Vol- VI
Part-1

Prosecution Replenish

An Endeavour for Learning and Excellence

January, 2017

Aano Bhadra Krtavo Yantu Vishwatah.(RIG VEDAM)
"Let Noble Thoughts Come To Me From All Directions"

*Never play with the feelings of others because you may win the game but the risk is that you will surely lose the person for a life time - **Shakespeare**.*

*The world suffers a lot. Not because of the violence of bad people, But because of the silence of good people! - **Napoleon**.*

*I am thankful to all those who said NO to me It's because of them I did it myself. - **Einstein**.*

*If friendship is your weakest point then you are the strongest person in the world. - **Abraham Lincoln**.*

*Laughing faces do not mean that there is absence of sorrow! But it means that they have the ability to deal with it. - **Shakespeare**.*

*Opportunities are like sunrises, if you wait too long you can miss them. - **William Arthur**.*

When you are in the light,
*Everything follows you, But when you enter unto the dark, Even your own shadow doesn't follow you. - **Hitler**.*

*Coin always makes sound but the currency notes are always silent. So when your value increases keep quiet. - **Shakespeare**.*

CITATIONS

(a) Constitution of India – Article 136 – Appeal against acquittal – Supreme Court will n pot ordinarily interfere with the appreciation of evidence or on findings of fact unless the High Court "acts perversely or otherwise improperly" – Court may also interfere where the appreciation of evidence and finding is vitiated by any error of law of procedure or found contrary to the principles of natural justice, errors of record and misreading of the evidence. (Para 13, 14)
(b) Criminal jurisprudence – Burden of proof to establish guilt of the accused beyond all reasonable doubts, and not all doubts – Lies on prosecution – Further, if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence – The view favourable to the accused should be adopted – But the rule regarding the benefit of doubt does not warrant acquittal of the accused by resorting to surmises, conjectures or fanciful considerations. (Para 15, 16, 17)
(d) Criminal trial – Testimony of closely related witness – Such evidence cannot be disbelieved merely on the ground that the witnesses are related to each other or to the deceased – Requires careful scrutiny and appreciation before basing conviction on such evidence – Can be relied upon if truthful, cogent, credible and trustworthy. (Para 28)
(e) Criminal trial – Appreciation of evidence – Minor contradictions, inconsistencies or insignificant embellishments – Do not affect the core of the prosecution case – Should not be a ground to reject prosecution evidence – Serious contradictions and omissions materially affect the case of the prosecution but not every contradiction or omission. (Para 29)
(f) Criminal trial – Defective investigation – Lapses in investigation does not invalidate the proceedings – Court has to scrutinize the evidence on record de hors the defective investigation. (Para 30)

(g) Code of Criminal Procedure, 1973 – Section 157 – Delay in sending report to Magistrate – Will not invalidate prosecution story if FIR recorded and investigation started without unreasonable delay, there is no other infirmity, and no prejudice is caused to the accused. (Para 40)
(h) Code of Criminal Procedure, 1973 – Section 174 – Evidentiary value of inquest report – Inquest report not a substantive piece of evidence – Can only be looked into for testing veracity of witnesses of inquest – It is prepared merely to ascertain the apparent cause of death, namely, whether it is suicidal, homicidal, accidental or caused by animals or machinery etc. and stating in what manner, or by what weapon or instrument, the injuries on the body appear to have been inflicted. (Para 41)
(i) Criminal trial – Appreciation of evidence – Ocular and medical evidence – Evidentiary value of medical evidence is only corroborative and not conclusive – In case of conflict, ocular evidence is preferred – Instantly no conflict between the two. (Para 43)
(j) Criminal trial – Motive – Direct evidence of witnesses trustworthy – Motive loses its significance. (Para 46)
(k) Criminal trial – Recovery of weapon – Mere non-recovery of weapon – Not fatal where there is ample unimpeachable ocular evidence. (Para 47)
(l) Code of Criminal Procedure, 1973 – Section 313 – Purpose of section 313 is to meet requirement of natural justice – Non-compliance of mandatory provisions of Section 313 does not entitle the accused to acquittal. (Para 48, 49)
(m) Criminal trial – Independent witness – Lack of independent witnesses – Not fatal to prosecution story. (Para 50, 51, 52)
(n) Criminal trial – Site plan – Otherwise credible testimony of eye-witnesses – Cannot be disbelieved on basis of the site plan. (Para 53)
YOGESH SINGH Vs MAHABEER SINGH & OTHERS; 2016 0 Supreme(SC) 853; 2016(4) Crimes 121 (SC)

Bail in other cases is not a ground for granting bail in case at hand.
Prayer for bail has to be considered on its own merit.
Fundamental right to individual liberty has to be balanced with the interest of the society. Period of custody is a relevant factor, but it has to be weighed with the totality of the circumstances and the criminal antecedents of the accused.
CHANDRAKESHWAR PRASAD @ CHANDU BABU Vs STATE OF BIHAR AND ANR.
STATE OF BIHAR VS MD. SHAHABUDDIN 2016 0 Supreme(SC) 768;2016(3) SCC (Crl) 685; 2016 (9) SCC 443.

