPEAK

(This column is for getting the queries clarified through the rich expertise of our seniors)

Query: Whether an investigation done by Head Constable be treated as defective investigation as he was not authorised to do so?

Expert: No, an investigation done by Head Constable which he was not authorised to do so, is merely an irregularity which would not vitiate entire trial. {2001 Cr.L.J. NOC 75(A.P.)}

SHARPEN YOUR TOOLS

Last edition's answer:

Can an I.O. seize property in a 498-A case?

"102. Power of Police Officer to seize certain property-

*(1) Any police officer may seize **any property** which may be alleged or suspected to have been stolen or which may be found under circumstances which create suspicion of the commission of **any offence**.*

This power of the police officer to seize **any property** in **any offence** has passed the legal test. The relevant test was by our own Hon'ble High Court in a precedent reported as 1996 (3) ALT 215 (DB) {Mohd. Maqbool Ahmed @ Mateen vs The Deputy Commissioner }

The relevant para is herewith extracted:

*8. In two eventualities, a police officer, acting Under Section 102(1) Cr.P.C, may seize any property (i) alleged or suspected to have been stolen; or (ii) found under circumstances creating suspicion of commission of an offence. The finding of property need not always precede the suspicion of commission of an offence in relation to that property. Once it is suspected by a police officer that a crime has been committed and in the course of the investigation, he-comes across any property, which is involved or suspected to have been involved **or has any link with the crime under investigation**, in our view, he has power to effect seizure of that property under Sub-section (1) of Section 102 Cr.P.C. **Any other interpretation would be totally unrealistic and frustrate the attempts of the investigating agency to effectively detect the crimes.***

This aspect was further strengthened by our Supreme court in a case reported as (1999) 7 Supreme Court Cases 685 & AIR 1999 SCW 3389 {**State of Maharashtra v. Tapas D. Neogy** }

*A plain reading of sub-section (1) of Section 102 indicates that the Police Officer has the power to seize any property which may be found under circumstances creating suspicion of the commission of any offence. The legislature having used the expression "**any property**" and "**any offence**" have made the applicability of **the provisions wide enough to cover offences created under any Act**. But the two pre- conditions for applicability of Section 102(1) are that it must be 'property' and secondly, in respect of the said property there must have suspicion of commission of any offence.*

This Month's question:

Can a Police officer who lodged a complaint can be the I.O. in that case.

Send your replies by 15th of Next month. The best reply would be acknowledged herein.



Prosecution Replenish inaugural edition being unveiled on 01/12/2012 at the auspicious hands of
Sri Ch.Vidyasagar Rao,
Honøble Addl. Director of Prosecution and Director of Prosecution (FAC);
Sri Manik Rao,
Joint Director of Prosecutions graced the occasion.

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The Prosecution Replenish,
4-235, Gita Nagar,
Malkajgiri, Hyderabad-500047
Ph: 9849365955; 9440723777
9848844936, 9908206768, 9490617419
e-mail:-
prosecutionreplenish@gmail.com

To,

Suggestions; articles and responses welcome to make this as the most informative leaflet.

PROSECUTION REPLENISH

(An Endeavour for learning and excellence)

Vol- II Part I

February, 2013

**"Yatra naryastu pujoyante ramante tatra Devata,
yatraitaastu na pujoyante sarvaastatrafalaaah kriyaah"**

Meaning: "Women Are Honored Where, Divinity Blossoms There; And where they are dishonored , all action remains unfruitful."

Prophet Muhammad said **"Women are the twin halves of men."**

"God commands us to treat women well, for they are our mothers, daughters and aunts."

Bible says : **God created man in his own image, in the image of God he created him; male and female he created them. God blessed them**

The gist of all the above is same, respect the woman. We are proven to be the oldest civilization of the world. The Sun rises in the east, but we are so attracted to the West, that we believe the mirror image of the Sun, shown by them and believe that the Sun rises in the West. Woman retains her very original form which is ensembled with Power, Love, Modesty, Devotion & Forgiveness altogether but sadly, now a days in the race of advancement & materialism, in following the west blindly, this form of Woman is perhaps lost some where (almost), and so are the Males who disrespect /torture woman & are treating them merely as an object of pleasure or time pass for them, which is really very shocking & a matter of great concern for the society !

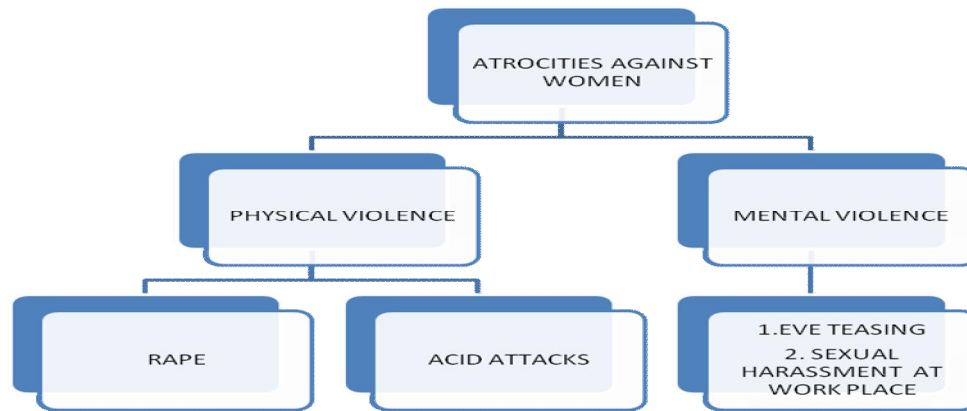
Justice Saghir Ahmad, observed "Unfortunately a woman in our country belongs to a class or group of society who are in an disadvantaged position on account of several social barriers and impediments and have therefore, been victims of tyranny at the hands of men with whom they, **unfortunately, under the Constitution enjoy equal status.**"

This edition is a tribute to all those unfortunate preys of the devastating carnal pleasures of some Creatures, who do not qualify to be called Human Beings.

We Remain,
Yours faithfully,
Editorial Team

This edition is a tribute to the all the unfortunate victims of this devastating crime. The column Landmark judgment is hence replaced with some of the judgment useful in pinning he accused of such offences.

**This Edition is sponsored by: Sri Srinivas Chapala,
APP, JMFC court, Mangalagiri.**



SEXUAL ASSAULT (PREVIOUSLY RAPE)

It is violation with violence of the private person of a woman – an outrage – by all means. By the very nature of the offence it is an obnoxious act of the highest order. The physical scar may heal up, but the mental scar will always remain. **Mohan Anna Chavan Vs. State of Maharashtra 2008 (3) SCC (Cri) 193**

Consent :

Consent of a woman under 16yrs of age for sexual intercourse is irrelevant as far as commission of rape is concerned **Charan Das Vs. State of Himachal Pradesh 2009 (1) ALT (Cri) 19**

Absence of visible injuries on prosecutrix not a case of consent **State of Rajasthan Vs. Noore Khan 2000 (5) SCC 30**

Appreciation of Evidence:

Testimony of rape victim can be acted upon even without corroboration provided her testimony inspires confidence in the mind of the court to accept the same. **Santosh Mooly Vs. State 2009 (1) ALT (Cri) 132**

A prosecutrix complaining of having been a victim of the offence of rape is not an accomplice, as such there is no need for corroboration **Mohd Imran Khan Vs. State (Govt of NCT of Delhi) 2012 (1) ALD (Cri) 586 (SC)**

Ingredients to Prove :

- To constitute offence of rape the presence of marks of violence on the private parts of the victim unnecessary **AIR 1972 SC 2661**
- Complete penetration need not be proved **1947 CrI.L.J.1098**
- There is no rule of practice that there must be in every case corroboration **AIR 1958 SC 143**

- Delay in reporting the offence and making FIR is not fatal. **2004 (6) Supreme 596**

Adequacy of Sentence:

Social impact of the crime particularly where it relates to offences against women, cannot be lost sight of and per se require exemplary treatment. Whereas a murderer destroys the physical frame of a victim, a rapist degrades and defiles the soul of a helpless female. Once a person is convicted for the offence of rape, reducing his sentence amounts to illegality resulted in miscarriage of justice **State of M.P. Vs. Babulal 2008 (1) SCC (CrI) 188**

Security of persons and property of the people is an essential function of the state. Courts are required to mould sentencing system to meet the challengers in operating factual matrix. In a rape case, accused's lustful acts have indelible scar not physically but also emotionally on victim. No sympathy (or) leniency called for. **Siriya @ Shrilal Vs. State of M.P. AIR 2008 SC 2314.**

Latest Judgments

Citations reported in CrI.L.J.

Recovery made on disclosure by accused – not affected by fact that panch witnesses were all police personal. **Munish Mubar Vs. State of Haryana 2013 CrI.L.J. 56 (SC)**

Order of remand – subsequent stay on investigation, does not make order of remand unsustainable – and detention pursuant to order illegal. Investigation is in exclusive domain of police – Magistrate has no control on it **Manubhai Ratilal Patel Tr Ushaben Vs. State of Gujarat and ors 2013 CrI.L.J. 160(SC)**

Rape – absence of sperm -detection test report - not fatal **State of U.P. Vs. Munesh 2013 CrI.L.J. 194(SC)**

Discharge - Magistrate has on basis of material on record only to see whether there is ground to presume that accused has committed offence – even strong suspicion about existence of facts constituting offence – sufficient to refuse discharge **Shoraj Singh Ahlawat & ors Vs. State of U.P. & anr 2013 CrI.L.J. 331 (SC)**

Mere under taking of further investigation does not mean that charge – sheet already filed gets abandoned. **Vipul Shital Prasad Agarwal Vs. State of Gujarat & anr 2013 CrI.L.J. 336 (SC)**

Absence of diatoms in body of deceased, does not rule out possibility of death by drowning **Shanthibhai J. Vagehla & anr Vs State of Gujarat & ors 2013 CrI.L.J. 390 (SC)**

Citations reported in ALD (Crl.)

Non-seizure of weapon used in commission of offence - not fatal to case of prosecution when direct eye witness categorically stated about the fact. **Palvai Devaiah Vs. State of Andhra Pradesh 2013 (1) ALD (Cri.) 99 (A.P.)**

Interested/related witness – testimony, not to be discarded merely on account of relationship - There is no bar in law on examining family members or any other person as witnesses

Injured witness stands on higher pedestal than other witnesses – no reason to either disbelieve his version or his presence at place of occurrence.

Limitation Act has no application to criminal proceedings **Shyam Babu Vs State of U.P. 2013 (1) ALD (Cri.) 23 (S.C.)**

Revision – order framing charge – quashing of, by High Court holding that there is no prima facie case against respondent by re-appreciating entire evidence – not proper. It is for the trial court to decide whether evidence on record is sufficient to make out a prima facie case against accused so as frame charges against him – even trial court cannot conduct roving and fishing inquiry into evidence at that stage.

High Court cannot go beyond scope of prayer made by party/respondent and quash even charges framed against all other accused **Ashish Chadha Vs. Asha Kumari and anr 2013 (1) ALD (Cri.) 42 (S.C.)**

Police Officer has got power and authority to take fingerprints of a suspect – Permission of Magistrate not necessary for obtaining finger prints of accused. **Narne Gopikrishna & anr Vs. State of A.P. 2013 (1) ALD (Cri.) 121 (A.P.)**

Sexual harassment of women at workplace - Vishaka directions in their true substance and spirit, directed to be implemented so that women could work with dignity, decency and due respect in a safe and secure workplace.

The Disciplinary authority shall treat the report/findings etc., of the Complaints Committee as the findings in a disciplinary inquiry against the delinquent employee and shall act on such report accordingly.

Each of Complaints Committee shall be headed by a woman and as far as possible in such committees an independent member shall be associated.

The Bar Council of India shall ensure that all Bar Associations in the country and persons registered with the State Bar Councils follow Vishaka guidelines.

Citations reported in ALT (Criminal)

Writ of Habeas Corpus not to be entertained when person is committed to judicial custody or police custody. **Manubhai Ratilal Patel Tr. Ushaben Vs State of Gujarat & ors 2013 (1) ALT (Crl.) 11 (SC)**

Father of the deceased cannot be expected to inform everyone living around him about the unpleasant factum of the daughter's embarrassing living condition in the matrimonial home and therefore mere non disclosure of those facts to others cannot be a ground to disbelieve his version. **Rakhal Debnath Vs State of West Bengal 2013 (1) ALT (Crl.) 20 (SC)**

S.311 of Cr.P.C empowers a criminal court to summon any person as a witness though not summoned as a witness or re-call and re-examine any person already examined at any stage of any enquiry, trial or other proceeding and the court shall summon and examine or re-call or re-examine any such person if his evidence appears to be essential to the just decision of the case

Speedy trial secures right to an accused, but it does not preclude the rights of public justice **Mohd Hussain @ julfikar Ali Vs State (Govt of NCT Delhi) 2013 (1) ALT (Crl.) 26 (SC)**

Single utterance by accused towards the deceased would constitute abetment U/s 107 IPC in order to mulct criminal liability U/s.306 IPC **Dr. K.Ramesh Vs. State of A.P. rep. by its public prosecutor 2013 (1) ALT (Crl.) 24 (AP)**

Recording of evidence before the revision court is proper. Whether it was recording fresh evidence (or) recording all necessary evidence that does not make any difference. The right of recording of evidence includes the right of recording additional evidence also. **B.Priya Kumar Vs. B.Sabitha & anr 2013 (1) ALT (Crl.) 65 (AP)**

Receipt of illegal gratification is sufficient even in the absence of common intention. **Chodagudi Sambasiva Rao & anr Vs State rep. by Inspector of Police, ACB Vijayawada 2013 (1) ALT (Crl.) 67 (AP)**

Dowry Prohibition Act,1961

- ✓ All offences are triable by JMFC.
- ✓ Offences are cognizable.
- ✓ All offences are Non-bailable, non-compoundable.
- ✓ Burden of proof on the accused for offences U/Sec 3 and 4.

Sec	Offence	Punishment
3. Penalty for giving or taking dowry	gives or takes or abets the giving or taking of dowry	not be less than five years, and with the fine which shall not be less than fifteen thousand rupees or the amount of the value of such dowry, whichever is more:.
4. Penalty for demanding dowry.	demands, directly or indirectly, from the parents or guardian of a bride or bridegroom, as the case may be, any dowry	not be less than six months but which may extend to two years and with fine which may extend to ten

		thousand rupees
4-A. Ban on advertisement	a. advertisement offering b. publishing advertisement.	not be less than six months, but which may extend to five years, or with fine which may extend to fifteen thousand rupees:
6. Dowry to be for the benefit of the wife or her heirs.	<p>(1) Where any dowry is received by any person other than the woman in connection with whose marriage it is given, that person shall transfer it to the woman—</p> <p>(a) if the dowry was received before marriage, within three months after the date of marriage; or</p> <p>(b) if the dowry was received at the time of or after the marriage, within three months after the date of its receipt; or</p> <p>(c) if the dowry was received when the woman was a minor, within three months after she has attained the age of eighteen years,</p> <p>and pending such transfer, shall hold it in trust for the benefit of the woman.</p> <p>(2) If any person fails to transfer any property as required by sub-section (1) within the time limit specified therefor, or as required by sub-section (3),</p>	not be less than six months, but which may extend to two years or with fine which shall not be less than five thousand rupees, but which may extend to ten thousand rupees or with both.
	<p>(3) Where the woman entitled to any property under sub-section (1) dies before receiving it, the heirs of the woman shall be entitled to claim it from the person holding it for the time being:</p> <p>Provided that where such woman dies within seven years of her marriage, otherwise than due to natural causes, such property shall,—</p> <p>(a) if she has no children, be transferred to her parents; or</p> <p>(b) if she has children, be transferred to such children and pending such transfer, be held in trust for such children.</p> <p>(3A) Where a person convicted under sub-section (2) for failure to transfer any property as required by sub-section (1) or sub-section (3) has not, before his conviction under that sub-section, transferred such property to the woman entitled thereto or, as the case may be, her heirs, parents or children the Court shall,</p> <p>(4) Nothing contained in this section shall affect the provisions of section 3 or section 4.</p>	in addition to awarding punishment under that sub-section, direct, by order in writing, that such person shall transfer the property to such woman or, as the case may be, her heirs, parents or children within such period as may be specified in the order, and if such person fails to comply with the direction within the period so specified, an amount equal to the value of the property may be recovered from him as if it were a fine imposed by such Court and paid to such woman or, as the case

	may be, 6 her heirs, parents or children.
The magistrate may for reasons to be recorded may impose lesser punishment than the minimum prescribed for the said offence.	

NEWS

Justice D. K. Jain, Judge, Supreme Court of India, will be the Chairman of the Twentieth Law Commission of India. According to the Notification issued here today, the appointment of Justice Jain will be effective from any day after 24th January 2013 on his retirement from the Supreme Court. The Twentieth Law Commission was constituted through a Government Order with effect from 1st September, 2012. It has a three-year term ending on 31st August, 2015.

G.O.Rt.No.39 LAW (LA&J-HOME-COURTS.A2) DEPARTMENT Dt:11-01-13.

The following amendment is issued to G.O.Rt.No.2417, Law (LA&J- Home-Courts.A2) Department, dated: 29.12.2012 :

“Sri C.Srinivasa Murthy, Senior Assistant Public Prosecutor working on OD as Faculty Member, PTC, Anantapur is posted as Additional Public Prosecutor Grade.II to the Principal Assistant Sessions Court, Nellore”

G.O.Ms.No.6(HEALTH, MEDICAL AND FAMILY WELFARE(L)DEPT) Dt:09-01-2013 The Government has in pursuance of regulation 2.3.4 of the Food Safety and Standards (Prohibition and Restriction on sales) Regulations, 2011, **prohibited the manufacture, the storage, the sale, the transportation or the distribution of Gutkha by whatever name and Paan masala containing tobacco and/or nicotine** as ingredients by whatsoever name it is available in the market, with immediate effect in the State of Andhra Pradesh in the interest of Public Health until further orders.

The following members were elected as the new office bearers of the Telangana Public Prosecutors (Cadre) Association recently

Post	Sarvasri	Ph.No.
President	J.V.Narsing Rao	9440723777.
Vice President-I	A.Shanker	9848580698.
Vice President-II	B.Anjaiah	9440108061
General Secretary	P.Krishna Murthy	9247289390.
Treasurer	K.Naresh Kumar	9849137567
Joint Secretary-I	Murali	9848073242
Joint Secretary-II	M.Sudhakar	9948846664
Ladies Representative-I	N.Manjula	9618943676
Ladies Representative-II	T. Jyothi Reddy	9440153589
Executive Members	Siddiramulu	9849357517
	Upender	9849250112
Chief advisor	Koteshwar Rao	9849424548
Advisors	Ramanuja Reddy	9848610516
	H. Krishna Mohan	7702234561

Prosecution replenish congratulates them and wishes them all the best in their endeavors to take our department to new peaks.

Corrigendum:

The citation M.Mazhar Pasha Vs State of A.P. & anr was reported as 2012 (2) ALD (Crl) 925 (SC), but inadvertently the same was mentioned as 2012 (2) ALD (Crl) 952 (SC). The same is regretted and patrons are requested to note the same.

SAVE PAPER SAVE TREES. Please send a email to prosecutionreplenish@gmail.com to receive the leaflet uninterruptedly and promptly.

ON A LIGHTER VEIN

Police arrested a drunkard & asked: Where r u going?
 Man: I'm going 2 listen a lecture on ill effects of drinking.
 Cop: Who'll lecture at midnight?
 Man: My wife...

EXPERT'S SPEAK

(This column is for getting the queries clarified through the rich expertise of our seniors)
 Query: Whether the witness (who is not an accused in that case) and who is present in the court be directed to give handwriting sample for comparison by the court?
 Expert: Yes, Sec 73 of Indian Evidence Act, gives the power to the court to do so.