(a) An accused is entitled to get a copy of the First Information Report at an earlier stage than as prescribed under Section 207 of the Cr.P.C.
(b) An accused who has reasons to suspect that he has been roped in a criminal case and his name may be finding place in a First Information Report can submit an application through his representative/agent/parokar for grant of a certified copy before the concerned police officer or to the Superintendent of Police on payment of such fee which is payable for obtaining such a copy from the Court. On such application being made, the copy shall be supplied within twenty-four hours.
(c) Once the First Information Report is forwarded by the police station to the concerned Magistrate or any Special Judge, on an application being filed for certified copy on behalf of the accused, the same shall be given by the Court concerned within two working days. The aforesaid direction has nothing to do with the statutory mandate inhered under Section 207 of the Cr.P.C.
(d) The copies of the FIRs, unless the offence is sensitive in nature, like sexual offences, offences pertaining to insurgency, terrorism and of that category, offences under POCSO Act and such other offences, should be uploaded on the police website, and if there is no such website, on the official website of the State Government, within twenty-four hours of the registration of the First Information Report so that the accused or any person connected with the same can download the FIR and file appropriate application before the Court as per law for redressal of his grievances. It may be clarified here that in case there is connectivity problems due to geographical location or there is some other unavoidable difficulty, the time can be extended up to forty-eight hours. The said 48 hours can be extended maximum up to 72 hours and it is only relatable to connectivity problems due to geographical location.

(e) The decision not to upload the copy of the FIR on the website shall not be taken by an officer below the rank of Deputy Superintendent of Police or any person holding equivalent post. In case, the States where District Magistrate has a role, he may also assume the said authority. A decision taken by the concerned police officer or the District Magistrate shall be duly communicated to the concerned jurisdictional Magistrate.
(f) The word 'sensitive' apart from the other aspects which may be thought of being sensitive by the competent authority as stated hereinbefore would also include concept of privacy regard being had to the nature of the FIR. The examples given with regard to the sensitive cases are absolutely illustrative and are not exhaustive.
(g) If an FIR is not uploaded, needless to say, it shall not enure per se a ground to obtain the benefit under Section 438 of the Cr.P.C.
(h) In case a copy of the FIR is not provided on the ground of sensitive nature of the case, a person grieved by the said action, after disclosing his identity, can submit a representation to the Superintendent of Police or any person holding the equivalent post in the State. The Superintendent of Police shall constitute a committee of three officers which shall deal with the said grievance. As far as the Metropolitan cities are concerned, where Commissioner is there, if a representation is submitted to the Commissioner of Police who shall constitute a committee of three officers. The committee so constituted shall deal with the grievance within three days from the date of receipt of the representation and communicate it to the grieved person.
(i) The competent authority referred to hereinabove shall constitute the committee, as directed herein-above, within eight weeks from today.
(j) In cases wherein decisions have been taken not to give copies of the FIR regard being had to the sensitive nature of the case, it will be open to the accused/his authorized representative/parokar to file an application for grant of certified copy before the Court to which the FIR has been sent and the same shall be provided in quite promptitude by the concerned Court not beyond three days of the submission of the application.
(k) The directions for uploading of FIR in the website of all the States shall be given effect from 15th November, 2016.
Youth Bar Association of India Versus Union of India and Others 2016 (4) Crimes 1 (SC); 2016 0 Supreme(SC) 692; (2016) 3 SCC (Cri) 691; (2016) 9 SCC 473; 2016(2) ALD (Crl) 892(SC).

(a) Prevention of Corruption Act, 1988 – Section 19(1) – Previous sanction of the Government mandatory for cognizance against a public servant – The provision bars taking of cognizance of an offence – Whether covers an order passed u/s 156(3) – Held, order directing further investigation under Section 156(3) cannot be passed in the absence of valid sanction. (Para 12)
(b) Prevention of Corruption Act, 1988 – Section 19 – Appellants-Government servants abused entirely different office or offices than the one which they were holding on the date on which cognizance was taken – Previous sanction of Government not required for taking cognizance against them.
(2016) 3 SCC (Cri) 696; (2016) 9 SCC 598; 2016 0 Supreme(SC) 681; L. NARAYANA SWAMY VS STATE OF KARNATAKA & ORS.

(a) Code of Criminal Procedure, 1973 – Section 301 – Expression ‘any court’ – Provision applies to trials before the Magistrate as well as Court of Session – Prosecution in a Sessions Court cannot be conducted by anyone other than the public prosecutor – Counsel for private person can act only under instructions of Public Prosecutor. (Para 9, 11, 12)
(b) Code of Criminal Procedure, 1973 – Section 302 – Intended only for magistrate courts – Complainant seeking to conduct the case himself, has to file a written application making out a case so that the Magistrate can exercise the jurisdiction and form the requisite opinion – Section 302 applies to every stage including the stage of framing charge, if complainant is permitted by the Magistrate to conduct the prosecution. (Para 11, 19, 20)
2016 0 Supreme(SC) 701; (2016) 10 SCC 378; 2016(2) ALD (Cri) 901 (SC); Dhariwal Industries Ltd.Vs. Kishore Wadhwani & Ors.

Criminal Procedure Code, 1973 — S. 427(1) — Person already undergoing a sentence of imprisonment — Subsequent conviction and sentence: Subsequent sentence, would normally commence at the expiration of imprisonment to which he was previously sentenced. However, such normal rule is subject to a qualification, and it is within the powers of court to direct that subsequent sentence shall run concurrently with the previous sentence, and not consecutively. **[Benson v. State of Kerala, (2016) 10 SCC 307**

Criminal Trial — Proof — Proof beyond reasonable doubt: Burden of proof is always on prosecution and accused is presumed to be innocent unless proved guilty. Prosecution has to prove its case beyond reasonable doubt and accused is entitled to benefit of reasonable doubt. The reasonable doubt is one which occurs to a prudent and reasonable man. S. 3, Evidence Act, refers to two situations in which a fact is said to be proved: (i) when a person feels absolutely certain of a fact i.e. "believes it to exist", and (ii) when he is not absolutely certain and thinks it so extremely probable that a prudent man would, under the circumstances, act on the assumption of its existence. The doubt which the law contemplates is not of a confused mind but of prudent man who is assumed to possess the capacity to separate the chaff from the grain. The degree of proof need not reach certainty but must carry a high degree of probability. [**Bhagwan Jagannath Markad v. State of Maharashtra, (2016) 10 SCC 537]**

Penal Code, 1860 — S. 149 [Ss. 302, 143, 147, 148 and 323 r/w S. 149] — Fastening of vicarious liability under S. 149 — Requirements of: Once it is established that unlawful assembly had a common object, it is not necessary that all persons forming the unlawful assembly must be shown to have committed some overt act. Vicarious liability under S. 149 rests upon the fact whether the other members knew beforehand that the offence actually committed was likely to be committed in prosecution of the common object. [**Saddik v. State of Gujarat, (2016) 10 SCC 663]**

To prove the chance fingerprints lifted from the entrance glass doors of the bank, the prosecution should have proved the photographs by examining constable-Trimul Kumar and should have produced the negatives of the photographs of the chance fingerprints. This lapse in the prosecution, in our view, cannot result in acquittal of the appellants. The evidence adduced by the prosecution must be scrutinized independently of such lapses either in the investigation or by the prosecution or otherwise, the result of the criminal trial would depend upon the level of investigation or the conduct of the prosecution. Criminal trials should not be made casualty for such lapses in the investigation or prosecution. Evidence of PW-14 (Manager) and PW-18 (Cashier) identifying the appellants and their evidence as to identity of the appellants in the test identification parade ought not to have been disbelieved by the tribunal.

Service law – Disciplinary proceedings – Acquittal in criminal proceeding – Does not debar employer from taking action in accordance with Rules – Acquittal in criminal case does not entitle a person to automatic reinstatement, unless honourably acquitted – Instantly, appellant acquitted giving benefit of doubt – Not entitled to reinstatement

2016 0 Supreme(SC) 545; 2016 (3) Crimes 212 (SC); 2016(2) ALD (Crl) 934(SC); Ajay Kumar Singh Vs. The Flag Officer Commanding-in-chief & Ors.

Criminal investigation – Drawing voice sample – Appellants consenting to give voice sample – Objecting to content of the text to be read out – Text extracted from sting operation clipping and included inculpatory words – Held, appellants cannot insist that the text should not contain any inculpatory words – Parts of the disputed conversation has to be used since a commonality of words is necessary to facilitate a spectrographic examination – Texts containing inculpatory words from disputed conversation but not sentences, approved – Article 21, Constitution of India. (Para 10, 14)

2016 (2) ALD (Crl) 956(SC); 2016 8 SCC 307; 2016 6 Supreme 122; 2016 0 Supreme(SC) 588; SUDHIR CHAUDHARY ETC. ETC. Vs. STATE (NCT OF DELHI)

since petitioners case falls under Section 10(3)(h) of the Act of 1967 as non-Bailable Warrant is pending against the 2nd respondent, it is for the 1st respondent to consider the case of the petitioner in terms of Section 10(3)(h) of the Act and pass orders on the application of the petitioner. The Joint

Secretary (CPV), Ministry of External Affairs issued Circular No. VI/401/1/1/2006, dated 04.06.2007 covering the issue. In the circumstances, the 1st respondent cannot direct the petitioner to obtain specific orders from the Court for impounding the passport of the 2nd respondent. **K.Sowmya Vs RPO Secunderabad. 2016 (2) ALD (Crl) 998; 2016 0 Supreme(AP) 333;**

THE RIGHTS OF PERSONS WITH DISABILITIES ACT, 2016

(r) **"person with benchmark disability"** means a person with **not less than forty per cent**. of a specified disability where specified disability has not been defined in measurable terms and includes a person with disability where specified disability has been defined in measurable terms, as certified by the certifying authority;

(*s*) **"person with disability"** means a person with long term physical, mental, intellectual or sensory impairment which, in interaction with barriers, hinders his full and effective participation in society equally with others;

(*t*) **"person with disability having high support needs"** means a person with benchmark disability certified under clause (*a*) of sub-section (*2*) of section 58 who needs high support;

Sanction for proceeding against a govt. employee mandatory u/sec. 94 of the act.