SHARPEN YOUR TOOLS**Last edition's answer:**

Can a Police officer who lodged a complaint can be the I.O. in that case?
 No, Complainant himself cannot be the investigating officer. See Assaddudin Owaisi & Anr Vs State of A.P. (2001 (1) ALD Crl. 777)

This Month's question:

Can a magistrate issue a warrant U/Sec. 73 Cr.P.C. for production of accused before the Investigating officer to aid in investigation?
 Send your replies by 15th of Next month. The best reply would be acknowledged herein.

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Suggestions; articles and responses welcome to make this as the most informative leaflet.

PROSECUTION REPLENISH

(An Endeavour for learning and excellence)

Vol- II Part 3

MARCH, 2013

**"You are a master of the words you don't say
and a slave to the ones you do"**

The recent spurt of cases against some of the political leaders; one due to the hate speeches and the other due to their regional patriotism have raised several legal issues which were never raised earlier on such a large scale.

The Sec 178 Cr.P.C. and the Sec 179 Cr.P.C. have been liberally used for preferring the said complaints, sending the leaders to the stage of self restrain.

This month we concentrate on this aspect and give hereunder some facts regarding the same. Hope the same would be useful for the prosecutors.

Another important aspect, which was brought by such huge public outcry is the Criminal Law Amendment Bill, 2013, We enclose the recent Criminal Law Amendment ordinance, 2013, which is given effect by publication in the gazette on 3/2/2013.

The significant feature of the said ordinance is that the responsibility of conduct of trials U/Sec 354 IPC and its offshoots, has been conferred on Magistrate Courts. Hence, APP's should brace up to the same.

Regards

Editorial Team

Prosecution Replenish

Sec 153-A IPC cases

In February 2009, the police filed a complaint against Ravindra Kumar and Anand Sinha, the editor and the publisher respectively of the Kolkata-based English daily *The Statesman*. The police charged Kumar and Sinha under section 295A because they had reprinted an article from *The Independent* by its columnist Johann Hari. Titled "Why should I respect oppressive religions?", the article stated Hari's belief that the right to criticise any religion was being eroded around the world. Muslim protestors in Kolkata reacted to Hari's belief by violent demonstrations at the offices of *The Statesman*.

In September or October 2007, the police in Pune arrested four Bangalore-based software-engineers for posting on the Internet an obscene profile of Chhatrapati Shivaji, a sixteenth-century Maratha warrior king, clad in female underwear.

In May 2007, a Buddhist group in Maharashtra's Amaravati district said their religious sentiments were hurt, and filed a complaint against Rakhi Sawant, an actress, because she posed in a bathtub against a statue of Lord Buddha.

In March 2007, a newspaper editor BV Seetharam was arrested under the Sections 153A, 153B, and 295 of the IPC for allegedly promoting religious hatred. He had written articles criticizing the public nudity of the Digambara Jain monks.

In 2007, the authorities charged ninety-one-year-old Maqbool Fida Husain with hurting religious sentiments by painting Mother India as a naked woman.

In December 2006, a complaint was filed against cricketer Ravi Shastri for hurting the religious feelings of Hindus by his allegedly eating beef during a Test match in Johannesburg.

On 2 August 2006, two religious groups in Ahmedabad complained to the police that their religious sentiments were hurt because a garment-maker had printed text from the Hindu and Jain religions on clothing. The police filed the complaint as a matter under section 295.

In 1933, the police arrested Dr. D'Avoine under section 295A for publishing his article "Religion and Morality" in the September 1933 issue of the magazine *Reason*. The trial judge found that the article's purpose was consistent with the purpose of the magazine, namely, "to combat all religious and social beliefs and customs that cannot stand the test of reason and to endeavor to create a scientific and tolerant mentality among the masses of the country". The trial judge Sir H. P. Dastur found that the article had no malicious intent and did not constitute a violation of section 295A.

In 1932, some clerics denounced a young woman physician named Rashid Jahan, and threatened her with disfigurement and death. She and three others had published a collection of Urdu short stories called *Angarey* in which they had robustly criticized obscurantist customs in their own community and the sexual hypocrisies of some feudal landowners and men of religion. Under section 295A, the authorities banned the book and confiscated all copies.

In November 2012, Maharashtra Police arrested Shaheen Dhada (21) for questioning the total shutdown in the city for Bal Thackeray's funeral in a Facebook post, and also her friend Renu Srinivasan (20) for liking her post. Although no religious issue was involved, the two were charged under Section 295 (A) for hurting religious sentiments, apart from Section 66 (a) of the Information Technology Act 2000

Section 153A of IPC

Object: The object of S.153A of IPC is to prevent breaches of public tranquility which might result from extended feelings of enmity between classes of people. **The Trustees of Safdar Hashmi Memorial Trust Vs. Govt of NCT Delhi 2001 CrI.L.J.3698**

Proof: It was enough to show that the language of the writing was of a nature calculated to promote feelings of enmity and hatred for a person must be presumed to intend the natural consequence of his act. **AIR 1971 Bom.56**

Appreciation of Evidence: To ascertain whether an offence as defined U/s 153 A of IPC has been committed or not, it is for the court to examine the words either spoken or written or by signs or by visible representations and come to a conclusion whether they have a tendency to promote or attempt to promote on grounds of religion, race, place of birth et., disharmony or feelings of enmity, hatred or ill-will between different religions, racial, language or regional groups or castes or communities. **Mohd Khalid Hussain Vs.State 2000 CrI.L.J. 2994 (AP)**

**This Edition is sponsored by: Sri Ch. Suresh,
APP & FM, APPA, Hyderabad.**

SEDITION(S.124-A of IPC)

Sedition embraces all those practices, whether by word, deed or writing which are calculated to disturb the tranquility of the State and lead ignorant persons to endeavour to subvert the Government and law of the Country. **1955 Crl.L.J. 184**

Ingredients:

That the accused spoke the words in question

That he thereby brought (or) attempted to bring into hatred (or) contempt (or) excite (or) attempted to excite disaffection and

That such disaffection was towards the Government established by law in India. **1976 (7) Andh.W.R. 190 (FB)**

Proof:

The essence of the crime of sedition consist in the intention with which the language is used **AIR 1931 Lah.182**

It is not only the writer of the alleged seditious article, but whoever uses in anyway, any words or printed matter or the purpose of exciting feeling of disaffection to the government is liable under this section. **Queen Empress Vs. Bal gangadhar Tilak 22 Bom.112 (129)**

An offence under this section has been committed where the entire speech shows the spirit of revolt against the government and bring government into hatred and contempt **AIR 1936 Cal 524.**

Appreciation of Evidence

In cases under this section the court need not see the effect on the mind of the people and they are concerned with the construction of the speech and the speech has to be taken as a whole **AIR 1933 Cal. 140**

The case of bringing into hatred (or) contempt and that of exciting or attempt to excite disaffection u/s.124A.IPC have to be considered together the one resulting from the other. **Kedar Nath Singh Vs. State of Bihar AIR 1962 SC 955**

A complaint for the offence U/s 124A of IPC cannot be said to be without authority in which the State Government directed to the Superintendent of Police to institute the complaint. **AIR 1968 All. 265**

Delay: Delayed filing of FIR was immaterial in view of serious nature of offence. **2003 Crl.L.J.4388**

Latest Judgments

Citations reported in ALT(Criminal)

Minor contradiction is not fatal to the case of the prosecution.

Making extra judicial confession inspires the confidence of the court and the same can be relied upon. **Pallapu Raju @ Pedda Raju Vs. State of A.P. rep by its Public Prosecutor. 2013 (1) ALT (Crl.) 91 (DB) (A.P)**

Statement of a witness under section 164 of Cr.P.C. is not a substantive piece of evidence. What the witness states before the court in the course of trial is the evidence. Merely because there are some minor omissions in the statement of PW1 recorded under section 164 of Cr.P.C. his evidence before the court cannot be disbelieved. **Ch.Viswesham Vs. State of A.P. 2013 (1) ALT (Crl.) 139 (A.P)**

Citations reported in ALD (Cri)

2013 (1) ALD (Cri) 297 (SC) K.Venkateshwarlu Vs State of A.P.

Criminal Proceedings and departmental proceedings are maintainable independently and neither has any impact on the other.

2013 (1) ALD (Cri) 209 (AP) Korra Govardhan Vs State of A.P.

Mere delay in lodging FIR, even for longer period alone will not be enough to disbelieve prosecution case, until the same is explained.

2013 (1) ALD (Cri) 283 (SC) Subash Krishnan Vs State of Goa.

Commencement of investigation on telephonic information- later reduced to writing and lodged FIR- the author of the complaint did not offer himself for cross-examination –whole genesis of case cannot be thrown out of board-- not fatal.

2013 (1) ALD (Cri) 206 (AP) B.Priya Kumar vs B.Sabitha & anr.

Revision court can also record evidence and can also take additional evidence.

2013 (1) ALD (Cri) 196 (AP) Malichetla Suribabu vs State of A.P.

When commission of offence by accused is proved, failure to prove motive is insignificant.

2013 (1) ALD (Cri) 179 (AP) State Vs M.Govardhan Reddy & anr.

Sec 409, 477-A IPC- mere proof of fact of entrustment and shortage of cash is not sufficient to pin the offence on the accused, when there was possibility of other employees to handle the cash. By act of reimbursing cash, it is not possible to draw adverse inference against accused.

THE DRUGS AND COSMETICS ACT, 1940

Sec 15. Jurisdiction. No Court inferior to that [of a Metropolitan Magistrate or of a Judicial Magistrate of the first class] shall try an offence punishable under section 13.

Sec 32 (2) Save as otherwise provided in this Act, no court inferior to that of a Court of Session shall try an offence punishable under this Chapter.] Act 26 of 2008 Offence relating to Ayurveda, Sidda or Unani shall be tried by JMFC.

Sec 36A. Certain offences to be tried summarily. All offences (except the offences triable by the Special Court under section 36AB or Court of Session) under this Act, punishable with imprisonment for a term not exceeding three years, other than an offence under clause (b) of sub-section (1) of section 33-I, shall be tried in a summary way by a Judicial Magistrate of the first class.

HENCE FROM THE ABOVE, OFFENCE WITH PUNISHMENT UPTO 3 YEARS ARE TO BE TRIED BY JMFC OR MM AND ALL OTHER CASES BY SESSIONS COURT/SPECIAL COURT.

31. Confiscation. On conviction or on application of the inspector, impugned Drugs & cosmetics will be confiscated. In addition implements or machinery used in such manufacture, sale or distribution and any receptacles, packages or coverings in which such drug is contained and the animals, vehicles, vessels or other conveyances used in carrying such drug shall also be liable to confiscation can also be confiscated on conviction.

36AC. Offences to be cognizable and non-bailable in certain cases.

32B. Compounding of certain offences. — (1) any offence punishable under clause (b) of sub-section (1) of section 13, section 28 and section 28A of this Act not being an offence punishable with imprisonment only, or with imprisonment and also with fine, may, either before or after the institution of any prosecution, be compounded by the Central Government or by any State Government or any officer authorised in this behalf by the Central Government or a State Government, on payment for credit to that Government of such sum as that Government may, by rules made in this behalf, specify:

Provided that such sum shall not, in any case, exceed the maximum amount of the fine which may be imposed under this Act for the offence so compounded:

Provided further that in cases of subsequent offences, the same shall not be compoundable.

(2) When the accused has been committed for trial or when he has been convicted and an appeal is pending, no composition for the offence shall be allowed without the leave of the court to which he is committed or, as the case may be, before which the appeal is to be heard.

(3) Where an offence is compounded under sub-section (1), no proceeding or further proceeding, as the case may be, shall be taken against the offender in respect of the offence so compounded and the offender, if in custody, shall be released forthwith.

13. Offences (1)	Imports a. adulterated drug U/Sec 9A; Spurious drug U/Sec 9B; spurious cosmetic U/Sec 9D; cosmetic u/Sec 10 (ee)	imprisonment for a term which may extend to three years and a fine which may extend to five thousand rupees
	b. other than drug or cosmetic in sec 10(a)	imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both;
	c. any drug or cosmetic in contravention of the provisions of any notification issued under section 10A	imprisonment for a term which may extend to three years, or with fine which may extend to five thousand rupees, or with both.
(2)	Whoever having been convicted of an offence, is again convicted a. U/clause (a) or Clause (c) of 13(1)	imprisonment for a term which may extend to five years, or with fine which may extend to ten thousand rupees, or with both;
	b. U/clause (b) of 13(1)	imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.
(3)	The punishment provided by this section shall be in addition to any penalty to which the offender may be liable under the provisions of section 11.	
27. Penalty for manufacture, sale, etc., of drugs in contravention of this Chapter	a. Sec 17A/Sec 17B when used by any person for or in the diagnosis, treatment, mitigation, or prevention of any disease or disorder is likely to cause his death or is likely to cause such harm on his body as would amount to grievous hurt	with imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life and shall also be liable to fine which shall not be less than ten lakh rupees or three times value of the drugs confiscated, whichever is more
The fine collected would be paid to the victim or his/her heirs.		
	(b) any drug ^o (i) deemed to be adulterated under section 17A, but not being a drug referred to in clause (a), or (ii) without a valid licence as required under clause (c) of section 18	imprisonment for a term which shall not be less than three years but which may extend to five years and with fine which shall not be less than one lakh rupees or three times the value of the drugs confiscated, whichever is more
	(c) any drug deemed to be spurious	imprisonment for a term which shall not be less

	under section 17B, but not being a drug referred to in clause (a)	than seven years but which may extend to imprisonment for life and with fine which shall not be less than three lakh rupees or three times the value of the drugs confiscated, whichever is more
	(d) any drug, other than a drug referred to in clause (a) or clause (b) or clause (c), in contravention of any other provision of this Chapter or any rule made thereunder	imprisonment for a term which shall not be less than one year but which may extend to two years and with fine which shall not be less than twenty thousand rupees.
27A. Penalty for manufacture, sale, etc., of cosmetics in contravention of this Chapter	manufactures for sale or for distribution, or sells, or stocks or exhibits or offers for sale (i) any cosmetic deemed to be spurious under section 17D or adulterated under section 17E	with imprisonment for a term which may extend to three years and with fine which shall not be less than fifty thousand rupees or three times to value of the cosmetics confiscated, whichever is more
	(ii) any cosmetic other than a cosmetic referred to in clause (i) in contravention of any provisions of this Chapter or any rule made thereunder	imprisonment for a term which may extend to three years and with fine which shall not be less than fifty thousand rupees or three times to value of the cosmetics confiscated, whichever is more
28. Penalty for non-disclosure of the name of the manufacturer, etc.	Whoever contravenes the provisions of section 18A or section 24	imprisonment for a term which may extend to one year, or with fine which shall not be less than twenty thousand rupees or with both.
28A. Penalty for not keeping documents, etc., and for non-disclosure of information.	Whoever without reasonable cause or excuse, contravenes the provisions of section 18B	imprisonment for a term which may extend to one year or with fine which shall not be less than twenty thousand rupees or with both
28B.	Penalty for manufacture, etc., of drugs or cosmetics in contravention of section 26A	with imprisonment for a term which may extend to three years and shall also be liable to fine which may extend to five thousand rupees
29.	Penalty for use of Government Analyst's report for advertising.	punishable with fine which may extend to five thousand rupees
30. Penalty for subsequent offences : Enhanced punishment for subsequent offences		

NEWS

- The following prosecutors have been selected as Junior civil judges.
 - Chapala Srinivas Rao
 - B.Sowjanya
 - Sheik Rehana
 - Arpita

- The unlawful activities (prevention act), 2012 has come into force from 1/2/2013 by publication in the Gazette of India vide S.O. 294(E) in vol. no.272.

- The Criminal Law amendment ordinance 2013 (3 of 2013) has been promulgated by the H.E. The President of India giving effect to the provisions from 3/2/2013 and published in Gazetted of India Part-II Extraordinary No.8 dated 03/02/2013. { the copy of the same is enclosed as a pull out in this edition }

Corrigendum:

An unintentional mistake in February edition regarding the initial and the phone no. of the Ladies representative of Telangana Public Prosecutors (Cadre) association has crept in and patrons are requested to read the same as:

Smt P.Manjula Devi Ph: 9246923333.

The inconvenience is regretted.

SAVE PAPER SAVE TREES. Please send a email to prosecutionreplenish@gmail.com to receive the leaflet uninterruptedly and promptly.

- ❖ Sri Khazana Rao, Addl.P.P. Kurnool, has contributed the citation of Suresh Nanda Case 2008 CrI.L.J. 1599; the answer to the query in Nov'2012 Edition. We appreciate the concern and thank him for the role.

ON A LIGHTER VEIN

- Smile :- A curve that can set a lot of things straight.
- Rumor :- News that travels at the speed of sound.
- Dictionary :- The only place where divorce comes before marriage.
- College :- A place where some pursue learning and others learn pursuing.
- Ecstasy :- A feeling when you feel you are going to feel a feeling you have never felt before.
- Office :- A place where you can relax after your strenuous homelife.
- Yawn :- The only time some married men ever get to open their mouth.
- Etc. :- A sign to make others believe that you know more than you actually do.
- Committee :- Individuals who can do nothing individually and sit to decide that nothing can be done together.
- Classic :- A book which people praise, but do not read.
- Marriage :- It's an agreement in which a man loses his bachelor degree and woman gains her master's.
- Worry :- Interest paid on trouble before it falls due.
- Experience :- The name men give to their mistakes.
- Tears :- The hydraulic force by which masculine power is defeated by feminine power.
- Atom Bomb :- An invention to end all inventions.
- Philosopher :- A fool who torments himself during life, to be spoken of when dead.
- Diplomat :- A person who tells you to go to hell in such a way that you actually look forward to the trip.
- Optimist :- A person who starts taking bath if he accidentally falls into a river.
- Pessimist :- A person who says that O is the last letter in ZERO, instead of the first letter in word OPPORTUNITY.

- Miser :- A person who lives poor so that he can die rich.
 Father :- A banker provided by nature.
 Criminal :- A guy no different from the rest...except that he got caught.
 Boss :- Someone who is early when you are late and late when you are early.
 Politician :- One who shakes your hand before elections and your confidence after.
 Doctor :- A person who kills your ills by pills, and kills you with his bills.

Experts Speak:

Q: What is the fate of the case in which the complaint is not marked?

A: The court has to consider the complaint, as it is part of the record. 2005 Cr.L.J. 12.

Last Month's question:

Can a magistrate issue a warrant U/Sec. 73 Cr.P.C. for production of accused before the Investigating officer to aid in investigation?

Ans: No, it can be issued for production before the court but not before the I.O.

This Month's question:

Q: Is sanction u/Sec 197 Cr.P.C. necessary to prosecute a public servant U/Sec 409 IPC?

Send your replies by 15th of Next month. The best reply would be acknowledged herein.

The pull out of the Criminal Law Amendment act, 2013 is sponsored by

- 1. Smt BSV Hima Bindu, APP, XIII MM court, Cyberabad.**
- 2. Miss B.Varalakshmi, APP, XIV MM court, Cyberabad.**

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Suggestions; articles and responses welcome to make this as the most informative leaflet.

PROSECUTION REPLENISH

(An Endeavour for learning and excellence)

Vol- II Part 4

MONTHLY LEAFLET

APRIL, 2013

**"YOU DON'T HAVE TO BE GREAT TO START,
BUT YOU HAVE TO START TO BE GREAT...!"**

The month of March, marked the confirmation of faith in the almighty with two festivals. While the Holy marked the undoubted faith of prince Prahlad in the Almighty; the Easter marked the faith that the Almighty would rise to cleanse the devout. Belated wishes for HOLI & EASTER from Replenish team.

To make mends, we wish all a very happy Telugu New year aptly named as Vijaya nama Samvatsaram. We hope the coming Telugu new year would bring Victory (Vijayam) in all the pursuits of prosecutors and well-wishers.

Another occasion is to rejoice is the foundation for victory of good over evil, by birth of the commended perfect man Sri Rama. We wish you all a very Happy Sri Rama Navami.

Regards

Editorial Team

LANDMARK JUDGMENT

Ramakrishnaya Vs State (1954 Cr.L.J. 610)

Cr. App. Nos. 480 & 481 of 1951 dt. 25-11-1952

(Counter Cases)

Counter complaints received during investigation are not hit by S.162 Cr.P.C. A counter complaint made by accused persons when sought to be used for or against them when figuring as complaints in their cases attract only the provisions of the law of evidence as to corroboration or contradiction and are no more than former statements of witnesses; yet when used against them as accused they attract the provisions as to admissions and confessions.

It is improper for police to prosecute at the same time two counter cases in regard to the same occurrence, one of which must be false. The police cannot charge both cross cases and must either find out the truth and charge that version which is true or if they are unable to do so to throw out both the cases or charge one version leaving it open to the aggrieved party to resort to his own remedies. If he finds that the choice of either course is difficult he should seek the opinion of the public prosecutor of the district and act accordingly.

A Magistrate before whom such a case is charged by the police and a private complaint from the party whose case was referred should hear both the cases together and commit both the cases to the sessions even if only one of them is exclusively triable by court of session.

Where there is a fight between two rival factions which gives rise to the complaint and counter complaint, it is a generally recognized rule that the cases should be tried by the same judge in quick succession though with different assessors or jurors; the first case should be tried to a conclusion and the verdict of the jury or the opinion of the assessors taken. The judge should however postpone the judgment in that case till he has heard the second case to a conclusion and he should then pronounce judgment separately in each case. He is bound to confine his judgment in each case to the evidence let in and is not at liberty to use the

evidence in one case for the purpose of the other and to allow his findings in one case to be influenced in any manner to the prejudice of the accused by the view which he may have formed in the other case.

To appoint separate Public Prosecutors for the conduct of case and counter case.

CITATIONS

REPORTED IN ALT (Crl.)

An order issuing process cannot be vitiated merely because of absence of reasons. Neither statements recorded under S.161 of Cr.P.C. or U/s.164 Cr.P.C. and also the documents and other material collected during the investigation can be taken as reliable evidence which can be taken into consideration for final adjudication of the guilt or innocence of the accused. It is only when the witnesses appear before the court and make their statements on oath and their statement have been tested by way of cross examination; and only after the documents and other materials relied upon are proved according to law, the same would constitute evidence which can be relied upon to determine the controversy. **Nupur Talwar Vs. CBI 2013(1) ALT (Crl) 257 (SC)**

Criminal Conspiracy ó Offence ordinarily complete, when combination is framed and object of combination need not be accomplished.

Prosecution need not necessarily prove that perpetrators expressly agreed to do or caused to be done illegal act **Pratapbhai Hamirbhai Solanki Vs State of Gujarat & anr 2013(1) ALT (Crl) 292 (SC)**

FIR is not an encyclopedia and is just an intimation of the occurrence of an incident. It need not contain all facts related to the incident.

In absence of examination report regarding slide containing sperms, case of prosecution cannot be doubted about rape, particularly in the light of categorical findings of doctor. **State of U.P. Vs. Munesh 2013(1) ALT (Crl) 339 (SC)**

Cr.P.C. does not oblige the investigating agency to necessarily hold the Test Identification parade. Failure to hold T.I.Parade while in police custody, does not by itself render the evidence of identification in court inadmissible or unacceptable. **Ravi Kapur Vs. State of Rajasthan 2013(1) ALT (Crl) 346 (SC)**

Dying declaration can be the sole basis for conviction, but it should not be the result of prompting or tutoring. **Eesa Koteswara Rao @ Kotaiah Vs. State of A.P. 2013(1) ALT (Crl) 188 (AP)**

Mere failure to prove motive cannot demolish the case of the prosecution. **Malichetla Suribabu Vs. State of A.P. rep. Public Prosecutor 2013(1) ALT (Crl) 222 (AP)**

REPORTED IN CrL.L.J

Statement of victim recorded U/s 161 Cr.P.C. by police when he was brought in injured condition, can be used as a Dying Declaration **Bhagwan Vs State of U.P 2013 CrL.L.J.512**

Once examination of witnesses has started, no adjournment to be granted except after recording special reasons **Akil @ Javed Vs. State of NCT of Delhi 2013 CrL.L.J.571**

REPORTED IN CrI.L.J. (MARCH EDITION)

Criminal conspiracy ó direct evidence is seldom available ó it can be proved by circumstantial evidence.

Investigation ó irregularities not affecting the substratum of prosecution case are inconsequential **N.V.Subba Rao. Vs. State through Inspector, CBI, Visakhapatnam, AP 2013 CrI.L.J.953**

Handwriting of the accused can be proved with the help of a person, with whom accused had admittedly worked .

Defects in investigation by itself is not a ground for acquittal. Courts in such cases has to evaluate reliability of prosecution evidence de hors lapses. **Hema Vs State 2013 CrI.L.J. 1011**

Fake encounters/custodial deaths ó Fact that state is infested by insurgency and that lives of many policemen and members of security forces are lost in fight against insurgency cannot be valid defence for fake encounters. **Extra Judicial Execution Victim Families Association (EVFAM) & anr. Vs. Union of India 2013 CrI.L.J.1084**

Issue estoppel is different from principle of double jeopardy ó it does not bar prosecution of accused for different offence **Ravinder Singh Vs. Sukhbir Singh 2013 CrI.L.J.1123**

Non-explanation of injuries on accused is not fatal to prosecution case. **Ram Vishambar Vs. State of U.P. 2013 CrI.L.J.1131**

Witness only by being relative of deceased does not become interested witness ó Evidence of relative if trustworthy and corroborated can be safely relied upon.

Appreciation of evidence ó witness ó variation and contradiction in his testimony is inconsequential if it does not affect root of prosecution case. Every variation or immaterial contradiction does not benefit accused **Sahabuddin & anr. Vs State of Assam 2013 CrI.L.J.1252**

Restriction on adjournments ó adjournment cannot be granted at the request of party .

Proceedings under NDPS Act - Court to adopt method of Sessions trials and assign block dates for examination of witnesses which would save witnesses from inconvenience and curtail duration of trial.

Evidence of official witnesses directed to be taken in form of affidavits.

Directions issued to supply charge sheet and other documents in electronic form **Thana Singh Vs. Central Bureau of Narcotics. 2013 CrI.L.J.1262**

Reported in ALD (CrI)

Minor contradiction not fatal to case of the prosecution **Godugunnuri Siva Reddy Vs State of A.P. 2013 (1) ALD (CrI.) 372 (AP)**

FIR ó Second FIR for same incident cannot be allowed to be registered. If allowed possibility of abuse of power to investigate cannot be ruled out

A second FIR could only be registered, where incidence is separate, offences are similar or different, or where subsequent crime is of such magnitude that it does not fall within ambit and scope of FIR recorded first.

Pre-registration hearing to accused/suspect ó not contemplated ó No such right vested in suspect . **Anju Chaudhary Vs. State of U.P. & anr 2013 (1) ALD (Crl.) 486 (SC)**

Breach of injunction orders passed by civil court ó Remedy is only in civil court ó Resorting to filing of criminal cases parallel to civil proceedings prohibited in law ó Court shall not encourage such a course. **Doddapaneni Umamaheswar Rao & ors Vs. Navuru Gopal Reddy & anr. 2013 (1) ALD (Crl.) 353 (AP)**

In a clash between two groups, in order to convict a person, at least two prosecution witnesses have to support and identify role and involvement of person concerned. **Busi Koteswara Rao & ors Vs. State of A.P. 2013 (1) ALD (Crl.) 440 (SC)**

Fact that victim was living separately with her husband even if true, does not make her not liable for offence u/s.498A IPC **Devinder @ Kala ram & ors Vs. State of Haryana 2013 (1) ALD (Crl.) 452 (SC)**

The Essential Commodities Act, 1955

[THE SCHEDULE (See section 2A)

Essential Commodities

(1) drugs.

Explanation.—For the purposes of this Schedule, “drugs” has the meaning assigned to it in clause (b) of section 3 of the Drugs and Cosmetics Act, 1940 (23 of 1940);

(2) fertilizer, whether inorganic, organic or mixed;

(3) foodstuffs, including edible oilseeds and oils;

(4) hank yarn made wholly from cotton;

(5) petroleum and petroleum products;

(6) raw jute and jute textiles;

(7) (i) seeds of food-crops and seeds of fruits and vegetables;

(ii) seeds of cattle fodder; and

(iii) jute seeds.

Offences to be cognizable as per Sec 10 A.

As per Sec 11. No Court shall take cognizance of any offence punishable under this Act except on a **report in writing** of the facts constituting such offence made by a Public Servant or an aggrieved person or a recognized consumer association

8. Attempts and abetment.—Any person who **attempts** to contravene, or abets a contravention of, any order made under section 3 shall be deemed to have contravened that order.

14. Burden of proof in certain cases.— Where a person is prosecuted for contravening any order made under section 3 which prohibits him from doing any act or being in possession of a thing without lawful authority or without a permit, licence or other document, the burden of proving that he has such authority, permit, licence or other document shall be on him.

6A. Confiscation of essential commodity.—(1) Where any essential commodity is seized in pursuance of an order made under section 3 in relation thereto, a report of such seizure shall, without unreasonable delay, be made to the Collector of the district or the Presidency town in which such essential commodity is seized and whether or not a prosecution is instituted for the contravention of such order, **the Collector may**, if he thinks it expedient so to do, direct the essential commodity so seized to be produced for inspection before him, **and if he is satisfied** that there has been a contravention of the order may **order confiscation of**— (a) the essential commodity so seized;

(b) any package, covering or receptacle in which such essential commodity is found; and

(c) any animal, vehicle, vessel or other conveyance used in carrying such essential commodity:]

Provided that without prejudice to any action which may be taken under any other provision of this Act, **no foodgrains or edible oilseeds** in pursuance of an order made **under section 3** in relation thereto from a **producer** shall, if the seized foodgrains or edible oilseeds **have been produced by him**, be confiscated under this section:

Provided further that in the case of any animal, vehicle, vessel or other conveyance used for the carriage of goods or passengers for hire, the owner of such animal, vehicle, vessel or other conveyance shall be given an option to pay, **in lieu of its confiscation, a fine not exceeding the market price at the date of seizure of the essential commodity sought to be carried by such animal, vehicle, vessel or other conveyance.**

(2) Where the Collector, on receiving a report of seizure or on inspection of any essential commodity under sub-section (1), is of the opinion that the essential commodity is subject to speedy and natural decay or it is otherwise expedient in the public interest so to do, he may—

(i) order the same to be sold at the controlled price, if any, fixed for essential commodity under this Act or under any other law for the time being in force; or

(ii) where no such price is fixed, order the same to be sold by public auction:

Provided that in case of foodgrains, the Collector may, for its equitable distribution and availability at fair prices, order the same to be sold through fair price shops at the price fixed by the Central Government or by the State Government, as the case may be, for the retail sale of such foodgrains to the public.

(3) Where any essential commodity is sold, as aforesaid, the sale proceeds thereof, after deduction of the expenses of any such sale or auction or other incidental expenses relating thereto, shall—

(a) where no order or confiscation is ultimately passed by the Collector,

(b) where an order passed on appeal under sub-section (1) of section 6C so requires, or

(c) where in a prosecution instituted for the contravention of the order in respect of which an order of confiscation has been made under this section, the person concerned is acquitted,

be paid to the owner or the person from whom it is seized.

7. Penalties

(1) Contravention of Sec 3. (a)	(i) with reference to clause (h) or clause (i) of sub-section (2) of that section	imprisonment for a term which may extend to one year and shall also be liable to fine
	(ii) in the case of any other order	imprisonment for a term which shall not be less than three months but which may extend to seven years and shall also be liable to fine
(b) any property in respect of which the order has been contravened shall be forfeited to the Government;		
(c) any package, covering or receptacle in which the property is found and any animal, vehicle, vessel or other conveyance used in carrying the commodity shall, if the court so orders, be forfeited to the Government.		
(2) Sec 3 (b)(4)		imprisonment for a term which shall not be less than three months but which may extend to seven years and shall also be liable to fine
(2A)	If any person convicted of an offence under sub-clause (ii) of clause (a) of sub-section (1) or under sub-section (2) is again convicted of an offence under the same provision	imprisonment for the second and for every subsequent offence for a term which shall not be less than six months but which may extend to seven years and shall also be liable to fine
(2B)	sub-sections (1), (2) and (2A), the fact that an offence under sub-clause (ii) of clause (a) of sub-section (1) or under sub-section (2) has caused no substantial harm to the general public or to any individual	shall be an adequate and special reason for awarding a sentence of imprisonment for a term of less than three months, or six months, as the case may be.
(3)	a person having been convicted of an offence under sub-section (1) is again convicted of an offence under that sub-section for contravention of an order in respect of an essential commodity, the court by which such person is convicted shall, in addition to any penalty which may be imposed on him under that sub-section	direct that person shall not carry on any business in that essential commodity for such period, not being less than six months, as may be specified by the court in the order

NEWS

- The General Secretaries of Telangana Public Prosecutors (Cadre) Association and A.P. Public Prosecutors (Cadre) Association have invited the suggestions from all its member prosecutors in order to make representation to the PRC committee. They can be contacted on:
 - Mr P. Krishnamurthy, GS, TPPA- 9247288930
 - Mr G.Daniel, GS, APPPA-9989213344
- The Criminal Law amendment Bill 2013 has been passed by the Lok Sabha on 19/03/2013.

There are reported cases of non-delivery of Prosecution replenish by our prosecutors, and there have been suggestions to mend the issue, by appointing honorary dedicated distributors in each district to foresee that the replenish is communicated to all prosecutors and to see that it attains the goal for which it has been endeavoured.

The prosecutors are requested to note that the Prosecution replenish is published by 5th of every month and dispatched in parts not later by 10th of every month.

SAVE PAPER SAVE TREES. Please send an email to prosecutionreplenish@gmail.com to receive the leaflet uninterruptedly and promptly through e-mail.

ON A LIGHTER VEIN

A man who had been caught embezzling millions from his employer went to a lawyer seeking defense. He didn't want to go to jail. But his lawyer told him, "Don't worry. You'll never have to go to jail with all that money." And the lawyer was right. When the man was sent to prison, he didn't have a dime.

Experts Speak

Q: Is Sec 324 Bailable or not?

Ans: Act 5 of 2009:

From 31st December, 2009 onwards, Section 324 of IPC is not compoundable. Yet, it is still bailable offence as per the Notification dated 21st June, 2006 inasmuch as Section 42(f)(iii) of Cr.P.C Amendment Act, 2005 was excluded.

What Section 42 sub-section (f)(iii) of Code of Criminal Procedure (Amendment) Act, 2005 (No. 25 of 2005) says :

It says as infra:

42. Amendment of the First Schedule.-In the First Schedule to the principal Act, under the heading "OFFENCES UNDER THE INDIAN PENAL CODEö,--

(f) in the 5th column, in the entries relating to-

(iii) section 324, for the word "Dittoö, the word "Non-bailableö shall be substituted; í ..

This Amendment was followed by a Notification dated 21st June, 2006 in the Gazette of India

MINISTRY OF HOME AFFAIRS

Notification

New Delhi, the 21st June, 2006

S. O. 923(E).- In exercise of the powers conferred by sub-section (2) of section 1 of the Code of Criminal Procedure (Amendment) Act, 2005 (No. 25 of 2005), the Central Government hereby appoints the 23rd June, 2006, as the date on which the provisions of the said Act, except the provisions of Sections 16, 25, 28(a), 28(b), 38, 42(a), 42(b) 42(f) (iii) and (iv) and 44(a), shall come into force.

[F. No. 2/5/90-Judl Cell (Vol VIII)]

Dr. P. K. SETH, Jt. Secy.

The Notification vividly says that Section 42(f)(iii) of Cr.P.C Amendment Act, 2005 is excluded and therefore not yet enforced. Which means that Section 324 of Indian Penal Code (IPC) continues to be a bailable offence but is not non-bailable.

Last Month's question

Q: Is sanction u/Sec 197 Cr.P.C. necessary to prosecute a public servant U/Sec 409 IPC?

A: No, relevant judgment is Shambunath Misra Vs State of UP (1997 CrL J. 2491)

Smt Brunda, APP, Peddapalli, Karimnagar; Smt Aparna, APP, Spl. Excise Court, R.R.District and Mr Khazana Rao, Addl. P.P. Gr-II Kurnool, have answered the query correctly. Their contribution is acknowledged.

This Month's question:

Q: Whether sexual intercourse on the promise of marriage amounts to consensual sex or Rape?

Send your replies by 15th of Next month. The best reply would be acknowledged herein.

While due care is taken while preparing this information. The patrons are requested to verify and bring it to the notice of the concerned regarding any misprint or errors immediately, so as to bring it to the notice of all patrons. Needless to add that no responsibility for any result arising out of the said error shall be attributable to the publisher as the same is inadvertent.

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e-mail:-

prosecutionreplenish@gmail.com

To,

Suggestions; articles and responses welcome to make this as the most informative leaflet.

PROSECUTION

REPLENISH

(AN ENDEAVOUR FOR LEARNING AND EXCELLENCE)

**“If you are depressed you are living in
the past.**

**If you are anxious you are living in the
future.**

**If you are at peace you are living in the
present.”**

Dear Prosecutors,

So, Summer is here. The temperatures are soaring high and the spirits dipping low. But think on the positive side. The days are longer, giving us enough time to complete our daily tasks; the power cuts usurp all rubbish entertainment and draw the members to spare time with each other; the hot afternoons confine you to rooms and spend time with your colleagues and family. Hence, be optimistic, Summer is not that bad.

Coming to the recent developments, the Criminal law amendment act, 2013 has been passed. The Bill was passed by the Lok Sabha on 19 March 2013, and by the Rajya Sabha on 21 March 2013, making certain changes from the provisions in the Ordinance. The Bill received Presidential assent on 2 April 2013 and came into force from 3 April 2013. The changes made in the Act in comparison with the Ordinance is listed as follows:

Acid attack	Fine shall be just and reasonable to meet medical expenses for treatment of victim, while in the Ordinance it was fine upto Rupees 10 lakhs
Sexual harassment	"Clause (v) any other unwelcome physical, verbal or non-verbal conduct of sexual nature" has been removed. Punishment for offence under clause (i) and (ii) has been reduced from five years of imprisonment to three years. The offence is no longer gender-neutral, only a man can commit the offence on a woman.
Voyeurism	The offence is no longer gender-neutral, only a man can commit the offence on a woman.
Stalking	The offence is no longer gender-neutral, only a man can commit the offence on a woman. The definition has been reworded and broken down into clauses, The exclusion clause and the following sentence has been removed "or watches or spies on a person in a manner that results in a fear of violence or serious alarm or distress in the mind of such person, or interferes with the mental peace of such person, commits the offence of stalking". Punishment for the offence has been changed; A man committing the offence of stalking would be liable for imprisonment up to three years for the first offence, and shall also be liable to fine and for any subsequent conviction would be liable for imprisonment up to five years and with fine.
Trafficking of person	"Prostitution" has been removed from the explanation clause
Rape	The word sexual assault has been replaced back to rape. The offence is no

	longer gender-neutral, only a man can commit the offence on a woman. The clause related to touching of private parts has been removed.
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Regards
Editorial Team
Prosecution Replenish

REPORTED IN CrI.L.J

Dying declarations cannot be discarded on ground that doctor had not certified about mental condition of wife. **Eesa Koteswara Rao Vs. State of A.P. rep. by its Public Prosecutor 2013 CrI.L.J. (NOC) 171 (AP)**

Single utterance of direct words in direction to do particular act leading towards death or suicide constitute “abetment” under section 306 of IPC. **Dr.K.Ramesh Vs State of A.P. 2013 CrI.L.J. (NOC) 190 (AP).**

Taking voice sample of an accused by the police during course of investigation is not hit by Article 20(3) of the Constitution.