As per sec.95. Where an act or omission constitutes an offence punishable under this Act and also under any other Central or State Act, then, notwithstanding anything contained in any other law for the time being in force, the offender found guilty of such offence shall be liable to punishment only under such Act as provides for **punishment which is greater in degree.**

OFFENCES AND PENALTIES

89. Any person who contravenes any of the provisions of this Act, or of any rule made thereunder	shall for first contravention be punishable with fine which may extend to ten thousand rupees and for any subsequent contravention with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees.
90. (1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly: Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence. (2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and	shall be liable to be proceeded against and punished accordingly.

91. Whoever, fraudulently avails or attempts to avail any benefit meant for persons with benchmark disabilities, shall be	punishable with imprisonment for a term which may extend to two years or with fine which may extend to one lakh rupees or with both.
92. Whoever,— (a) intentionally insults or intimidates with intent to humiliate a person with disability in any place within public view; (b) assaults or uses force to any person with disability with intent to dishonour him or outrage the modesty of a woman with disability; (c) having the actual charge or control over a person with disability voluntarily or knowingly denies food or fluids to him or her; (d) being in a position to dominate the will of a child or woman with disability and uses that position to exploit her sexually; (e) voluntarily injures, damages or interferes with the use of any limb or sense or any supporting device of a person with disability; (f) performs, conducts or directs any medical procedure to be performed on a woman with disability which leads to or is likely to lead to termination of pregnancy without her express consent except in cases where medical procedure for termination of pregnancy is done in severe cases of disability and with the opinion of a registered medical practitioner and also with the consent of the guardian of the woman with disability, shall be	punishable with imprisonment for a term which shall not be less than six months but which may extend to five years and with fine.
93. Whoever, fails to produce any book, account or other documents or to furnish any statement, information or particulars which, under this Act or any order, or direction made or given thereunder, is duty bound to produce or furnish or to answer any question put in pursuance of the provisions of this Act or of any order, or direction made or given thereunder, shall be	punishable with fine which may extend to twenty-five thousand rupees in respect of each offence, and in case of continued failure or refusal, with further fine which may extend to one thousand rupees for each day, of continued failure or refusal after the date of original order imposing punishment of fine.

As against the argument that some witnesses mentioned in the first information report were not examined, it is enough to repeat, what has often been ruled that the prosecution is not bound to produce all the witnesses said to have seen the occurrence. Material witnesses considered necessary by the prosecution for unfolding the prosecution story alone need be produced without unnecessary and redundant multiplication of witnesses. The appellant s counsel has not shown how the prosecution story is rendered less trustworthy as a result of the non-production of the witnesses mentioned by him. No material and important witness was deliberately kept back by the prosecution. Incidentally we may point out that the accused too have not considered it proper to produce those persons as witnesses for controverting the prosecution version. **1971 AIR(SC) 2156; 1971 CrLJ 1468; 1972 3 SCC 79; 1972**

SCC(Cri) 399; 1971 Supreme(SC) 384; Raghubir Singh Vs The State of U.P. (THREE JUDGE BENCH)

NEWS

- The President has promulgated the Payment of Wages Act (Amendment) Ordinance, 2016, which enables an employer to pay wages by crediting it into the bank account of the employee.

- Prosecution replenish congratulates Smt Sulochana (2008 batch Prosecutor) and Sri Samanthapudi Srikanth (2015 Batch Prosecutor) for being appointed as JCJ's.

- Our website prosecutionreplenish.com is constantly hacked and links changed. The service providers and web hosting agency, are unable to rectify the same. Inconvenience caused is greatly regretted. Hence these leaflets are being posted to emails and public domain groups (Facebook and Whatsapp). Patrons are thanked for their patience and any requirement of the previous editions may kindly be enquired on the email address prosecutionreplenish@gmail.com.

ON A LIGHTER VEIN

From the police blotter, or, what a beat cop deals with every day:

• A deputy responded to a report of a vehicle stopping at mailboxes. It was the mail carrier.

• A resident said someone had entered his home at night and taken five pounds of bacon. Upon further investigation, police discovered his wife had gotten up for a late-night snack.

• A man reported that a squirrel was running in circles on Davis Drive, and he wasn't sure if it was sick or had been hit by a car. An officer responded, and as he drove on the street, he ran over the squirrel.