Investigating Officer cannot take physical samples, including voice samples, from accused without authorization from Magistrate **Ritesh Sinha Vs. State of Uttar Pradesh 2013 CrI.L.J. 1301**

Death Penalty – Rarest of rare case test depends on societies perception of crime. It is not Judge centric. **Gurvail Singh @ Gala & anr Vs. State of Punjab 2013 CrI.L.J. 1460**

Extra judicial confession - Accused making extra judicial confession immediately after the crime, confessions stands corroborated by evidence on record – conviction based upon confession is proper **R.Kuppuswamy Vs State rep. Inspector of Police, Ambelligai 2013 CrI.L.J. 1513**

Encounter death – investigation to be done by independent agency. FIR to be registered once complaint is made against police of culpable homicide **Rohtash Kumar Vs State of Haryana 2013 CrI.L.J. 1518**

S.8 of IEA – Fact that accused had generally good behavior, not relevant when culpability of accused is clearly proved by circumstances.

Absence of motive would not entitle accused to acquittal **Vivek Kalra Vs. State of Rajasthan 2013 CrI.L.J. 1524**

Powers of Appellate Court are in no way restricted . Appellate court can review and re-appreciate evidence **Chinman Kameshwar Rao & ors Vs. State of A.P. 2013 CrI.L.J. 1540**

Merely because sanction had not been obtained to prosecute the accused and to proceed to the stage of S.309 Cr.P.C. it cannot be said that the accused is entitled to grant of statutory bail, as envisaged in S.167 of Cr.P.C. **Suresh Kumar Bhikamchand Jain Vs State of Maharashtra & anr 2013 CrL.J. 1625**

ALD Criminal

An oral information can be treated to be an FIR, only if it is reduced into writing and read over to the informant. A cryptic telephonic information cannot be treated as FIR.

Defective investigation by police does not entitle the accused for acquittal as held in AIR 2003 SC 2471; AIR 2010 SC 3718; AIR 2011 SC 1403, does not lay the proposition as broad prospective, Accused is eligible for the benefit of shoddy investigation.

Merely because some of the accused have been acquitted, though evidence against all of them so far as direct testimony went, was the same does not lead to a necessary corollary that those who have been convicted must also be acquitted. It is always open to a court to differentiate the accused who had been acquitted from those who were convicted. AIR 2010 SC 1526 referred. **2013(1) ALD (Crl) 568 (SC) Surajit Sarkar Vs State of West Bengal.**

It is the obligation of the court to scrutinize the prosecution evidence de hors the lapses of investigation to find out whether the evidence is reliable or not and whether such lapses of investigation affect the object of finding out the truth. (Defective investigation does not entitle for acquittal of the accused)

The absence of expert opinion by itself does not absolve the liability of accused. The evidence of person acquainted with the handwriting of the accused can be accepted as per sec 47 of IEA. **2013(1) ALD (Crl) 582 (SC) Hema Vs State (THREE JUDGE BENCH)**

De nova investigation/fresh investigation/re investigation can be ordered only in rarest of rare cases by higher judiciary

Supplemental report filed on further investigation conducted under orders of the court, including that of magistrate or by police of its own accord, shall be dealt with as part of the primary report and has to be read conjointly either to charge or discharge thee accused.

In appropriate case, where the court feels that the investigation is not in proper direction, the court can hand over the investigation to a specialized agency. AIR 2011 SC 3168 REFERRED. **2013(1) ALD (Crl) 519 (SC) Vinay Tyagi Vs Irshad Ali.**

Dying Declaration cannot be discarded for the reason that HC who recorded the statement did not obtain certificate of doctor with regard to the state of mind of patient and also for the reason that there is no endorsement that the statement was recorded in the presence of duty doctor or any other doctor. More so when the subsequent declaration was recorded by Magistrate.

An important evidence not produced by the prosecution ipso facto does not give a right to the accused to take shelter U/Sec 114(g) of IEA, to take adverse inference against the prosecution. **2013(1) ALD (Crl) 625 (AP) Shaik Mowlali Vs State of A.P.**


Court has not endorsed the approach of aggravating and mitigating circumstances in Bachan Singh's case. This needs a fresh look.

We have unfortunately not taken the sentencing process as seriously as it should be with the result that in capital offences, it has become judge-centric sentencing rather than principled sentencing. **2013(1) ALD (Crl) 547 (SC) Sangeet & another Vs State of Haryana.**

ALT (Criminal)

Offence of abetment by instigation depends upon intention of person who abets and not upon the act which is done by the person who has abetted **Praveen Pradhan Vs. State of Uttaranchal & anr 2013 (1) ALT (Crl) 467 (SC)**

S.7A of Juvenile Justice (Care and Protection of Children) Act 2000, obliges court only to make an inquiry and not an investigation or trial. Inquiry shall be under Juvenile Justice Act and not under Cr.P.C **Ashwani Kumar Saxena Vs State of M.P. 2013 (1) ALT (Crl.) 398 (SC)**



"explosive" means gunpowder, nitroglycerine, nitroglycol, gun-cotton, di-nitro-toluene, tri-nitro-toluene, picric acid, di-nitro-phenol, tri-nitro-resorcinol (styphnic acid), cyclo-trimethylene-tri-nitramine, penta-erythritol-tetranitrate, tetryl, nitro-guanidine, lead azide, lead styphynate, fulminate of mercury or any other metal, diazo-di-nitro-phenol, coloured fires or any other substance whether a single chemical compound or a mixture of substances, whether solid or liquid or gaseous used or manufactured with a view to produce a practical effect by explosion or pyrotechnic effect; and includes fog-signals, fireworks, fuses, rockets, percussion-caps, detonators, cartridges, ammunition of all descriptions and every adaptation or preparation of an explosive as defined in this clause;

As per sec 14 Except sections 8, 9 and 9A, nothing shall apply to the manufacture, etc., of any explosive by the armed forces, factories, establishments and persons specified in sub-section (1).

As per sec 10 The convicting court may direct that the explosive, ingredient or substance as well as the receptacles be **forfeited**.

As per sec 12 Abetment of the commission of an offence is *per se* punishable. But, in an attempt to commit any offence, any act must have been done towards the commission of the same.

As per sec 13 a police officer, or by the occupier of, or the agent or servant of, or other person authorised by the occupier of, that place, or by any agent or servant of, or other person authorised by, the railway administration or conservator of the port or officer in charge of the airport are empowered to **apprehend an offender without warrant** and convey him before a Magistrate.

9B. Punishment for certain offences. — 1) Whoever, in contravention of rules made under **section 5 or of the conditions of a licence** granted under the said rules—

(a) manufactures, imports or exports any explosive shall be punishable with imprisonment for a term, which may extend to three years, or with fine which may extend to five thousand rupees, or with both;

(b) possesses, uses, sells or transports any explosive shall be punishable with imprisonment for a term which may extend to two years or with fine which may extend to three thousand rupees or with both; and

(c) in any other case, with fine which may extend to one thousand rupees.

(2) Whoever in contravention of a notification issued under **section 6** manufactures, possesses or imports any explosive shall be punishable with imprisonment for a term which may extend to three years or with fine which may extend to five thousand rupees or with both; and in the case of importation by water, the owner and master of the vessel or in the case of importation by air, the owner and the master of the aircraft, in which the explosive is imported shall, in the absence of reasonable excuse, each be punishable with fine which may extend to five thousand rupees.

(3) Whoever,—

(a) manufactures, sells, transports, imports, exports or possesses any explosive in contravention of the provisions of clause (a) of **section 6A**; or

(b) sells, delivers or despatches any explosive in contravention of the provisions of clause (b) of that section,

shall be punishable with imprisonment for a term which may extend to three years or with fine or with both; or

(c) in contravention of the provisions of **section 8** fails to give notice of any accident shall be punishable,—

(i) with fine which may extend to five hundred rupees, or

(ii) if the accident is attended by loss of human life, with imprisonment for a term which may extend to three months or with fine or with both.

JUDGMENTS

1981 AIR 1062 Mohammad Usman Mohammad Hussain vs State Of Maharashtra-ingredients necessary to prove offence U/Sec 5.

1995 (3) ALD 316, 1996 CriLJ 466 B. Premanand vs Union Of India-Satya Sai Baba Ashram case- permission from District Magistrate mandatory.

State of Tamil Nadu SIT v. Nalini AIR 1999 SC 2640- sensational Rajiv Gandhi case-conviction.

Abu Salem vs State Of Maharashtra on 10/09/2010- though explosive act not mentioned in the extradition-can be tried by Indian courts

The Supreme Court has said that the victims of sexual assault required a different kind of treatment and it was incumbent upon state governments to issue guidelines as how to deal with them.

"It is an obligation on the part of the state authorities and, particularly, the director general of police and home ministry of the state to issue proper guidelines and instructions as how to deal with such cases and what kind of treatment is to be given to the prosecutrix...," said the apex court bench of Justice B.S. Chauhan and Justice F.M.I Kalifulla in a recent judgment.

Q: Is the Sec 7 of the Criminal Amendment act, 1932 applicable in the state of A.P.

A: Yes, it is applicable as per the judgment delivered by our own high court in V.Sudhakar vs R.Rama Mohan Rao, on 10 November, 2004 Criminal Petition No.1348 of 2002

Q: Whether sexual intercourse on the promise of marriage amounts to consensual sex or Rape?

Ans: Yedla Srinivasa Rao Vs. State of A.P. (2006) 11 SCC 615

SATPAL SINGH VS STATE OF HARYANA (2010) 8 SCC 714 = 2010 CRI. L.J. 4283

Does the AP Ordinance No.6 of 1972 which stated that Sec 506 IPC as cognizable and non-bailable still holds good in view of the enactment Act 25 of 1979.

Send your replies by 15th of Next month. The best reply would be acknowledged herein.

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Suggestions; articles and responses welcome to make this as the most informative leaflet.

PROSECUTION REPLENISH

(AN ENDEAVOUR FOR LEARNING AND EXCELLENCE)

“In life, we all have an unspeakable secret, an irreversible regret, an unkept promise, an unheard request, an irreplaceable loss, an unreachable dream and an unforgettable first love. Still life is being about happy anyhow because everything in life can be summed up in 4 words "life must goes on”

LANDMARK JUDGMENT

**K.M.Nanavati Vs State of Maharashtra
AIR 1962 SC 605**

S.300 Exception 1 – Grave and sudden provocation – What amounts to – Accused momentarily losing self control but regaining it – S.300 Exception 1 not applicable

1. The test of “grave and sudden” provocation is whether a reasonable man, belonging to the same class of society as the accused, placed in the situation in which the accused was placed would be so provoked as to lose his self – control.
2. Words and gestures may also, under certain circumstances, cause grave and sudden provocation to an accused so as to bring his act within the first Exception to S.300 IPC
3. The mental background created by the previous act of the victim may be taken in to consideration in ascertaining whether the subsequent act caused grave and sudden provocation for committing the offence.
4. The fatal blow should be clearly traced to the influence of passion arising from that provocation and not after the passion had cooled down by lapse of time, or otherwise giving room and scope for premeditation and calculation.

LATEST JUDGMENTS

CITATIONS REPORTED IN CrI.L.J.

Information given to police on basis of hearsay – not liable to be treated as FIR – treating statement of eye witness, though recorded later in point of time as FIR – Justified

Ocular evidence prevails in case of contradiction between ocular and medical evidence **Umesh Singh Vs. state of Bihar 2013 CrI.L.J. 2116**

Cognizance – date on which taken – is deemed to be date of institution of case. Doctrine of Prospective overruling- the law laid by court or any amendments to a law should be applied to the future cases only and not to the cases which already reached finality. **Ramesh Kumar Soni Vs State of Madhya Pradesh 2013 CrI.L.J. 1738 (SC)**

If complaint contains the allegation of commission of offences both under 498-A {Cognizable offence} as well as 494 {non-cognizable} , the court can take cognizance of the same even on police report. (2012 CrI.L.J 2234 {Ushaben vs

Kishorbhai Chunilal Talpadia} Followed) **2013 Cri.L.J. 2099 Pintu @ Sujit Kumar Giri Vs State of Orissa (Ori)**

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S.200 Cr.P.C. makes it incumbent on the Magistrate to examine the witnesses present in Court on oath and can apply S.203 Cr.P.C. only if he finds a sufficient ground for not proceeding with the case. The section is mandatory. **G.Pal Vijay Kumar Vs State of A.P. 2013 (2) ALT (Crl.) 38 (AP)**

THE FOOD SAFETY AND STANDARDS ACT, 2006

As per Sec 41, the Food Safety Officer is empowered to search any place, seize any article of food or adulterant, if there is a reasonable doubt about them being involved in commission of any offence relating to food. However, no search shall be deemed to be irregular by reason only of the fact that witnesses for the search are not inhabitants of the locality in which the place searched is situated.

The procedure for launching prosecution is mentioned at sec 42 which lays down procedure for launching prosecutions, it provides that the Designated Officer, after scrutiny of the report of Food Analyst shall decide as to whether the contravention is punishable with imprisonment or fine only and in the case of contravention punishable with imprisonment, he shall send his recommendations within fourteen days to Commissioner of Food Safety for sanctioning prosecution. In case the contravention is punishable with fine only, he shall himself adjudicate and dispose off the case, it also provides that the Commissioner of Food Safety shall, if he so deems fit, decide within the prescribed period as per the gravity of offence, whether the matter be referred to a court of ordinary jurisdiction in case of offences punishable with imprisonment for a term upto three years; or a Special Court in case of offences punishable with imprisonment for a term exceeding three years where such Special Court is established and in case no Special Court is established, such cases shall be tried by a court of ordinary jurisdiction.

As per sec 77 the limitation for taking cognizance of the case is 1 year, which can be extended to 3 years by the Commissioner of Food Safety.

As per Sec 79, the court of ordinary jurisdiction to pass any sentence authorised under the Act, except a sentence of imprisonment for a term exceeding six years.

As per Sec 68, the penalties and punishments in this act are in addition to the other offences.

As per sec 69, some of the offences whose punishments are imposition of Fine alone are **Compoundable** on payment of sum of money which shall not be more than one lakh rupees by way of composition of the offence which such person is suspected to have committed. On payment of such sum of money the suspected person, if in custody, shall be discharged and no further proceedings in respect of the offence shall be taken against such person.

50	Penalty for selling food not of the nature or substance or quality demanded	penalty not exceeding five lakh rupees	
	persons covered under sub-section (2) of section 31	penalty not exceeding twenty five thousand rupees.	
51	Penalty for sub-standard food.	penalty which may extend to five lakh rupees.	
52	Penalty for misbranded food.	penalty which may extend to three lakh rupees.	
53	Penalty for misleading advertisement	penalty which may extend to ten lakh rupees.	
54	Penalty for food containing extraneous matter.	penalty which may extend to one lakh rupees.	
55	Penalty for failure to comply with the directions of Food Safety Officer.	penalty which may extend to two lakh rupees.	
56	Penalty for unhygienic or unsanitary processing or manufacturing of food.	penalty which may extend to one lakh rupees.	
57	Penalty for possessing adulterant.		
	(i) where such adulterant is not injurious to health,	penalty not exceeding two lakh rupees;	
	(ii) where such adulterant is injurious to health,	penalty not exceeding ten lakh rupees.	
58	Penalty for contraventions for which no specific penalty is provided.	penalty which may extend to two lakh rupees.	
59	Punishment for unsafe food.		
	i) where such failure or contravention does not result in injury	with imprisonment for a term which may extend to six months and also with fine which may extend to one lakh rupees;	
	(ii) where such failure or contravention results in a non-grievous injury,	imprisonment for a term which may extend to one year and also with fine which may extend to three lakh rupees;	
	(iii) where such failure or contravention results in a	imprisonment for a term which may extend to six years and also with fine	

	grievous injury,	which may extend to five lakh rupees;	
	(iv) where such failure or contravention results in death,	with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life and also with fine which shall not be less than ten lakh Rupees.	
60	Punishment for interfering with seized items.	Imprisonment for a term which may extend to six months and also with fine which may extend to two lakh rupees.	
61	Punishment for false information.	Imprisonment for a term which may extend to three months and also with fine which may extend to two lakh rupees.	
62	Punishment for obstructing or impersonating a Food Safety Officer.	Imprisonment for a term which may extend to three months and also with fine which may extend to one lakh rupees.	
63	Punishment for carrying out a business without licence.	Imprisonment for a term which may extend to six months and also with a fine which may extend to five lakh rupees.	
64	Punishment for subsequent offences.	(i) twice the punishment, which might have been imposed on a first conviction, subject to the punishment being maximum provided for the same offence; (ii) a further fine on daily basis which may extend up to one lakh rupees, where the offence is a continuing one; and (iii) his licence shall be cancelled.	
	(2) The Court may also cause the offender's name and place of residence, the offence and the penalty imposed to be published at the offender's expense in such newspapers or in such other manner as the court may direct and the expenses of such publication shall be deemed to be part of the cost attending the conviction and shall be recoverable in the same manner as a fine.		
65	Compensation in case injury of death of consumer	(a) not less than five lakh rupees in case of death; (b) not exceeding three lakh rupees in case of grievous injury; and (c) not exceeding one lakh rupees, in all other cases of injury: Provided that the compensation shall be paid at the earliest and in no case later than six months from the date of occurrence of the incident: Provided further that in case of death, an interim relief shall be paid to the next of the kin within thirty days of the incident.	
	(2) Where any person is held guilty of an offence leading to grievous injury or death, the Adjudicating Officer or the court may cause the name and place of residence of the person held guilty, the offence and the penalty imposed to be		

	published at the offender's expense in such newspapers or in such other manner as the Adjudicating Officer or the court may direct and the expenses of such publication shall be deemed to be part of the cost attending the conviction and shall be recoverable in the same manner as a fine.
	(3) The Adjudicating Officer or the court may also,— (a) order for cancellation of licence, re-call of food from market, forfeiture of establishment and property in case of grievous injury or death of consumer; (b) issue prohibition orders in other cases.
66	Offences by companies. All the persons responsible for the affairs of the company are similarly liable as individuals.
67	Penalty for contravention of provisions of this Act in case of import of articles of food to be in addition to penalties provided under any other Act. in addition to any penalty to which he may be liable under the provisions of the Foreign Trade (Development and Regulation) Act, 1992 (22 of 1992) and the Customs Act, 1962 (52 of 1962)

NEWS

- Sri A.Santhosh Reddy, Has been appointed as the new Secretary to Government, Legislative Affairs & Justice, Law Department.
- Government issued G.O.Ms. No. 136 **FINANCE (PC-I) DEPARTMENT** dated 11/06/2013 revising the Dearness Allowance (DA) to the State Government employees in the Andhra Pradesh Revised Pay Scales 2010 from **47.936%** of the basic pay to **54.784%** of basic pay from **1st January, 2013**.
 - The Dearness Allowance sanctioned shall be paid in cash with the salary of **May, 2013 payable in June, 2013**. The arrears on account of payment of Dearness Allowance for the period from **1st January 2013 to 30th April 2013** shall be credited to the **General Provident Fund Account** of the respective employees.
 - In respect of the employees who were appointed to Government service on or after 01.09.2004 and are governed by the Contributory Pension Scheme (CPS), the arrears from **1st January 2013 to 30th April 2013**, 10% of the DA arrears shall be credited to the PRAN accounts of the individuals along with the government share as per G.O. at reference 23rd read and the remaining 90% of arrears shall be paid in cash.

ON A LIGHTER VEIN

Three men stood before a judge on a charge of drunk and disorderly conduct in a public park.

Judge: What were you doing?