BOOK-POST

If undelivered please return to:
The Prosecution Replenish,
4-235, Gita Nagar,
Malkajgiri, Hyderabad-500047
Ph: 9849365955; 9440723777
9848844936, 9908206768
e-mail:- prosecutionreplenish@gmail.com
Website : prosecutionreplenish.com

To,

_____

_____

_____

_____

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

Vol- VI
Part-2

Prosecution Replenish

An Endeavour for Learning and Excellence

February, 2017

Aano Bhadra Krtavo Yantu Vishwatah.(RIG VEDAM)
"Let Noble Thoughts Come To Me From All Directions"

When things go wrong, and time is tough, I just look up and say, I know you are testing me, I will wait for the day, you will reward me for being strong. *- Anonymous.*

CITATIONS

Minor inconsistencies in evidence cannot render prosecution case untrustworthy and discardable. Omission to hold the TIP is not fatal.
In absence of a certificate relating to the call details u/s 65B(4) Evidence Act, 1872 mere printouts would not be admissible in evidence u/s 65B(2) of the Act.
Conspiracy requires an act i.e. actus reus and an accompanying mental state i.e. mens rea.
Harpal Singh @ Chhota Vs State of Punjab; Sukhmeet Singh @ Deputy Vs State of Punjab; 2016 0 Supreme(SC) 915; 2016(4) Crimes 154 (SC).

(a) Code of Criminal Procedure, 1973 – Section 378(3) – Leave of High Court mandatory before challenging an acquittal – It means that normally judgment of acquittal of the trial court is attached a definite value which is not to be ignored by the High Court – In case of acquittal being plausible, High Court is not supposed to substitute its views for trial court – Order of acquittal can be reversed only when it is perverse on facts or law. (Para 21, 22, 24)
(1961) 3 SCR 120; (2012) 4 SCC 722 – Relied upon
(b) Indian Evidence Act, 1872 – Section 32 – Dying declaration – A dying declaration is an independent piece of evidence – Can be acted upon without corroboration if it is found to be otherwise true and reliable – Instantly dying statement recorded by a competent Magistrate having no animosity with anyone – Doctor certifying about her fit state of mind to record statement – Trial court not giving reasons for disbelieving the dying declaration or the certificate of attending doctor or the Magistrate recording the statement – Approach of trial court legally unsustainable. (Para 27, 28, 30)
(1999) 8 SCC 161; (2002) 8 SCC 83; 1958 SCR 552; (2008) 2 SCC 516 – Relied upon
(c) Criminal trial – Appreciation of evidence – Trial court disbelieving dying declaration relying on statement of PW4 that the appellant was with him at the time of incident and had reached hospital when the deceased was already there – Hospital records showing that it was the appellant who brought deceased to hospital – Trial court committing serious error – High Court rightly appreciated the evidence. (Para 34)
(d) Criminal trial – Appreciation of evidence – Witnesses turning hostile – Reasons analysed – Witness identity protection and witness protection programmes – 'Culture of compromise' – Menace needs to be tackled. (Para 40, 41, 44, 46)
RAMESH AND OTHERS VS STATE OF HARYANA; 2016 4 Crimes(SC) 169; 2017 1 SCC 529; 2016 8 Supreme 296; 2016 0 Supreme(SC) 917;

(a) Code of Criminal Procedure, 1973 – Section 340(1) r/w sections 199 and 200, Indian Penal Code, 1860 – Initiating an inquiry into any offence punishable u/s 199 and 200 – Mere making a contradictory statement in a judicial proceeding by itself not always sufficient to justify a prosecution u/s 199 and 200 – Intentionally giving a false statement at any stage of the judicial proceedings or fabricated false evidence for the purpose of using the same at any stage of the judicial proceedings attracts section 199 and 200 – Even then, the court has to form an opinion that it is expedient in the interests of justice to initiate an inquiry – Court having a prima facie satisfaction of the offence which appears to have been committed should suffice – Even after forming the opinion court has to decide if compliant is required to be filed – Then only the court may file a complaint. (Para 7, 8, 11)
(1992) 3 SCC 178; (2002) 1 SCC 253; (2005) 4 SCC 370 – Relied upon
(b) Code of Criminal Procedure, 1973 – Section 340(1) – Complaint filed u/s 340 has to be dealt with as if on a police report – Procedure for trial of warrant case to be followed – Sections 195(1)(b)(i) and 238 to 243 – Code therefore providing meticulous procedures u/s 340 – High Court not following all requirements u/s 340 – Parties deciding to settle the matter amicably – Invoking section 340 not sustainable. (Para 11, 12, 13)
2016 4 Crimes(SC) 190; 2017 1 SCC 113; 2016 8 Supreme 318; 2016 0 Supreme(SC) 918; Amarsang Nathaji as Himself & as Karta & Manager Vs Hardik Harshadbhai Patel & Other