1st man: Oh, just throwing peanuts in the pond.

Judge: And what were you doing?

2nd man: I was throwing peanuts in the pond, too.

Judge: Sounds harmless. And you, were you throwing peanuts in the pond as well?

3rd man: No, sir. I am Peanuts!

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Experts Speak

Q: Does Sec 53, 53-A, 54 Cr.P.C. construed to include the other scientific tests other than DNA test like Polygraph Test (Lie Detector Test) Narcoanalysis technique' and the `Brain Electrical Activation Profile'(BEAP) test?

A: The right not to incriminate oneself is primarily concerned does not extend to the use in criminal proceedings of material which may be obtained from the accused through the use of compulsory powers but which has an existence independent of the will of the suspect such as, inter alia, documents acquired pursuant to a warrant, breath, blood and urine samples and bodily tissue for the purpose of DNA testing.

The National Human Rights Commission had published `Guidelines for the Administration of Polygraph Test (Lie Detector Test) on an Accused' in 2000. These guidelines should be strictly adhered to and similar safeguards should be adopted for conducting the `Narcoanalysis technique' and the `Brain Electrical Activation Profile'(BEAP) test. The first of such guidelines is “(i) No Lie Detector Tests should be administered except on the basis of consent of the accused”

{Selvi Vs State of Karnataka (2010) 2 MLJ (CrL.) 908 (SC) = 2010 (7) SCC 263}

Last Month's question

Q: Does the AP Ordinance No.6 of 1972 which stated that Sec 506 IPC as cognizable and non-bailable still holds good in view of the enactment Act 25 of 1979.

A: Please refer the judgment delivered by our own high court in V.Sudhakar vs R.Rama Mohan Rao, on 10 November, 2004 Criminal Petition No.1348 of 2002

This Month's question

Q : Can a person be detained in custody U/Sec 151 Cr.P.C. alone, for a period exceeding 24 hours from the time of his arrest ?

Send your replies by 15th of Next month. The best reply would be acknowledged herein.

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THE IMMORAL TRAFFIC (PREVENTION) ACT, 1956

- ❖ Act extends to whole of India including Jammu & Kashmir.
- ❖ As per sec 15 of the act the special police officer or the trafficking police officer (i) to enter and search premises without warrant; (ii) to call upon 2 or more respectable inhabitants of the locality to attend and witness the search; (iii) to remove from the premises all the persons found therein.
- ❖ All the offences except Sec 9 offence is triable by Magistrate court.(Sec 22)
- ❖ Every offence punishable under this Act shall be cognizable.(Sec 14)
- ❖ Arrest without warrant can be made only by the special police officer or under his direction or guidance or subject to his prior approval.(Sec 14)
- ❖ Interim custody of the victims can be ordered only after the welfare officer/probation officer gives a certificate regarding the capacity and antecedents of the petitioner seeking the custody of the victim and stating that the victim will not be re-inducted into the immoral traffic again. (Sec 17)

3	Any person who keeps, or manages, or acts or assists in the keeping or management of, a brothel, shall be liable to be punished with	(a) rigorous imprisonment for not less than 1 year but upto 3 years and also fine upto Rs. 2,000, on first conviction; and (b) rigorous imprisonment for not less than 2 years but upto 5 years and also fine upto Rs. 2,000
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	any person who being (a) the tenant, lessee, occupier or person in charge of any premises, (i) uses, or (ii) knowingly allows any other person to use, such premises as a brothel; or who being (b) the owner, lessor or landlord of any premises or his agent, (i) lets such premises with the knowledge that the same is intended to be used as a brothel; or (ii) is wilfully a party to the use of such premises as a brothel,	(i) imprisonment upto 2 years and fine upto Rs. 2,000, on first conviction; and (ii) rigorous imprisonment upto 5 years and also fine, in the event of a second or subsequent conviction.
4	Any person over the age of 18 years who knowingly lives on the earnings of the prostitution of any other person,	(i) imprisonment upto 2 years, or (ii) fine upto Rs. 1,000, or (iii) imprisonment upto 2 years and fine upto Rs. 1,000.
	where such earnings relate to the prostitution of a child or a minor,	imprisonment for a term of (i) not less than 7 years, and (ii) not more than 14 years.
5	Any person who (i) procures or induces any person for the purpose of prostitution; or (ii) takes, causes or induces any person to carry on prostitution,	(a) rigorous imprisonment for not less than 3 years but upto 7 years; and (b) fine upto Rs. 2,000.
	offence is committed against the will of any person,	7 years imprisonment which shall extend to 14 years.
6	Any person who detains any other person in any brothel, or in or upon any premises	(a) imprisonment for not less than 7 years but which may be for life; or (b) imprisonment upto 10 years and also fine.
7	A person who carries on prostitution and a person with whom prostitution is carried on, in any premises within the notified areas or in the vicinity of public places,	imprisonment upto 3 months
	Any person who commits an offence under sub-section (1) in respect of a child or minor,	(i) imprisonment for not less than 7 years but which may be for life; or (ii) imprisonment upto 10 years and also fine.
	Any person who being the keeper of any public place knowingly permits prostitution or permits prostitutes to remain there or being the tenant, lessee, occupier or person in charge of any public place knowingly permits the same to be used for prostitution or being the owner, lessor, landlord or the agent lets the same to be used for prostitution or is wilfully a party to such use	(i) imprisonment upto three months or with fine upto Rs. 200 (on first conviction) and imprisonment upto six months and fine upto Rs. 200 (on second and subsequent conviction).
8	Any woman who (a) tempts, or attracts, or endeavours to tempt or attract the attention of, any person for the purpose of prostitution; or (b) solicits or molests any person, or loiters or acts to cause obstruction or annoyance to persons or to offend against public decency, for the purpose of prostitution,	(i) imprisonment upto 6 months or fine upto Rs. 500 or both, on first conviction; and (ii) imprisonment upto 1 year and fine upto Rs. 500, in the event of a second or subsequent conviction.
	a man who commits any of offences under this section	imprisonment for not less than 7 days but upto 3 months
9	Any person who causes or aids or abets the seduction for prostitution of a person (in whose custody, charge or care such person is)	(i) imprisonment for a term of not less than 7 years but which may be for life; or (ii) imprisonment upto 10 years and also fine.

THE SCHEDULE

[See section 2 (c)]

Section	Magistrate competent to exercise the powers
7(1)	District Magistrate.
11(4) 2[***]	Metropolitan Magistrate or Judicial Magistrate of the first class.
15(5)	Metropolitan Magistrate, Judicial Magistrate of the first class, District Magistrate or Sub-Divisional Magistrate.
16	Metropolitan Magistrate, Judicial Magistrate of the first class, District Magistrate or Sub-Divisional Magistrate.
18	District Magistrate or Sub-Divisional Magistrate.
19	Metropolitan Magistrate, Judicial Magistrate of the first class, District Magistrate or Sub-Divisional Magistrate.
20	District Magistrate, Sub-Divisional Magistrate or any Executive Magistrate specially empowered by the State Government.
22B	Metropolitan Magistrate or Judicial Magistrate of the first class.]

NEWS

- Sri R.Venkata Rao, Administrative Officer (Legal) (Retired), in the office of Director of Prosecutions as OSD on contract basis for a period of one year with a monthly remuneration Rs.20,000/- equal to pay last drawn minus pension vide G.O.Ms No.1440 dated 27/06/2013.

ON A LIGHTER VEIN

A man goes into a pet shop to buy a parrot. The shop owner points to three identical-looking parrots on a perch and says, "The parrot on the left costs \$500."

"Why does the parrot cost so much?" asks the customer.

The owner says "Well, the parrot knows how to do legal research."

The customer then asks about the next parrot, to be told that this one costs \$1,000 because it can do everything the other parrot can do plus it knows how to write a brief that will win any case.

Naturally, the increasingly startled customer asks about the third parrot, to be told that it costs \$4,000. Needless to say, this begs the question, "What can it do?"

To which the owner replies, "To be honest, I've never seen him do a darn thing, but the other two call him Senior Partner."

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Experts Speak

Q: Does Sec 53, 53-A, 54 Cr.P.C. construed to include the other scientific tests other than DNA test like Polygraph Test (Lie Detector Test) Narcoanalysis technique' and the `Brain Electrical Activation Profile'(BEAP) test?

A: The right not to incriminate oneself is primarily concerned does not extend to the use in criminal proceedings of material which may be obtained from the accused through the use of compulsory powers but which has an existence independent of the will of the suspect such as, inter alia, documents acquired pursuant to a warrant, breath, blood and urine samples and bodily tissue for the purpose of DNA testing.

The National Human Rights Commission had published 'Guidelines for the Administration of Polygraph Test (Lie Detector Test) on an Accused' in 2000. These guidelines should be strictly adhered to and similar safeguards should be adopted for conducting the 'Narcoanalysis technique' and the 'Brain Electrical Activation Profile'(BEAP) test. The first of such guidelines is "(i) No Lie Detector Tests should be administered except on the basis of consent of the accused"

{Selvi Vs State of Karnataka (2010) 2 MLJ (Cri.) 908 (SC) = 2010 (7) SCC 263}

Last Month's question

Q: Can a person be detained in custody U/Sec 151 Cr.P.C. alone, for a period exceeding 24 hours from the time of his arrest ?

A: Ahmed Noormohmed Bhatti v. State of Gujarat and Ors., AIR 2005 SC 2115= 2005 Cri LJ 2157)

This Month's question

Q : Can defence examine the same witness examined on behalf of the prosecution, as defence witness?

Send your replies by 15th of Next month. The best reply would be acknowledged herein.

While due care is taken while preparing this information. The patrons are requested to verify and bring it to the notice of the concerned regarding any misprint or errors immediately, so as to bring it to the notice of all patrons. Needless to add that no responsibility for any result arising out of the said error shall be attributable to the publisher as the same is inadvertent.

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Suggestions; articles and responses welcome to make this as the most informative leaflet.

PROSECUTION

REPLENISH

(AN ENDEAVOUR FOR LEARNING AND EXCELLENCE)

*“Half of the problems in life are because we act without thinking;
And the rest half are because we keep on thinking without acting!”*

Dear Prosecutors,

Seasons Greetings. Gone are the hot days and time to get wet. There was not a single holiday in the months of May, June & July. The Holidays have returned back and we Indians cannot live without festivals, which we use to escape from our routine life and to lead an exhilarating life. We have three important festivals in this month. To begin with Id-ul-fitr(Ramzan), the festival which propagates sacrifice and righteous life; the National festival, Independence Day, signifying the commemoration of the sacrifice of the numerous sung and unsung freedom fighters and the Janmashami, birth of Lord Krishna, who gave the song divine, which advocated to do our duty without worrying (expecting) about the result.

So, there is another occasion to rejoice this month that is the cultural event of and by the Prosecutors, the date is scheduled to 1st of September, 2013 at APPA. So all are requested to make OUR EVENT a grand success with maximum participation. Please give your names for the sports and cultural program, which you want to participate.

So awaiting a grand get together,

Regards
Editorial Team
Prosecution Replenish

LANDMARK JUDGMENT

Gian Kaur Vs. State of Punjab
AIR 1996 SC 1257

S.309 of IPC providing for imposition of punishment for attempt to commit suicide is not violative of Article 14 of the Constitution of India.

“Right to die” is not included in the “right to life” under Article 21. Thus right to live with human dignity cannot be construed to include within its ambit the right to terminate natural life, at least before commencement of the natural process of certain death. Art.21 of the Constitution of India cannot be pressed into service to support the challenge based on Article 14. It cannot therefore, be said that S.309 of IPC is violative either of Art.14 or 21 of the Constitution of India.

S.306 IPC imposing punishment for abetment of suicide is not unconstitutional.

CITATIONS

CITATIONS REPORTED IN SCC(CRL.)

To attract S.34 IPC it is always not necessary that every accused must do a separate act to be responsible for the ultimate criminal act. What is required is that an accused person must share the common intention to commit the act. **Syed Yousuf Hussain Vs. State of Andhra Pradesh 2013 (2) SCC (CrI) 497**

Delay in lodging FIR and delay in recording the statements of witnesses under extraordinary circumstances is not fatal to the case of the prosecution
Minor contradictions and discrepancies – not vitiation of prosecution case. **Lal Bahadur & ors. Vs. State NCT of Delhi 2013 (2) SCC (CrI) 516**

Over act not necessary for implication of liability with aid of S.149 IPC.
Existence of strong motive, is not an essential prerequisite for conviction for murder where there is other credible evidence on record.
Identification of accused for the first time in court is admissible. **Subal Ghorai Vs State of West Bengal. 2013 (2) SCC (CrI) 530**

Delay may not itself be a ground for dismissing complaint at threshold.
Criminal offence is a wrong against the State and the Society as a whole, even though the same is committed against an individual. **Udai Shankar Awasthi Vs. State of U.P 2013 (2) SCC (CrI) 708**

CITATIONS REPORTED IN ALT (CRL.)

S.319 Cr.P.C. – Accused named in FIR but not in charge sheet – Even if investigating authority is of view that no case made out against an accused Magistrate can apply mind independently to material contained in police report and take cognizance thereupon. **Dhrup Singh & ors Vs. State of Bihar 2013 (2) ALT (CrI.) 334 (SC)**

Non-mention of names of few accused persons in Inquest report is of no consequence.

Evidence of relatives can be acted upon if reliable and trustworthy and cannot be discarded on ground of relationship.

Merely because FIR sent to concerned Magistrate three days after registration, it cannot be said that the FIR was ante-timed, anti dated or fabricated. **Guriam Mondal Vs. State of West Bengal 2013 (2) ALT (CrI.) 352 (SC)**

No requirement of law to insist upon corroboration of statement of victim, in a case of rape, to base conviction of an accused. **Mohan Lal & anr Vs. State of Punjab 2013 (2) ALT (CrI.) 362 (SC)**

A miscarriage of justice may arise from acquittal of guilty, no less than, from conviction of innocent.

Falsity of particular material witness or material particular, would not ruin the evidence from beginning to end. Maxim falsus in uno falsus in omnibus has not application in India. **Ramesh Harijan Vs. State of U.P. 2013 (2) ALT (CrI.) 378 (SC)**

While exercising jurisdiction under section 482 of Cr.P.C. High Court is under a duty to scrutinize the allegations leveled in the complaint/FIR. **Buravilli Shiva Madhuri Vs Buravilli Satya Venkata Lakshmana Rao & ors. 2013 (2) ALT (CrI.) 216 (AP)**

CITATIONS REPORTED IN Cr.L.J.

Anti dating, anti timing of FIR does not lead to rejection of entire prosecution case **Anand Mohan Vs. State of Bihar 2013 Cr.L.J. 2644**

Child witness – conviction on basis of evidence of child is permissible if it is trustful and corroborated – Corroboration is not must – It is under rule of prudence. **Shivacharanappa & ors. Vs State of Karnataka 2013 Cr.L.J. 2658**

Omission to mention fact in statement made to police, whether amounts to contradiction is question of fact to be decided considering significance and relevance of omission in context such omission occurred. **Satya Pal Vs. State of Haryana & anr. 2013 Cr.L.J. 2731**

Appointment of Additional Public Prosecutor – Eligibility, for – pendency of criminal cases against candidate – Is bar for appointment **P.N.S.Prakash Vs. Secretary to Govt. of A.P. Legislative Affairs & Justice, Hyd. & ors. 2013 Cr.L.J. 2771**

Delay in lodging FIR is not always ground to disbelieve prosecution case
Non examination of independent witness is not fatal to case of prosecution case. **Kanhaiya Lal & ors Vs State of Rajasthan 2013 Cr.L.J. 2921**

Power of police to investigate are not unlimited. Power should be exercised within limits prescribed in Cr.P.C. Should not result in destruction in personal freedom **Chandran Ratnaswami Vs. K.C.Palanisamy & ors 2013 Cr.L.J. 2938**

Magistrate is not bound to accept final report filed by investigating agency – can take cognizance and issue process against person though exonerated by investigating agency. **Moti Lal Songara Vs. Prem Prakash @ Pappu & anr 2013 Cr.L.J. 2977**

Dying Declaration – certificate by doctor that maker is fit to make statement – not essential requirement in every case. **State of Madhya Pradesh Vs. Dal Singh & ors 2013 Cr.L.J. 2983**

CITATIONS REPORTED IN ALD (CRL.)

When maximum imprisonment provided for offence is beyond 3yrs, S.468 Cr.P.C. is not attracted **Dr.T.H.Chowdary Vs. Registrar of Companies, Govt. of A.P. 2013 (2) ALD (Crl.) 18 (AP)**

FIR- A valuable piece of evidence – Can be used to corroborate evidence of maker under S.157 of I.E.A or for contradicting maker as provided under S.145 of I.E.A. or for impeaching credit of witnesses under S.155 of said Act.

Minor contradictions of deviations, bound to occur even in case of truthful witnesses when made to depose about actual incident after lapse of a long time. **Muddana Goud & ors Vs. State of A.P. 2013 (2) ALD (Crl.) 32 (AP)**

S-20 of Prevention of Corruption Act – Mere explanation given by accused – not enough – explanation must be supported by circumstances which probablise defence theooooory put forth by the accused. **D.Sudharshan Vs. ACB, Warangal range 2013 (2) ALD (Crl.) 53 (AP)**

Discrepancies, omissions and contradictions in evidence of – should not be attached undue importance, when they do not go to heart of matter and shake basic version of the prosecution witnesses. **Bogadi Haribabu & ors Vs. State of A.P. 2013 (2) ALD (Crl.) 59 (AP)**

Dying Declaration – If made at earliest opportunity without any influence has to be accepted as relevant and truthful one – Absence of any corroboration cannot take away its relevance. **Hiraman Vs. State of Maharashtra 2013 (2) ALD (CrI.) 74 (SC)**

Extra Judicial confession made voluntary and without any inducement can be made a basis for recording a conviction. **R.Kupuswamy Vs. State 2013 (2) ALD (CrI.) 94 (SC)**

Failure to establish motive – not sufficient to acquit accused of offence, where other circumstances lead to only hypothesis that accused has committed offence . **Sanaullah Khan V State of Bihar 2013 (2) ALD (CrI.) 122 (SC)**

S.120B IPC – Mere knowledge of main object/purpose of conspiracy – sufficient to attract relevant penal provisions – it is not necessary that person involved has knowledge of all stages of action. Statements recorded u/s 164 Cr.P.C. can be used for both corroboration and contradiction. Recovery of weapon of offence in pursuance of disclosure statement made by accused – failure trace origin of blood found on weapon because of lapse of time – is not fatal. It is not number of witnesses, but quality of their evidence which is important in matter of appreciation of evidence **R.Shaji Vs State of Kerala 2013 (2) ALD (CrI.) 153 (SC)**

THE GEOGRAPHICAL INDICATIONS OF GOODS (REGISTRATION AND PROTECTION) ACT, 1999

- ✓ All offences under this act shall be **bailable**.
- ✓ The offences under section 39 or section 40 or section 41 shall be **cognizable**.
- ✓ No court shall take cognizance of an offence under section 42 or section 43 or section 44 except on **complaint in writing** made by the Registrar or any officer authorised by him in writing
- ✓ No court inferior to that of a **Metropolitan Magistrate or Judicial Magistrate of the first class** shall try an offence under this Act.
- ✓ A police officer not below the rank of **deputy superintendent of police or equivalent**, after obtaining the opinion of the Registrar about the facts of the case, **search and seize** without warrant the goods, die, block, machine, plate, other instruments or things involved in committing the offence, wherever found, and all the articles so seized shall, as soon as practicable, be produced before the Judicial Magistrate of the first class or Metropolitan Magistrate, as the case may be.

46. Forfeiture of goods.

Court can direct the forfeiture to Government of all the goods and things by means of or in relation to which certain offences mentioned therein have been committed. The court may either order for the forfeited goods to be destroyed or otherwise disposed of.