(a) Criminal trial – Judicial propriety – Section 438 and 439(2), Code of Criminal; Procedure, 1973 – State in appeal against grant of bail to respondent by High Court pleading that subsequent bail petition should be heard by the same Judge who earlier heard and dismissed it – Instantly the earlier bail petition was heard and dismissed by a single Judge and the subsequent bail petition was heard by the Chief Justice himself granting the bail – As the Principal Additional Advocate General had expressed his no objection to the Chief Justice hearing the subsequent bail petition, this ground does not survive – However, this by itself is not enough for

dismissing the appeal more so when there is no suppression of fact a claimed by respondent. (Para 8) (1964) 3 SCR 480 – Referred
(b) Code of Criminal Procedure, 1973 – Section 439(2) – When High Court exercises its discretion and grants bail, Supreme Court does not interfere, normally – Interference will however be warranted if bail is granted on extraneous considerations and/or relevant factors are ignored or bypassed. (Para 12) (1978) 2 SCC 411; (1984) 1 SCC 284; (1986) 4 SCC 767 – Relied upon
(c) Code of Criminal Procedure, 1973 – Section 438 and 439(2) – Grant and cancellation of bail – Reasons for granting bail must be recorded – Discussing evidence is totally different from giving reasons for a decision – Granting bail by ignoring material evidence on record and without giving reasons would be perverse and contrary to principles of law – Such order granting bail liable to be cancelled. (Para 13) (2001) 6 SCC 338 – Relied upon
(d) Code of Criminal Procedure, 1973 – Section 439(2) – Respondent surrendering only after initiation of process u/s 83 – Direct and specific allegations of raping minor girl – Threatening and intimidating prosecutrix and her family members – Has a criminal antecedent – Even then High Court granting bail making casual and cryptic remarks – High Court not dealing with chances of the accused person fleeing from justice or reasonable apprehension of him tampering with evidence/trial if released on bail – High Court ignoring rejection of bail application of co- accused – High Court also not considering provisions of Section 29 of Protection of Children from Sexual Offences Act, 2012 – Not a fit case for granting bail. (Para 16, 17, 18, 19, 20, 21) (2012) 12 SCC 180 – Relied upon
(e) Code of Criminal Procedure, 1973 – Section 439(2) – Cancellation of bail – For ensuring fair trial – Possible only if witnesses are able to depose without fear, freely and truthfully – If granting bail to accused may hamper fair trial, bail can be cancelled – Liberty of accused and interest of society of fair trial need to be balanced. (Para 22, 23, 24)
2016 0 Supreme(SC) 926; 2016(4) Crimes 194; STATE OF BIHAR VS RAJBALLAV PRASAD @ RAJBALLAV PD. YADAV @ RAJBALLABH YADAV

(a) Criminal trial – FIR and Investigation – Recording of FIR not condition precedent for initiating criminal investigation – Discrepancy in recording time, not fatal to prosecution case – Held FIR not antetimed. (Para 16, 17, 18, 19) (1973) 3 SCC 114 – Relied upon
(b) Criminal trial – Delay in forwarding FIR to Magistrate – Not fatal if investigation commenced promptly on the basis of the FIR – Only extraordinary and unexplained delay raises doubts about authenticity of FIR. (Para 19, 20) (1972) 2 SCC 640; (2006) 10 SCC 432 – Relied upon
(c) Criminal trial – Appreciation of evidence – Statement given by the eyewitness in the court – Cannot be discarded merely because the statement u/s 164, Code of Criminal Procedure, 1973 was not immediately recorded – Further no question asked on this point in cross-examination – Trial court discarding evidences on flimsy ground and based on surmises and conjectures – High Court rightly re-appraised the same and reversed the order of acquittal. (Para 28, 32, 36)
2016 0 Supreme(SC) 930; 2016(4) Crimes (SC) 206; Anjan Das Gupta Vs The State of West Bengal & Ors.

When sentence of death penalty is altered to life imprisonment, it should mean rest of the life.
Section 302 prescribes maximum of death sentence and minimum of life imprisonment. Court cannot impose a sentence lesser than the minimum but can impose a sentence lesser than the maximum. Imposition of fixed term imprisonment for 25 years is not improper.
Power of the constitutional authorities under Article 71 and Article 161 are sacrosanct. Power u/s 433-A, on the other hand, is subject to judicial review.
Contention that Fixed term sentence is a judicial innovation not sanctioned by law rejected.
There is no fault in the High Court imposing a fixed term sentence while deciding an application for enhancing sentence of life imprisonment to death.
Appellate court cannot impose a sentence that the trial court could not impose.
Expanded option of sentence between death and life imprisonment is permissible.
Varying sentences can be imposed on individual accused depending upon conduct of accused persons before, during and after the proceedings and their socio-economic positions and the third accused being married and having children and remorse shown by him in prison.
Sentences should normally run concurrently.
Proper fine can be imposed for providing adequate compensation to the victim.
2016 9 SCC 541; 2016 0 Supreme(SC) 777; Vikas Yadav Vs State of U.P. and Ors.

Burden of proof is always on prosecution. Accused is presumed to be innocent unless proved guilty.
Minor discrepancies not touching the core of the case should be ignored.

"Falsus in uno, falsus in omnibus" has no application in India.
Common object of the members of unlawful assembly can be gathered from their conduct.
Not explaining injury to accused is not enough to reject the prosecution version.
Recoveries and Chemical Analyzer's report only have corroborative value.
Every GD Entry or cryptic information cannot be treated as FIR.
Appellate court is fully empowered to review the evidence and to reach at its own conclusion.
2016 10 SCC 537; 2016 0 Supreme(SC) 790; 2016 (4) Crimes 246(SC); Bhagwan Jagannath Markad & Ors. Vs State of Maharashtra

Even if the Magistrate, u/s 156(3), does not direct specifically to register FIR but directs investigation, police should register FIR and conduct investigation.
2016 0 AIR(SC) 814; 2016 6 SCC 276; 2016 2 SCC(Cri) 545; 2016 1 Supreme 447; 2016 0 Supreme(SC) 143; 2016 (4) Crimes 308 (SC) Hamant Yashwant Dhage Vs. State of Maharashtra & Others

Standard of proof for age determination is the degree of probability and not proof beyond reasonable doubt.
Ossification test does not yield accurate and precise conclusions after the examinee crosses the age of 30 years.
Medical evidence though a very useful guiding factor is not conclusive and has to be considered along with other circumstances.
2016 0 Supreme(SC) 949; 2016 (4) Crimes 310(SC) MUKARRAB ETC. Vs STATE OF U.P

If contraband is not recovered from the person, section 50 will have no application.
Section 57 not being mandatory in nature, a substantial compliance thereof is sufficient.
The recovery of the contraband from car by which accused were travelling establishes conscious possession of the contraband.
2016 0 Supreme(SC) 938; 2016 (4) Crimes 328 (SC); DILBAGH SINGH VS STATE OF PUNJAB

Non-recording of extra judicial confession for a long time may be inconsequential.
Extra judicial confession made to unbiased and unconnected person who stood cross-examination, may be relied for conviction.
Acquittal of co-accused will not be a ground for acquittal of appellant.
However, since the statement of the two prosecution witnesses recorded under Sections 161 and 164 of the Criminal Procedure Code, was not put to them, after they were declared hostile, and were subjected to cross-examination at the behest of the prosecution, we have no alternative, but to overlook the last seen evidence sought to be projected by the prosecution.
Last seen theory witness turned hostile-not fatal
2016 9 SCC 325; 2016 0 Supreme(SC) 679; Kadamanian @ Manikandan Vs State Represented by Inspector of Police.

Indian Evidence Act, 1872 – Section 32 – Dying declaration – No format prescribed – No specific authority prescribed for recording the same – Only requirement of dying declaration being deceased's fitness of mind and capacity to recollect the situation – No illegality in Inspector of police recording the dying declaration.
2016 0 Supreme(SC) 998; 2016 (4) Crimes 390 (SC); SHAMA Vs STATE OF HARYANA

(a) Indian Penal Code, 1860 – Section 149 – An overt act is not an inflexible requirement to establish culpability of a member of an unlawful assembly – Accused being member of an unlawful assembly and common unlawful object of the unlawful assembly are crucial considerations – Unlawful assembly formed with common object of committing an offence and that offence committed, in prosecution of the object, by any member of the unlawful assembly, all the members of the assembly will be vicariously liable for that offence even if one or more, but not all committed the offence – Members of an unlawful assembly may have a community of object upto a certain point, beyond which they may differ in their objects, and the knowledge possessed by each member of what is likely to be committed in prosecution of their common object may vary not only according to the information at his command, but also according to the extent to which he shares the community of object – Consequently the effect of Section 149 may be different on different members of the same unlawful assembly.
2016 4 Crimes(SC) 404; 2017 1 SCC 477; 2016 8 Supreme 528; 2016 0 Supreme(SC) 962;; Muthuramalingam & Ors. Vs. State Represented by Inspector of Police

(A) Indian Penal Code, 1860 – Sections 376 and 506 – Criminal Procedure Code, 1973 – Section 378 – Rape and criminal intimidation – Acquittal appeal – Minor victim – Prosecutrix subjected to rape on various

occasions by accused – Prosecution case fully corroborated by medical evidence – Reluctance on part of prosecutrix in not narrating incident to anybody for a period of three years and not sharing the same event with her mother, is clearly understandable – It is not easy to lodge a complaint of this nature exposing prosecutrix to risk of social stigma which unfortunately still prevails in our society – Decision to lodge FIR becomes more difficult and hard when accused happens to be a family member – After taking all due precautions which are necessary, when it is found that prosecution version is worth believing, case is to be dealt with all sensitivity that is needed in such cases – In such a situation one has to take stock of realities of life as well – Evidence brought on record contains positive proof, credible sequence of events and factual truth linking respondent with rape of prosecutrix and had criminally intimidated her – Respondent found to be guilty for offence under Sections 376(2)(f) and 506 of IPC – Judgment of High Court set aside and conviction recorded by trial court restored – Respondent shall undergo rigorous imprisonment for a period of twelve years for offence under Section 376(2)(f) and shall also pay a fine of Rs. 50,000, failing which he shall undergo further sentence of one year – Respondent also convicted for committing offence under Section 506 IPC for which he is sentenced to rigorous imprisonment for two years. (Paras 23, 24, 29, 30, 32, 33 and 34)