52. Limitation of prosecution.— within three years of the commission of the offence charged or two years after the discovery thereof by the prosecutor, whichever expiration first happens.

53. Information as to commission of offence.—An officer of the Government whose duty it is to take part in the enforcement of the provisions of this Chapter shall not be

compelled in any court to say whence he got any information as to the commission of any offence against this Act.

The court may, for adequate and special reasons to be mentioned in the judgment, impose a lesser sentence

“**geographical indication**”, in relation to goods, means an indication which identifies such goods as agricultural goods, natural goods or manufactured goods as originating, or manufactured in the territory of country, or a region or locality in that territory, where a given quality, reputation or other characteristic of such goods is essentially attributable to its geographical origin and in case where such goods are manufactured goods one of the activities of either the production or of processing or preparation of the goods concerned takes place in such territory, region or locality, as the case may be.

Explanation.—For the purposes of this clause, any name which is not the name of country, region or locality of that country shall also be considered as the geographical indication if it relates to a specific geographical area and is used upon or in relation to particular goods originating from that country, region or locality, as the case may be;

Sec. 38 (4) In any prosecution for falsifying a geographical indication or falsely applying a geographical indication to goods, **the burden of proving the assent of proprietor shall lie on the accused.**

Exemptions from punishments:

- (a) that, having taken all reasonable precautions against committing an offence against this section, he had at the time of commission of the alleged offence no reason to suspect the genuineness of the geographical indication or that any offence had been committed in respect of the goods; or
- (b) that, on demand by or on behalf of the prosecutor, he gave all the information in his power with respect to the person from whom he obtained such goods or things; or
- (c) that otherwise he had acted innocently,

47. Exemption of certain persons employed in ordinary course of business.—Where a person accused of an offence under section 39 proves,—

- (a) that in the ordinary course of his business he is employed on behalf of other persons to apply geographical indications, or as the case may be, to make dies, blocks, machines, plates, or other instruments for making, or being used in making, geographical indications;
- (b) that in the case which is the subject of the charge he was so employed, and was not interested in the goods or other things by way of profit or commission depend on the sale of such goods;
- (c) that, having taken all reasonable precautions against committing the offence charged, he had, at the time of the commission of the alleged offence, no reason to suspect the genuineness of the geographical indication; and
- (d) that, on demand made by or on behalf of the prosecutor, he gave all the information in his power with respect to the persons on whose behalf the geographical indication was applied,

he shall be acquitted.

48. Procedure where invalidity of registration is pleaded by the accused.

If the court is satisfied with the defence of invalidity of the registration, it shall adjourn the proceedings for three months to enable an application for rectification of the register to be filed before the Appellate Board. If the accused proves that he has made such application, further proceedings shall stand stayed till the disposal of the application for rectification. On the other hand, if within the period allowed by the court, the accused fails to apply for rectification before the Appellate Board, the court will proceed with the case as if the registration is valid. It also provides that where an application for rectification is pending before the institution of the criminal proceedings, the court shall stay the proceedings in the prosecution pending the out come of the rectification application and determines the charge in conformity thereof to the extent that the complaint relies on the registration of his geographical indication.

39. Penalty for applying false geographical indications.	imprisonment of not less than six months but which may extend to three years and with fine which shall not be less than fifty thousand rupees but which may extend up to two lakh rupees.
40. Penalty for selling goods to which false geographical indication is applied.	be punishable with imprisonment for a term which shall not be less than six months but which may extend to three years and with fine which shall not be less than fifty thousand rupees but which may extend to two lakh rupees
41. Enhanced penalty on second or subsequent conviction	This section provides for enhanced penalty for second or subsequent conviction. The term of imprisonment in such cases shall not be less than one year but it may extend up to three years and fine of not less than one lakh rupees which may extend up to two lakh rupees
42. Penalty for falsely representing a geographical indication as registered	with imprisonment for a term which may extend to three years, or with fine, or with both.
43. Penalty for improperly describing a place of business as connected with the Geographical Indications Registry	imprisonment for a term which may extend to two years, or with fine, or with both
44. Penalty for falsification of entries in the register.	Imprisonment for a term which may extend to two years or with fine, or with both.

NEWS

- At a ceremony held today (July 19, 2013) at 0930 hrs at Rashtrapati Bhavan, Shri Justice Palanisamy Sathasivam was sworn in as the Chief Justice of the Supreme Court of India.
- The President of India, Shri Pranab Mukherjee promulgated the National Food Security Ordinance, 2013 today (July 5, 2013).

- > The 10th PRC committee has called for submissions on our representation on 17/08/2013.

SAVE PAPER SAVE TREES. Please send a email to prosecutionreplenish@gmail.com to receive the leaflet uninterruptedly and promptly.

ON A LIGHTER VEIN

Max was caught red handed by a police officer in the very act of burglarizing a store. He was quickly brought to trial.

“How do you plead? asked the judge.

“Your honor,” answered Max, “before I plead guilty or not guilty I ask that the court to kindly appoint a lawyer to defend me.”

“Max you were caught in the actual commission of a crime. What could any lawyer possibly say in your defense?”

That’s exactly my point, your honor,” said Max. “I’m curious also to hear what he could possibly say!”

Last Month’s question

Q:Can defence examine the same witness examined on behalf of the prosecution, as defence witness?

Ans: **Rohtash Kumar Vs. State of Haryana (2013) 40 SCD 444**

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Suggestions; articles and responses welcome to make this as the most informative leaflet.

PROSECUTION

REPLENISH

(AN ENDEAVOUR FOR LEARNING AND EXCELLENCE)

“I have not failed. I’ve just found 10,000 ways that won’t work.”

Thomas A. Edison

Dear Prosecutors,

At the outset, a very heartfelt thanks to one and all, who have made it to the inauguration of our website. Words cannot describe the gratitude which we felt by your presence in the said get-together. To put it shortly, it has made a lot of difference to us and has filled new vigor in us to take stronger strides towards our objective, reflected in our tagline.

A very special thanks to our Honoured Guests of the day, whose presence and encouragement has been overwhelming.

We rededicate with new vigor towards our objective.

Regards

Editorial Team

Prosecution Replenish

CITATIONS

CITATIONS REPORTED IN ALD (Criminal)

Conviction – on basis of testimony of close relatives sustainable.

Delay in lodging FIR by itself cannot be regarded as fatal to prosecution case.

Failure of - to mention exact role played by each accused - of no consequent, when accused had formed unlawful assembly with common object. **Kanhaiya Lal & ors.**

Vs State of Rajasthan 2013(2) ALD (Cri.) 204 (SC)

Medical evidence vis a vis ocular evidence – Improvements made in court to bring prosecution case in conformity with post mortem notes – rule that ocular evidence has precedence over medical evidence cannot be applied. **Sunil Kundu & anr Vs State of Jharkhand 2013(2) ALD (Cri.) 217 (SC)**

Delay in lodging FIR - No ground to throw away entire prosecution case.

Sympathizing with accused person or convict – does not entitle court to ignore feelings of victim of offence **Kulwanth Singh & ors Vs. State of Punjab 2013 (2) ALD (Cri.) 241 (SC)**

Eyewitness account of occurrence – discrepancy with regard to names and number of persons present at place of occurrence – not material

Defective investigation cannot be a ground to discard prosecution case unless it creates reasonable doubt on guilt of accused **Babu & anr Vs. State 2013(2) ALD (Cri.) 248 (SC)**

Accused tried to block information from investigating agency – bail, held liable to be cancelled. **CBI Vs. Vijay Sai Reddy 2013 (2) ALD (Cri.) 271 (SC)**

FIR – not an encyclopedia which must disclose all facts and details relating to reported offence – Law does not require mentioning of all ingredients of offence in FIR **B.Sudhakar Reddy Vs. SHO, RGIA, Cybderabad, R.R.Dist & ors 2013 (2) ALD (Cri.) 300 (AP)**

FIR – not an encyclopedia, which should contain all details. **K.V.Ramana Reddy Vs State of AP. 2013 (2) ALD (Cri.) 315 (AP)**

Customers cannot be prosecuted for offence u/s. 3, 4 and 5 of Immoral Traffic (Prevention) Act 1956 **Arjun Rao Vs. State of AP. 2013 (2) ALD (Cri.) 337 (AP)**

Dying Declaration – Certificate by doctor that maker is fit to make statement – not essential in every case.

Discrepancies, embellishments and improvements – bound to occur for reason of common errors in observations and do not erode credibility of witness unless they materially affect trial or core of prosecution. **State of Madhya Pradesh Vs. Dal Singh & ors. 2013 (2) ALD (Cri.) 348 (AP)**

CITATIONS REPORTED IN ALT (Criminal)

In operating the sentencing system, law should adopt the corrective machinery or deterrence based on factual matrix.

Undue sympathy to impose inadequate sentence would do more harm to justice system and would undermine public confidence in the efficacy of law. **Hazara Singh Vs. Raj Kumar & ors 2013(2) ALT (Cri.) 464 (SC).**

No rule of law that testimony of victim of rape, in case of rape, cannot be acted upon without corroboration in material particulars. She stands on much higher pedestal than an injured witness.

Merely because a woman is of easy virtue, in a case of rape, her evidence cannot be discarded on that ground alone, but be appreciated cautiously. **Lillu @ Rajesh & anr Vs. State of Haryana. 2013(2) ALT (Cri.) 488 (SC).**

Interested evidence not necessarily unreliable.

No immutable rule of appreciation of evidence that evidence of injured witnesses be mechanically accepted **Md.Ishaque & ors. Vs. State of West Bengal & ors. 2013(2) ALT (Cri.) 496 (SC).**

FIR is not expected to be a treatise.

It is one thing to say that every wear and tear of married life need not lead to suicide and it is another thing to put it so crudely and suggest that one or two assaults on a woman is an accepted social norm. **Vajresh Venkatray Anvekar Vs. State of Karnat Klaka 2013(2) ALT (Cri.) 501 (SC).**

When there are both civil and criminal liabilities in respect of an issue against a person, he is liable to be prosecuted both on the criminal side and civil side. **N.Gurucharanam Vs. State of A.P. through Public Prosecutor & anr. 2013(2) ALT (Cri.) 310 (AP).**

CITATIONS REPORTED IN SCC (Criminal)

Long drawn out/delayed trial – conduct of accused in delaying trial – quash in such a case is impermissible. **Niranjan Hemchandra Sashittal Vs. State of Maharashtra 2013 (2) SCC (Cri.) 737.**

Magistrate acting under S.5 Identification of Prisoners Act, 1920 can require any person to give his voice sample for purposes of investigation or proceeding under Cr.P.C., and that Magistrate has ancillary or implied power U/s 53 of Cr.P.C. to pass such orders.

Voice sample is physical non-testimonial evidence. It does not communicate to the investigator any information based on personal knowledge of the accused, which can incriminate him. Therefore, there is no difficulty in including a voice sample test in the phrase “such other tests” appearing in Explanation (a) Section 53 Cr.P.C. by applying the doctrine of “ejusdem generis” as it is a test pertaining to physical non testimonial evidence like blood, sputum etc. **Ritesh Sinha Vs State of U.P. & anr. 2013 (2) SCC (Cri.) 748**

Conviction of public servants in corruption cases cannot be suspended just because they would otherwise lose their job. **State of Maharashtra Vs Balakrishna Dattatrya Kumbhar. 2013 (2) SCC (Cri.) 784**

Indian police and court ordinarily have jurisdiction to investigate and try offences committed even by non citizens within contiguous zone of India as IPC and Cr.PC have been duly extended to contiguous zone **Republic of Italy thru ambassador & ors Vs. UOI and ors 2013 (2) SCC (Cri.) 905**

Second FIR – when may be lodged - rival versions in respect of the same incident do take different shapes and in that event, lodgment of two FIRs is permissible. **Surender Kaushik & anr Vs. State of U.P. & ors 2013 (2) SCC (Cri.) 953**

Service rendered by Public Prosecutor is deemed to be ‘practice’ as an advocate under S.24(9) Cr.P.C. They were eligible to be appointed as District Judge u/Art.233(2) of Constitution of India. **Deepal Agarwal Vs Keshav Kaushik & ors. 2013 (2) SCC (Cri.) 978**

THE INDECENT REPRESENTATION OF WOMEN (PROHIBITION) ACT, 1986

The act has come into force from 2-10-1987 *vide* G.S.R. 821(E), dated 25th September, 1987, having been published in the Gazette of India, Extra., 1987, Pt. II, Sec. 3(i).

All offences are triable by Magistrate courts.

All offences under this act are **cognizable** and **bailable**.

<p>3. Prohibition of advertisements containing indecent representation of women—No person shall publish, or cause to be published, or arrange or take part in the publication or exhibition of, any advertisement which contains indecent representation of women in any form</p>	<p>punishable on first conviction with imprisonment of either description for a term which may extend to two years, and with fine which may extend to two thousand rupees, and in the event of a second or subsequent conviction with imprisonment for a term of not less than six months but which may extend to five years and also with a fine not less than ten thousand rupees but which may extend to one lakh rupees.</p>
<p>4. Prohibition of publication or sending by post of books, pamphlets, etc., containing indecent representation of women.—No person shall produce or cause to be produced, sell, let to hire, distribute, circulate or send by post any book, pamphlet, paper, slide, film, writing, drawing, painting, photograph, representation or figure which contains indecent representation of women in any form</p>	<p>punishable on first conviction with imprisonment of either description for a term which may extend to two years, and with fine which may extend to two thousand rupees, and in the event of a second or subsequent conviction with imprisonment for a term of not less than six months but which may extend to five years and also with a fine not less than ten thousand rupees but which may extend to one lakh rupees.</p>

Exemptions

Provided that nothing in section 4 of the act shall apply to—

(a) any book, pamphlet, paper, slide, film, writing, drawing, painting, photograph, representation or figure—

(i) the publication of which is proved to be justified as being **for the public good** on the ground that such book, pamphlet, paper, slide, film, writing, drawing, painting, photograph, representation or figure is **in the interest of science, literature, art, or learning** or other objects of general concern; or

(ii) which is kept or **used bona fide for religious purposes**;

(b) any representation sculptured, engraved, painted or otherwise represented on or in—

- (i) **any ancient monument** within the meaning of the Ancient Monument and Archaeological Sites and Remains Act, 1958 (24 of 1958);
or
(ii) **any temple, or on any car used for the conveyance of idols, or kept or used for any religious purpose;**
(c) any film in respect of which the provisions of **Part II of the Cinematograph Act, 1952 (37 of 1952), will be applicable.**

NEWS

The Website of our leaflet "Prosecution Replenish.com", had been inaugurated

- 1) Sri M.A.Ravooof, Public Prosecutor, Warangal;
- 2) Sri G.Mallikarjuna Rao, Public Prosecutor, Ranga Reddy District;
- 3) Sri C.C.Subrahmanyam, Public Prosecutor, Nellore;

have been appointed as the Joint Directors of Prosecution vide GORt no. 1846 LAW (LA&J-HOME-COURTS.A1) DEPARTMENT dated 17/08/2013.

The following APP's have been promoted as Sr. APP's.

1	K.Jayashree, APP, Jangareddygudem	Sr.APP, Rajahmundry
2	S.Bharathi, APP, Kovvur	Sr.APP(A), Nellore
3	L.Balaji, APP	Sr.APP(A), Anantapur.
4	Venkatanaryana, APP, Tirupathi	Sr.APP(A), Cuddapah
5	Motilal, APP, PCR, Kurnool	Sr.APP,
6	D. Naik, APP	Sr.APP, Dharamavaram.
7	A.Ram Reddy, APP	Sr.APP(A), Karimnagar
8	T.Jyothi, APP	Sr.APP, Jagityala, Karimnagar.
9	Ch.Suresh, JCJ, AP Judicial Academy	Sr.APP, Bhodan, Nizamabad.

10	K.Srivani, APP, Nakrekal	Sr.APP, I ACMM court, Nampally, Hyd.
11	Meraj Firdouse, APP, XIV ACMM, Hyd	Sr.APP(A), Sanga Reddy, Medak
12	R.Akhila, APP, Excise court, Nalgonda	Sr.APP(A), Nalgonda.
13	P.J.Ramakrishna, APP, Armoor	Sr.APP,III ACMM court, Nampally, Hyd
14	L.H.Rajeshwar Rao, APP, III MM, RR	Sr.APP,II ACMM court, Nampally, Hyd
15	K.V.Beena, APP XIII MM, Hyd	Sr.APP(A), Mahboobnagar.
16	P.Krishnamurthy, APP, XV MM, RR	Sr.APP(A), Ranga Reddy District.

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ON A LIGHTER VEIN

Lawyer : Judge. I wish to appeal my client's case on the basis of newly discovered evidence.

Judge : And what is the nature of the new evidence.

Lawyer : I discovered that my client still has Rs. 500 left.

Experts Speak

Q: What is the difference between a partisan witness and interested witness?

A: Raju @ [Balachandran and Ors. v. State of Tamil Nadu AIR 2013 SC 983](#), very recently attempted a possible categorization of witnesses and identified broadly four such categories in the following words:

“33. For the time being, we are concerned with four categories of witnesses - a third party disinterested and unrelated witness (such as a bystander or passer-by); a third party interested witness (such as a trap witness); a related and therefore an interested witness (such as the wife of the victim) having an

interest in seeing that the accused is punished; a related and therefore an interested witness (such as the wife or brother of the victim) having an interest in seeing the accused punished and also having some enmity with the accused. But, more than the categorization of a witness, the issue really is one of appreciation of the evidence of a witness. A court should examine the evidence of a related and interested witness having an interest in seeing the accused punished and also having some enmity with the accused with greater care and caution than the evidence of a third party disinterested and unrelated witness. This is all that is expected and required.”

This Month's question

Q: Are pending proceedings before CLB (Company Law Board) and SEBI, a bar to initiate criminal proceedings?

Send your replies by 15th of Next month. The best reply would be acknowledged herein.

While due care is taken while preparing this information. The patrons are requested to verify and bring it to the notice of the concerned regarding any misprint or errors immediately, so as to bring it to the notice of all patrons. Needless to add that no responsibility for any result arising out of the said error shall be attributable to the publisher as the same is inadvertent.

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Suggestions; articles and responses welcome to make this as the most informative leaflet.

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“If you don’t build your dream, someone else will hire you to help them build theirs.”

Dhirubhai Ambani

CITATIONS

CITATIONS REPORTED IN SCC (Criminal)

Rape is a crime against body of a woman and soul of the society. Inadequate punishment/sentence is injustice to both victim and society. **Shyam Narain Vs. State (NCT of Delhi) 2013 (3) SCC (Cri.) 1**

Unless there is a voluntary participation by woman in to a sexual act after fully exercising choice in favour of assent, court cannot hold that woman gave consent to sexual intercourse. **Roop Singh Vs. State of Madhya Pradesh 2013 (3) SCC (Cri.) 24**

Non examination of material witness – if court finds evidence adduced worthy of being relied on, then evidence on record has to be accepted. Recovery or discovery in case at hand is a relevant fact or material which can be relied upon. **Harivadan Babubhai Patel Vs. State of Gujarat 2013 (3) SCC (Cri.) 27**

Witness completely changing stand in cross-examination and exculpating accused on the adjournment day, inference may be drawn. **Akil Vs State (NCT of Delhi) 2013 (3) SCC (Cri.) 63**

An order which does not contain any reason is no order in the eye of the law. **Pankaj Garg Vs. Menu Garg & anr. 2013 (3) SCC (Cri.) 124**

Dying Declaration reiterated can form sole basis of conviction without corroboration **Krishan Vs State of Haryana 2013 (3) SCC (Cri.) 125**

Reiterated extra judicial confession is capable of sustaining a conviction provided same is not made under any inducement, is voluntary and truthful **R.Kuppuswamy Vs State 2013 (3) SCC (Cri.) 151**

An FIR showing prima facie cognizable offences, would not stand vitiated merely on account of non compliance with S.154(2) of Cr.P.C. **State Vs. N.S.Gnaneswaran 2013 (3) SCC (Cri.) 235**

There is no format prescribed for recording dying declaration. It is not obligatory that either Executive Magistrate or Judicial Magistrate should be present for recording dying declaration. **Surinder Kumar Vs. State of Punjab 2013 (3) SCC (Cri.) 246**

CITATIONS REPORTED IN ALT(Crl.)

Where a specific provision prescribed minimum sentence, provisions of Probation of Offenders Act cannot be invoked. **Shyam Lal Verma Vs. CBI 2013 (3) ALT (Crl.) 9 (SC)**

Long delay may be one of the grounds for commutation of sentence in death into life imprisonment cannot be invoked in case of conviction under TADA or similar statutes. **Mahendra Nath Das Vs Union of India 2013 (3) ALT (Crl.) 20 (SC)**

A charge of murder may stand established against an accused even in absence of corpus delicti i.e. identification of the body or cause of death. **Rishipal Vs State of uttarakhand 2013 (3) ALT (Crl.) 39 (SC)**

Consent for purpose of Section 375 IPC requires voluntary participation not only after exercise of intelligence based on knowledge of the significance and moral quality of the act, but after having fully exercised the choice between resistance and assent. **Dilip Vs. State of Madhya Pradesh 2013 (3) ALT (Crl.) 108 (SC).**

While granting bail, factor to be borne in mind by the Court enunciated as under. **Y.S.Jagan Mohan Reddy Vs. CBI 2013 (3) ALT (Crl.) 114 (SC)**

Delay in lodging FIR cannot be a ground for throwing away the entire prosecution case **Kulwanth Singh & ors Vs. State of Punjab 2013 (3) ALT (Crl.) 122 (SC)**

CITATIONS REPORTED IN ALD(Crl.)

When witness did not attempt to improve his version then minor discrepancies / contradictions do not effect his testimony. **Kusti Mallaiah Vs State of A.P. 2013(2) ALD (Crl) 603 (SC)**

Failure of accused to explain the details within his special knowledge would draw inference U/Sec. 106 IEA and conviction can be awarded. **Babu @ Bala Subramaniam and another vs state of Tamilnadu 2013(2) ALD (Crl) 627 (SC)**

Guidelines to state governments to follows safeguards in cases pertaining to sexual abuse of children. **Shanker Kishanrao Khada vs State of Maharastra 2013(2) ALD (Crl) 636 (SC)**

Adjournment - Duty of Bench and Bar in the matter of grant of - Anguish expressed over grant of adjournments on the mere asking, deferment of cross-examination without recording special reasons and giving of dates after long gap – Duty of trial Judge to have control over proceedings and not to leave the same to whims and fancies of parties or their counsel, and to monitor trial in consonance with provisions of CrPC, emphasised - Hope expressed that courts would keep in mind statutory provisions and interpretation placed by Supreme Court and would not be guided by their own thinking and would not allow the control of trial to counsel for parties – **Gurnaib Singh Vs State of Punjab 2013 (2) ALD (Crl) 585 (SC) = (2013) 7 SCC 108**

Informant giving wireless message and later typed report of incident can choose which of the two be treated as FIR- If date and time of FIR is suspicious, the prosecution version is not rendered vulnerable, but the court is required to make a careful analysis of the evidence in support of prosecution. **Anand Mohan Vs State of Bihar 2013 (2) ALD (Cri) 561 (SC)**

Unless lapses made on the part of Investigating authorities are such, so as to cast a reasonable doubt on the case of the prosecution, or seriously prejudice the defence of the accused, the court would not set aside the conviction of the accused merely on the ground of tainted investigation.

Court in Dayal Singh & Ors. v. State of Uttaranchal, (2012) 8 SCC 263, has laid down certain norms for taking stern action against an Investigating Officer, guilty of dereliction of duty or misconduct in conducting investigation, and held that the State is bound to initiate disciplinary proceedings against such officers even ignoring the law of limitation, and even if such officer has retired.

if primacy is given to a designed or negligent investigation, or to the omissions or lapses created as a result of a faulty investigation, the faith and confidence of the people would be shaken not only in the law enforcing agency, but also in the administration of justice. **Karan Singh Vs State of Haryana 2013 (2) ALD (Cri) 578 (SC)**

In the absence of any material to show that the averments in the final report which are alleged to be defamatory in nature are based on the statements of the witnesses recorded by him during the course of investigation, sanction under section 197 Cr.P.C., is not necessary to initiate prosecution against the petitioner.(I.O) **I.Venkateshwarlu Vs State & Another, 2013 (2) ALD (Cri) 687 (AP)**

High Court not precluded from granting anticipatory bail in cases where prima facie the SC & ST (POA) act does not apply as per the contents of the complaint, dehors the impediment contained in Sec 18 of S.C. & ST (POA) act. **2013 (2) ALD (Cri) 535 (AP) Paracha Mohan Rao vs State of A.P.**

DD not supported by medical certificate of fitness- not fatal. No thumb rule that person with 92 5 burns cannot give DD as the person could not be said to conscious. **2013 (2) ALD (Cri) 598 (SC) Jose vs State of Kerala**

Prosecution initiated after expiry date of the sample. Service of sec 13(2) of the PFA act after the expiry date of the sample. Cases quashed. **2013 (2) ALD (Cri) 694 (AP) Hindusthan Lever Ltd vs State of A.P.**

THE INDIAN TREASURE-TROVE ACT, 1878

"20. Penalty on finder or purchaser for failure to give notice or for alteration of the treasure. —(1) If the finder or the purchaser of any treasure fails to give the notice or fails to make the deposit or give the security, as required by section 4, or alters or attempts to alter such treasure so as to conceal its identity, the share or interest in such treasure or any right to which the finder or the purchaser, as the case may be, would otherwise be entitled shall vest in the State Government.

(2) For the offence of such failure or alteration, the finder or purchaser shall also be punishable with imprisonment which may extend to **one year, or with fine, or with both.**"—Andhra Pradesh Act 10 of 1963, sec. 5 (w.e.f. 6-4-1963).

"22. Penalty on owner or occupier who fails to give notice under section 4. —If the owner or occupier of the place in which any treasure is found, being aware of the finding thereof, fails to give notice as required by section 4, sub-section (2), he shall be punishable with imprisonment which may extend to **six months, or with fine, or with both.**"

NEWS

The following Additional Public Prosecutor Grade-I (Category-4) are Promoted and posted as Public Prosecutor / Joint Director of Prosecutions (Category-3)

Sl. No.	Name & Designation with place of working	Name of Post & Posting proposed
1	Sri T.Srinivasulu Reddy, Additional Public Prosecutor Grade-I, I Additional Sessions Court, Ongole, Prakasam District.	Public Prosecutor, Prl. District & Sessions Court, Kadapa.
2	M.Bichappa, Additional Public Prosecutor Grade-I/Spl.PP, Spl.Court for SC&ST-cum-V Additional District & Sessions Court, Karimnagar	Public Prosecutor, Prl. District & Sessions Court, Sangareddy, Medak District.
3	G.Vyjayanthi, Additional Public Prosecutor Grade-I on OD as LA-cum-Spl.PP, CID, Hyderabad.	Public Prosecutor, as Legal Advisor-cum-special Public Prosecutor in the O/O. Additional Director General of Police, Hyderabad on OD on usual terms and conditions.
4	P.Ravinder Reddy, Additional Public Prosecutor Grade-I, II Additional District & Sessions Court, L.B.Nagar, Ranga Reddy District.	Public Prosecutor, Prl. District & Sessions Court, Karimnagar.
5	B.Yugander Rao, Additional Public Prosecutor Grade-I, IV Additional MSJ Court, Hyderabad.	Public Prosecutor, Prl. District & Sessions Court, Warangal.
6	K.Maruthi Rao, Additional Public Prosecutor Grade-I on OD as LA-cum-PP, O/o.Addl.DGP, Intelligence, Hyderabad.	Public Prosecutor, Prl. District & Sessions Court, Nalgonda.
7	A. Sowdamani, Additional Public Prosecutor Grade-I/Spl.PP, Spl.Court for trial of offences under SC&ST(POA) Act,1989, Anantapur.	Public Prosecutor/ Legal Advisor-cum-Special Public Prosecutor in the O/o. the Director General, Prisons, & Correctional Services Department, Hyderabad on OD on usual terms and conditions.
8.	J.V.Narsing Rao, Additional Public Prosecutor Grade-I/ Spl.PP, Spl.Court for trial of offences under SC&ST(POA) Act,1989, Ranga Reddy.,	Public Prosecutor, Prl. District & Sessions Court, L.B.Nagar, Ranga Reddy.

- S.O. 2989(E).—In exercise of the powers conferred by sub-section (3) of Section 1 of the Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013 (25 of 2013), the Central Government hereby appoints the 6th day of December, 2013 as the date on which the said Act shall come into force.
- AMENDMENT to Criminal Rules of Practice and Circular Orders, 1990 vide G.O.Rt. No. 2201 Dt: 07-11-2013.

The existing sub-rule (2) of rule 58 shall be read as sub-rule (2) (i) and the following rules (ii) and (iii) shall be added, namely,

- “ (ii) each document shall be assigned separate exhibit number;
 (iii) where a marked document contains more pages than one, the total number of pages shall be mentioned in the endorsement”.
- AMENDMENTS to Criminal Rules of Practice and Circular Orders, 1990 vide G.O.Rt.No. 2200 LAW (L.A. & J – HOME – COURTS-B) DEPARTMENT Dated: 07-11-2013

In the Criminal Rules of Practice and Circular Orders, 1990, after rule 116, the following rules shall be added, namely,

“116A. To avoid abscondence of accused due to furnishing of bogus surety or surety bond by a stock surety, in addition to the proof as mentioned in sub-clause 2 of the format of Surety Bond, the surety, in all cases under the NDPS Act, the cases in which offence is serious and sentence provided is of more than 10 years imprisonment or the cases under the special enactments shall furnish at least one of the documents, amongst the following:-

1. Ration Card (Household supply card) issued by the Civil Supplies Department.
2. Passport
3. Identity Card issued by the Election Commission of India.
4. Permanent Account Number Card, i.e., PAN Card issued by the Income-Tax Department.
5. ATM/Debit card, or Credit Card issued by any Nationalized or Private Bank of Standing at the National Level, having photograph of the holder thereon.
6. Identity Card issued by the Government Authorities or the Public Statutory Corporations.
7. Any such document, which is ordinarily issued by an Authority after due verification of the identity of the person and his address, which the Judge or the Magistrate may think just and proper, in the interest of justice, by recording specific reasons.”

“116B. The surety shall submit two copies of his latest passport size photographs, which are not older than six months before the date of submission, of which one

copy shall be retained in the Court record and one copy be retained by the police station concerned.”

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ON A LIGHTER VEIN

NASA was interviewing professionals to be sent to Mars. Only one could go and couldn't return to Earth.

The first applicant, an engineer, was asked how much he wanted to be paid for going. “A million dollars,” he answered, “because I want to donate it to M.I.T.”

The next applicant, a doctor, was asked the same question. He asked for \$2 million. “I want to give a million to my family,” he explained, “and leave the other million for the advancement of medical research.”

The last applicant was a lawyer. When asked how much money he wanted, he whispered in the interviewer's ear, “Three million dollars.”

“Why so much more than the others?” asked the interviewer. The lawyer replied, “If you give me \$3 million, I'll give you \$1 million, I'll keep \$1 million, and we'll send the engineer to Mars.”

Experts Speak

As held in *A.E.G. Carapiet v. A.Y. Derderian*, a party should put his or her case in the cross-examination of the witnesses of the opposite party and the above rule is one of essential justice and not merely a technical rule of evidence. The Division Bench of Calcutta High Court clearly laid down that wherever the opponent has declined to avail himself or herself of the opportunity to put his/her essential and material case in cross-examination, it must follow that he/she believed that the testimony given could not be disputed at all.

The non-cross examining a witness on a vital point amounts to admission. **Mrs. Murial Hyden vs Mrs. Dulcie M. Robb And Ors. 1991 (1) ALT 5**

Last Month's question

Q: Are pending proceedings before CLB (Company Law Board) and SEBI, a bar to initiate criminal proceedings?

A: As per the judgment dated 31 July, 2001 of Company Law Board headed by Hon'ble judges S Balasubramanian, K Balu in case pertaining between S. Sivakumar vs Cirlacs Data Systems Ltd. And reported as 2002 112 CompCas 162 CLB, in which it was pleaded that the pendency of criminal proceedings need not be a bar in the CLB considering the petition on the basis of the pleadings and pass an order, for which he relied on Medchal Chemicals & Pharma (P.) Ltd. v. Biological E, Ltd. [2000J CLA-BL Supp. 46 (SC) and Atul Mathur v. Atul Katra [1990] 68 Comp. Cas. 324 (SC) to show that 'both criminal law and civil law remedy can be perused in diverse situations and the same had not been disturbed.

As per sec. 21 (Savings provision) of THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992, which reads as follows:

21. Nothing in this Act shall exempt any person from any suit or other proceedings which might, apart from this Act, be brought against him.

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May the Spirit of
Christmas bring you
Peace,
May the Gladness of
Christmas bring you
Hope,
May the Warmth of
Christmas bring you
Happiness,
Wish you all A very merry
CHRISTMAS.



CITATIONS

Citations reported in SCC (Criminal)

S.216 of Cr.P.C – Alteration of charge – Power of courts – There is unrestricted power to add or alter any charge whenever court finds that defective charge has been made or addition of new charge becomes necessary after commencement of trial – but such addition or alteration has to be made before pronouncement of judgment **Jasvinder Saini & ors Vs. State (Govt of NCT of Delhi) 2013 (3) SCC (Cri.) 295**

Rape victim is not an accomplice but victim of offence – she stands on same footing as injured witness – there is no provision requiring corroboration of sole testimony of prosecutrix as it is required in case of accomplice

Acquittal of accused based on defective investigation is impermissible **Ganga Singh Vs. State of M.P. 2013 (3) SCC (Cri.) 314**

Protection of sanction U/s.197 Cr.P.C. available only for acts having reasonable connection with official duty **Om Prakash & ors Vs. State of Jharkhand 2013 (3) SCC (Cri.) 472**

A delayed FIR can usher in craftsmanship, manipulation and embellishment and may make prosecution story vulnerable, but when delay is adequately explained, same deserves to be accepted **Kanhैया Lal Vs. State of Rajasthan 2013 (3) SCC (Cri.) 499**

Citations reported in ALT (Cri.)

No time limit can be stipulated for disposal of criminal trial.

There is qualitative difference between right to speedy trial and accused's right of fair trial. **Niranjan Hemachandra Sashital Vs. State of Maharashtra 2013 (3) ALT (Cri.) 264 (SC)**

Prosecution case cannot be doubted for non-examining independent witness.

No absolute rule that police officers cannot be cited as witnesses and their depositions be treated with suspect. **Ram Swaroop Vs. State (Govt of NCT) of Delhi 2013 (3) ALT (Cri.) 298 (SC)**

Court is obliged to examine the probative value of documents produced in court or their contents and decide the question of admissibility of a document as secondary evidence. **Kaliya Vs. State of Madhya Pradesh 2013 (3) ALT (Cri.) 302 (SC)**

Abscondence by a person against whom FIR has been lodged, having an apprehension of being apprehended by police, cannot be said to be unnatural.

In a case of circumstantial evidence, judgment remains essentially inferential
Sujit Biswas Vs. State of Assam 2013 (3) ALT (Cri.) 316 (SC)

S.90 of Indian Evidence Act provides that any consent given under misconception of fact would not be considered as valid consent, so far as provisions of S.375 of IPC are concerned. Such physical relationship tantamount to committing rape. **Deepak Gulati Vs State of Haryana 2013 (3) ALT (Cri.) 339 (SC)**

Statement of accused U/s.313 Cr.P.C. cannot be treated as evidence u/s3.of IEA, as no oath administered to them.

Incriminating circumstances not put to accused during examination U/s.313 of Cr.P.C cannot be used against him and be excluded from consideration **Raj Kumar Singh A Raju Vs. State of Rajasthan 2013 (3) ALT (Cri.) 355 (SC)**

Interested Witnesses vis-à-vis conviction – not an invariable rule that interested evidence can never form basis of conviction, unless corroborated in material particulars by independent evidence. **Kanhaiya Lal & ors. Vs. State of Rajasthan 2013 (3) ALT (Cri.) 369(SC)**

Anticipatory bail is a discretionary remedy. Discretionary relief cannot be granted unless there are special circumstances. Such a relief cannot be granted in a casual manner. **G.Karanalal Vs. State of A.P. 2013 (3) ALT(Cri.) 173**

It cannot be said that merely because name of the accused is not there in the FIR continuation of proceedings against him would amount to abuse of process of court **K.V.Ramana Reddy Vs. State of A.P 2013 (3) ALT(Cri.) 208**

Citations reported in ALD (Cri)

Executive instructions can supplement and not supplant statutory provisions or rules. While a statutory provision or rule cannot be modified or amended by executive instructions, a valid provision or rule, having some lacuna or gap, can be supplemented by it.

Once a complaint is forwarded for investigation, by the Magistrate under Section 156(3) Cr.P.C, the police officer is obligated to receive the said complaint, register it as an FIR under Section 154 Cr.P.C. and cause an investigation there into. It is not open to him either to refuse to cause investigation or even to inform the Magistrate that it is appropriate that the investigation be caused by another Police Station. Section 201 Cr.P.C provides for a situation where a complaint is made to a Magistrate not competent to take cognizance of the offence and, there under, in case a complaint is made directly to him, for which he is not competent to take cognizance of the offence, the Magistrate can either direct the complainant to the proper Court or return the complaint for presentation to the proper Court. The Code does not empower a Magistrate, competent to take cognizance of and try the offence, either to return the complaint or to transfer it to another Magistrate who may

also be competent to take cognizance of and try the offence. **Where more Courts than one have territorial jurisdiction to take cognizance of and try the offence, the Code does not empower one Magistrate to transfer the complaint made before him to another Court, let alone transfer a complaint registered in one police station to another. Reading any such power as being available either to the Magistrate or to the Station House Officer, by necessary implication in any of the provisions of the Code, would amount to judicial legislation.**

Even if it is presumed that power inheres in a police officer to transfer the complaint lodged with his police station to another, in cases where the offence committed is beyond the territorial limits of his police station, it is difficult to hold that he can transfer the complaint even in cases where both the Police Stations have territorial jurisdiction to investigate the said complaints or one of the complaint is, or both the complaints are, registered pursuant to their being referred for investigation by the Magistrate under Section 156(3) Cr.P.C.

Police not barred from registering and investigating cases where an F.I.R. has already been registered in respect of the same offence/incident in another police station, until the parliament makes necessary legislation. **2013 (2) ALD (CRL) 855(A.P) Akbaruddin Owaisi Vs Govt of A.P. & others.**

Police officer can search and register crime pertaining to Sec 34(a) and 36 of Excise act under sec 55 of the act. **2013(2) ALD (CRL) 750(A.P) Sunkari Sambaiah & others Vs State of A.P.**

No Criminal prosecution is envisaged under WALTA Act. **2013 (2) ALD (CRL) 717(A.P) Nayeneni Surya Rao & anr Vs. District Collector, RR District.**

Case cannot proceed on basis of sanction obtained during pendency of prosecution. Respondents may initiate a fresh prosecution after obtaining necessary sanction in accordance with law. **2013 (2) ALD (CRL) 765 (S.C) Ahmed Bin Salem & others Vs State of A.P.**

Sec 145 Cr.P.C. proceedings cannot be kept pending for ever. RDO has to pass final order within considerable time. **2013 (2) ALD (CRL) 713 (A.P) Konduri Yadagiri & anr Vs RDO, Karimanagar.**

Prosecution not bound to examine all listed/cited witnesses. Discretion of prosecutor to examine witnesses.

False explanation may be counted as providing a missing link for completing the chain of circumstances.

Unless the discrepancies/contradictions/omissions in evidence of witness effect the core of the prosecution case, cannot discredit the witness.

2013 (2) ALD (CRL) 806 (S.C) Rohtash Kumar Vs State of Haryana .

Anticipatory bail can be granted to accused in SC & ST (POA) act cases, if the case is not made out against the accused except for omnibus allegations. **2013 (2) ALD (CRL) 709 (A.P.) Mysa Arjun Vs State of A.P.**

Search and seizure by S.I., who was I/C. SHO under NDPS act - no impropriety. **2013 (2) ALD (CRL) 767 (S.C.) State of Rajasthan Vs Bheru Lal.**

Mere fact that panch witness deposed that he signed on panchanama basing on the version of the I.O. that the papers pertain to arrest of the accused. Witness not liable for prosecution for giving false evidence. **2013 (2) ALD (CRL) 729 (A.P.) Dampetla Chenna Reddy Vs. State of A.P.**

Mere intimacy of husband with other woman would not amount to cruelty unless husband has ill-treated the wife either physically or mentally. The same cannot be treated to be a ground to drive the wife to commit suicide. Hence, 306 IPC is not attracted. **2013 (2) ALD (CRL) 755 (S.C.) Pinakin Mahipatray Rawal vs State of Gujarat.**

Except simply denying the offence alleged in the statement under section 313 Cr.P.C., the appellant did not let in any evidence to contradict the version of the prosecutrix. No motive was either alleged or proved as against the prosecutrix or any of the witnesses to disbelieve the version of the prosecution witnesses or to hold that the Appellant was falsely implicated. Broken bangles were also recovered from the place of occurrence at the instance of the prosecutrix. No previous grudge of the prosecutrix as against him in order to falsely implicating the appellant was also suggested. **2013 (2) ALD (Cri) 788= 2013 STPL(Web) 345 SC = [2013] 2 S.C.R. 765 Swaroop Singh Vs. State of M.P.**

In view of the compromise arrived at between the parties, the possibility of conviction is remote and bleak and continuation of criminal proceedings would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim.

Though the offence under Section 3 (1) (x) of the Act is not compoundable, but this Hon'ble Court in Criminal Petition No. 6359 of 2013 was pleased to allow the application filed for compounding the offences where the case was registered under the provisions of the said Act.

Taking into consideration the judgments referred to above and in view of the compromise arrived at between the parties and also in view of the unwillingness of the second respondent to proceed further in the complaint filed by him, this Court is of the view that continuation of proceedings would be an abuse of process of law as no useful purpose would be served in allowing the proceedings to go on as the chances of conviction would be very remote and bleak. **2013 (2) ALD (Cri) 705 (A.P. K.S.S. Rajendra Prasad & anr Vs State of A.P. & anr.**

THE INFORMATION TECHNOLOGY ACT, 2000

Came into force on 17th October, 2000 *vide* G.S.R. 788 (E), dated 17th October, 2000.

As per sub-section (4) of section 1, the documents or transactions to which the act shall not apply are

1. A negotiable instrument (other than a cheque) as defined in section 13 of the Negotiable Instruments Act, 1881 (26 of 1881).
2. A power-of-attorney as defined in section 1A of the Powers-of-Attorney Act, 1882 (7 of 1882).
3. A trust as defined in section 3 of the Indian Trusts Act, 1882 (2 of 1882).
4. A Will as defined in clause (h) of section 2 of the Indian Succession Act, 1925 (39 of 1925) including any other testamentary disposition by whatever name called.
5. Any contract of the sale of conveyance of immovable property or any interest in such property.

As per sections

75. Act to apply for offence or contravention committed outside India.

76. Confiscation.—Any computer, computer system, floppies, compact disks, tape drives or any other accessories related thereto, in respect of which any provision of this Act, rules, orders or regulations made thereunder has been or is being contravened, shall be liable to confiscation:

77. Penalties or confiscation not to interfere with other punishments.

78. Power to investigate offences. —a police officer not below the rank of **Inspector** shall investigate any offence under this Act.

80. Power of police officer and other officers to enter, search, etc.—(1) any police officer, not below the rank of a **Deputy Superintendent of Police**, or any other officer of the Central Government or a State Government authorised by the Central Government in this behalf **may enter any public place and search and arrest without warrant any person** found therein who is **reasonably suspected** of having committed or of committing or of being **about to commit** any offence under this Act.

77A Compounding of Offences:

(1) A Court of competent jurisdiction may compound offences other than offences for which the punishment for life or imprisonment for a term exceeding three years has been provided under this Act.

Provided that the Court shall not compound such offence where the accused is by reason of his previous conviction, liable to either enhanced punishment or to a punishment of a different kind.

Provided further that the Court shall not compound any offence where such offence affects the socio-economic conditions of the country or has been committed against a child below the age of 18 years or a woman.

(2) The person accused of an offence under this act may file an application for compounding in the court in which offence is pending for trial and the provisions of section 265 B and 265 C of Code of Criminal Procedures, 1973 shall apply.

77 B Offences with three years imprisonment to be **cognizable**

84B & 84C provide Punishment for **abetment** of offences and for **attempt to commit offences**, where express provision for such punishment is not provided in the act.

63. all contraventions under this act (pending before the Special Tribunal) are **compoundable**.

<p>65. Tampering with computer source documents. If any person knowingly or intentionally conceals, destroys code or alters or causes another to conceal, destroy, or alter any computer source used for a computer, computer programme, computer system, or computer network</p>	<p>imprisonment upto three years, or with fine upto two lakh rupees, or with both</p>
<p>66.Computer related offences. —If any person, dishonestly or fraudulently, without permission of the owner or any other person who is incharge of a computer, computer system or computer network— (i) accesses such computer, computer system or computer network or computer resource; (ii) downloads, copies or computer system or computer network or computer resource; (ii) downloads, copies or extracts any data, computer data-base or information; (iii) introduces or causes to be introduced any computer contaminant or computer virus; (iv) damages or causes to be damaged any computer, computer system or computer network data, computer database or any other programmes; (v) disrupts or causes disruption; (vi) denies or causes the denial of access to any person authorised to access; (vii) provides any assistance to any person to</p>	<p>which may extend to three years or with fine which may extend to five lakh rupees or with both</p>

<p>facilitate access in contravention of the provisions of this Act;</p> <p>(viii) charges the services availed of by a person to the account of another person by tampering with or manipulating any computer, computer system or computer network;</p> <p>(ix) destroys, deletes or alters any information residing in a computer resource or diminishes its value or utility or affects it injuriously by any means;</p> <p>(x) steal, conceals, destroys or alters or causes any person to steal, conceal, destroy or alter any computer source code with intention to cause damage; he shall be liable to pay damages by way of compensation to the person so affected.</p>	
<p>66A. Punishment for sending offensive messages through communication service, etc. —Any person who sends, by means of a computer resource or a communication device,—</p> <p>(a) any information that is grossly offensive or has menacing character; or</p> <p>(b) any information which he knows to be false, but for the purpose of causing annoyance, inconvenience, danger, obstruction, insult, injury, criminal intimidation, enmity, hatred or ill will, persistently by making use of such computer resource or a communication device; or</p> <p>(c) any electronic mail or electronic mail message for the purpose of causing annoyance or inconvenience or to deceive or to mislead the addressee or recipient about the origin of such messages,</p>	<p>shall be punishable with imprisonment for a term which may extend to three years and with fine.</p>
<p>66B. Punishment for dishonestly receiving stolen computer resource or communication device.— ANY person KNOWING OR HAVING REASON TO BELIEVE the same to be stolen</p>	<p>may extend to three years or with fine which may extend to rupees one lakh or with both</p>
<p>66C. Punishment for identity theft. —Whoever, fraudulently or dishonestly make use of the electronic signature, password or any other unique identification feature of any other person</p>	<p>may extend to three years and shall also be liable to fine with may extend to rupees one lakh.</p>
<p>66D. Punishment for cheating by personation by using computer resource.</p>	<p>may extend to three years and shall also be liable to fine which may extend to one lakh rupees.</p>

<p>66E. Punishment for violation of privacy. — Whoever, intentionally or knowingly captures, publishes or transmits the image of a private area of any person without his or her consent, under circumstances violating the privacy of that person</p>	<p>may extend to three years or with fine not exceeding two lakh rupees, or with both.</p>
<p>66F : Punishment for cyber terrorism: (1) Whoever,- (A) with intent to threaten the unity, integrity, security or sovereignty of India or to strike terror in the people or any section of the people by — (i) denying or cause the denial of access to any person authorized to access computer resource; or (ii) attempting to penetrate or access a computer resource without authorisation or exceeding authorized access; or (iii) introducing or causing to introduce any Computer Contaminant and by means of such conduct causes or is likely to cause death or injuries to persons or damage to or destruction of property or disrupts or knowing that it is likely to cause damage or disruption of supplies or services essential to the life of the community or adversely affect the critical information infrastructure specified under section 70, or (B) knowingly or intentionally penetrates or accesses a computer resource without authorization or exceeding authorized access, and by means of such conduct obtains access to information, data or computer database that is restricted for reasons of the security of the State or foreign relations; or any restricted information, data or computer database, with reasons to believe that such information, data or computer database so obtained may be used to cause or likely to cause injury to the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence, or to the advantage of any foreign nation, group of individuals or otherwise, commits the offence of cyber terrorism.</p>	<p>imprisonment which may extend to imprisonment for life</p>

<p>67.Punishment for publishing or transmitting obscene material in electronic form. —Whoever publishes or transmits or causes to be published or transmitted in the electronic form, any material which is lascivious or appeals to the prurient interest or if its effect is such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it,</p>	<p>on first conviction with imprisonment of either description for a term which may extend to three years and with fine which may extend to five lakh rupees and in the event of second or subsequent conviction with imprisonment of either description for a term which may extend to five years and also with fine which may extend to ten lakh rupees.</p>
<p>67A.Punishment for publishing or transmitting of material containing sexually explicit act, etc., in electronic form.</p>	<p>on first conviction with imprisonment of either description for a term which may extend to five years and with fine which may extend to ten lakh rupees and in the event of second or subsequent conviction with imprisonment of either description for a term which may extend to seven years and also with fine which may extend to ten lakh rupees.</p>
<p>67B.Punishment for publishing or transmitting of material depicting children in sexually explicit act, etc., in electronic form.</p> <p>Whoever—</p> <p>(a) publishes or transmits or causes to be published or transmitted material in any electronic form which depicts children engaged in sexually explicit act or conduct; or</p> <p>(b) creates text or digital images, collects, seeks, browses, downloads, advertises, promotes, exchanges or distributes material in any electronic form depicting children in obscene or indecent or sexually explicit manner; or</p> <p>(c) cultivates, entices or induces children to online relationship with one or more children for and on sexually explicit act or in a manner that may offend a reasonable adult on the computer</p>	<p>on first conviction with imprisonment of either description for a term which may extend to five years and with fine which may extend to ten lakh rupees and in the event of second or subsequent conviction with imprisonment of either description for a term which may extend to seven years and also with fine which may extend to ten lakh rupees:</p>

resource; or (d) facilitates abusing children online, or (e) records in any electronic form own abuse or that of others pertaining to sexually explicit act with children,	
67C.Preservation and retention of information by intermediaries in such manner and format as the Central Government may prescribe.	may extend to three years and also be liable to fine.
68. Power of Controller to give directions provides that the controller may give directions to a Certifying Authority or any employee of such authority to take such measures or cease carrying on such activities as specified in the order, so as to ensure compliance with this law.	imprisonment upto 3 years or fine upto Rs.2 lakhs, or both
69. Powers to issue directions for interception or monitoring or decryption of any information through any computer resource	the subscriber or intermediary or any person who fails to assist the agency referred to in sub-section (3) shall be punished with an imprisonment for a term which may extend to seven years and shall also be liable to fine.
69A. Power to issue directions for blocking for public access of any information through any computer resource:	Imprisonment for a term which may extend to seven years and also be liable to fine.
69B Power to authorize to monitor and collect traffic data or information through any computer resource for Cyber Security:	imprisonment for a term which may extend to three years and shall also be liable to fine
70 empowers the appropriate Government to declare by notification any computer, computer system or computer network to be a protected system.	imprisonment which may extend to ten years or with fine.
70 B Indian Computer Emergency Response Team to serve as national agency for incident response: Any service provider, intermediaries, data centers, body corporate or person who fails to provide the information called for or comply with the direction under sub-section (6) UPON A COMPLAINT BY AUTHORISED OFFICER U/Sub-Sec 1	imprisonment for a term which may extend to one year or with fine which may extend to one lakh rupees or with both
71. Penalty for misrepresentation.—Whoever	term which may extend to two

makes any misrepresentation to, or suppresses any material fact from the Controller or the Certifying Authority for obtaining any licence or Digital Signature Certificate,	years, or with fine which may extend to one lakh rupees, or with both.
72. Penalty for breach of confidentiality and privacy. — Save as otherwise provided in this Act or any other law for the time being in force, whoever empowered under this act access the information of a person and discloses the same	may extend to two years, or with fine which may extend to one lakh rupees, or with both.
72 A Punishment for Disclosure of information in breach of lawful contract	imprisonment for a term which may extend to three years, or with a fine which may extend to five lakh rupees, or with both
73. Penalty for publishing Digital Signature Certificate false in certain particulars. —	a term which may extend to two years, or with fine which may extend to one lakh rupees, or with both
74. Publication for fraudulent purpose. — Whoever knowingly creates, publishes or otherwise makes available a Digital Signature Certificate for any fraudulent or unlawful purpose	may extend to two years, or with fine which may extend to one lakh rupees, or with both.

ON A LIGHTER VEIN

One afternoon, a wealthy lawyer was riding in the back of his **limousine,** when he saw two men eating **grass** by the roadside.

He ordered his driver to stop and he got out to investigate.

“Why are you eating grass?” he asked one man.

“We don’t have any money for food.” **the poor man replied.**

“Oh, come along with me then.”

“But sir, I have a wife with two children!”

“Bring them along! And you, come with us too!”, **he said to the other man.**

“But sir, I have a wife with six children!” **the second man answered.**

“Bring them as well!”

They all climbed into the car, which was no easy task, even for a car as large as the limo. Once underway, one of the **poor fellows** says, “Sir, you are too kind. **Thank you** for taking all of us with you.”

The lawyer replied, **“No problem,** the grass at my home is about **two feet tall.**”

NEWS

- Prosecution Replenish wishes Smt. Soumya, office of the D.O.P, a very Happy Retirement.
- Sri Reva Reddy, Retd. JD, is now the Legal Advisor of Cyberabad Commissionerate.

Experts Speak

Q: Whether Sec 354 IPC is triable by court of sessions in Andhra Pradesh or by Magistrate court?

A: The recent amendments by way of Criminal Law amendment act, 2013, has created a furor regarding the jurisdiction of Sec 354 IPC not only among the legal fraternity, but also among the Judiciary. Some of the bail applications and other petitions filed in cases involving 354 IPC, have been returned to be filed before the Magistrate courts.

It is relevant to take note of the objective of the Crl. Law. Amendment, is to make the laws stringent regarding the sexual offences against women and propounded greater punishments.

Let us try to answer the query:

Sec. 5 of IPC, **Certain laws not to be affected by this Act.**- Nothing in this Act shall affect the provisions of any Act for punishing mutiny and desertion of officers, soldiers, sailors or airman in the service of the Government of India **or the provisions of any special or local law.**

The Local law is defined in Sec 42 of IPC, A “local law” is a law applicable only to a particular part of India.

Hence, the amendment as applicable in A.P. (Local law) will prevail over the general law (Crl.Law.Amndt. Act,2013).

Further,

The Supreme Court in Ashoka Marketing Limited and Another Vs. Punjab National Bank and Others, (1990) 4 SCC 406, applied and explained the legal maxim: **leges posteriores priores contrarias abrogant, (later laws abrogate earlier contrary laws).** This principle is subject to the exception embodied in the maxim: **generalia specialibus non derogant, (a general provision does not derogate from a special one).** This means that where the literal meaning of the general enactment covers a situation for which specific provision is made by another

enactment contained in an earlier Act, it is presumed that the situation was intended to continue to be dealt with by the specific provision rather than the later general one (Benion: Statutory Interpretation p. 433-34). One of the principles of statutory interpretation is that the later law abrogates earlier contrary laws. This principle is subject to the exception embodied in the second latin maxim mentioned above. The Supreme Court in paragraphs 50-52 of this decision held as follows:

“50. One such principle of statutory interpretation which is applied is contained in the latin maxim: *leges posteriores priores contrarias abrogant*, (later laws abrogate earlier contrary laws). This principle is subject to the exception embodied in the maxim: *generalia specialibus non derogant*, (a general provision does not derogate from a special one). This means that where the literal meaning of the general enactment covers a situation for which specific provision is made by another enactment contained in an earlier Act, it is presumed that the situation was intended to continue to be dealt with by the specific provision rather than the later general one (Benion: Statutory Interpretation p. 433-34).

51. The rationale of this rule is thus explained by this Court in the *J.K. Cotton Spinning & Weaving Mills Co. Ltd. v. The State of Uttar Pradesh & Others*, [1961] 3 SCR 185: "The rule that general provisions should yield to specific provisions is not an arbitrary principle made by lawyers and judges but springs from the common understanding of men and women that when the same person gives two directions one covering a large number of matters in general and another to only some of them his intention is that these latter directions should prevail as regards these while as regards all the rest the earlier directions should have effect."

52. In *U.P. State Electricity Board v. Hari Shankar Jain*, [1979] 1 SCR 355 this Court has observed: "**In passing a special Act, Parliament devotes its entire consideration to a particular subject. When a general Act is subsequently passed, it is logical to presume that Parliament has not repealed or modified the former special Act unless it appears that the special Act again received consideration from Parliament.**" "

44. Justice G.P. Singh in his well-known work "Principles of Statutory Interpretation 12th Edition 2010" has dealt with the principles of interpretation applicable while examining the interplay between a prior special law and a later general law. While doing so, he quotes Lord Philimore from *Nicolle Vs. Nicolle*, (1922) 1 AC 284, where he observed:

"it is a sound principle of all jurisprudence that a prior particular law is not easily to be held to be abrogated by a posterior law, expressed in general terms and by the apparent generality of its language applicable to and covering a number of cases, of which the particular law is but one. This, as a matter of jurisprudence, as understood in England, has been laid down in a great number of cases, whether the prior law be an express statute, or be the underlying common or customary law of the country. **Where general words in a later Act are capable of reasonable and sensible application without extending them to subjects specially dealt with by earlier legislation, that earlier and special legislation is not to be held indirectly**

repealed, altered or derogated from merely by force of such general words, without any indication of a particular intention to do so.”

45. The Supreme Court in R.S. Raghunath Vs. State of Karnataka & Another, (1992) 3 SCC 335, quotes from Maxwell on The Interpretation of Statutes, the following passage: "A general later law does not abrogate an earlier special one by mere implication. Generalia specialibus non derogant, or, in other words, where there are general words in a later Act capable of reasonable and sensible application without extending them to subjects specially dealt with by earlier legislation, you are not to hold that earlier and special legislation indirectly repealed, altered, or derogated from merely by force of such general words, without any indication of a particular intention to do so. In such cases it is presumed to have only general cases in view, and not particular cases which have been already otherwise provided for by the special Act."

HENCE, SEC 354 IPC is triable by Sessions court in the state of A.P.

THIS MONTH'S QUESTION

What is the appropriate provision that has to be charged against Chain SNATCHING? Is it Sec 382 IPC or Sec 379 & 356 IPC?

Please send in your answers within 15 days. The best and correct answers would be acknowledged herein.

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