(B) Indian Penal Code, 1860 – Section 376 – Rape – Testimony of a victim in cases of sexual offences is vital and unless there are compelling reasons which necessitate looking for corroboration of a statement, court should find no difficulty to act on testimony of victim of a sexual assault alone to convict accused – Seeking corroboration to a statement before relying upon the same as a rule, in such cases, would literally amount to adding insult to injury – Deposition of prosecutrix has to be taken as a whole – Victim of rape is not an accomplice and her evidence can be acted upon without corroboration – She stands at a higher pedestal than an injured witness does – If court finds it difficult to accept her version, it may seek corroboration from some evidence which lends assurance to her version – To insist on corroboration, except in rarest of rare cases, is to equate one who is a victim of lust of another with an accomplice to a crime and thereby insult womanhood – It would be adding insult to injury to tell a woman that her claim of rape will not be believed unless it is corroborated in material particulars, as in case of an accomplice to a crime. (Para 31)

2016 (4) Crimes 424 (SC); 2016 0 Supreme(SC) 992; STATE OF HIMACHAL PRADESH Vs SANJAY KUMAR @ SUNNY

Code of Criminal Procedure, 1973 – Section 173(8) – Investigating agency invested with power to seek and obtain approval of the court and thereafter conduct further investigation at any stage – Magistrate cannot order further investigation suo motu or on an application by informant after cognizance has been taken on the basis of the earlier report, process has been issued and accused has entered appearance in response thereto – Sections 156, 190, 200, 202 and 204 distinguished. **2017 0 Supreme(SC) 105;AMRUTBHAI SHAMBHUBHAI PATEL Vs. SUMANBHAI KANTIBHAI PATEL & ORS.**

Under section 34 IPC each person sharing the common intention is constructively liable for criminal act done by any one of them.
In some ways sections 34 and 149 IPC are similar and in some cases they may overlap.
A close relative, being a natural witness, cannot be regarded as an interested witness.
Evidence of such witness if intrinsically reliable or inherently probable may, by itself, be sufficient to base a conviction thereon.
Non-examination of material witness would not be fatal to prosecution story if other evidence is trustworthy
2017 0 Supreme(SC) 19; Vijendra Singh Vs. State of Uttar Pradesh

Contradictory stands taken in statement u/s 313 CrPC and during arguments goes against the accused.
When there is no contradiction between the medical and ocular evidence, conviction cannot be faulted.
Due credence needs to be accorded to evidence of injured witnesses.
When group of persons come to the place of occurrence armed with deadly weapons, their intention and purpose would be more than apparent.
2017 0 Supreme(SC) 28; Baleshwar Mahto & Anr. Vs. State of Bihar & Anr.

For prosecution under section 182 IPC, it is mandatory to follow procedure u/s 195 CrPC
2017 0 Supreme(SC) 36; Saloni Arora Vs. State of NCT of Delhi

Code of Criminal Procedure, 1973 – Section, 353 and 364 – Judgment not delivered in open court – Only result (acquittal) announced – Entire judgment may not be pronounced in open court and only operative portion may be read out – Instantly only result announced – No judgment available on record – A judgment not signed and dated and not pronounced in open court is no judgment – Incomplete and unsigned judgment is no judgment – Such act is grossly illegal
2017 0 Supreme(SC) 21; Ajay Singh and Anr. Vs. State of Chhattisgarh and Anr

Police have statutory right to investigate, without any interference or direction form judiciary.
Unless the information discloses commission of a cognizable offence, immediate registration of FIR is not mandatory.
Extraordinary power under Article 226 or inherent power under Section 482 could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, but the power to quash FIR has to be exercised sparingly and cautiously.
High Court refusing to stay the same and at the same time directing that accused persons shall not be arrested amounts to an order u/s 438 without satisfying conditions therefor and is legally not acceptable.
2017 0 Supreme(SC) 26; The State of Telangana Vs. Habib Abdullah Jeelani & Ors.

Indian Evidence Act, 1872 – Section 27 – Absence of signature of accused on recovery Panchnama – Not required under any provision – Signature of accused on statement u/s 27 is enough
Criminal trial – Recovery – Gold ring recovered at the instance of accused 6 – Plea of absence of blood on the ring and ready availability in market – Of no avail in absence of any explanation of possession of the ring identified to be that of the deceased – Conviction upheld
When more than one accused Nos.2 and 3 disclose, one after another, the spot of disposal of body of deceased and the dead body is discovered only after accused Nos.2 and 3 were taken together to the spot; such fact disclosed by them, and discovery made at their instance, would be admissible against all the accused. **2017 0 Supreme(SC) 15; KISHORE BHADKE Vs. STATE OF MAHARASHTRA**

Constitution of India – Article 213(2)(a) – Effect of not laying an Ordinance before state legislature – Ordinance will cease to operate on expiry of six weeks after reassembly of the legislature – It is not mandatory to lay an Ordinance before the legislature – Ordinance does not become null and void by not laying it before the legislature – Article 213(2) cannot be construed to mean that if the Ordinance is not so laid, it will not have the force and effect of a law
2017 0 Supreme(SC) 10; (7 JUDGE BENCH) Krishna Kumar Singh & Anr. Vs State of Bihar & Ors.

Here in the instant case, no doubt, an innocent man has lost his life at the hands of another man, and looking at the way in which the investigation was handled, we are sure to observe that it was carried out in a lackluster manner. The approach of the Investigating Officer in recording the statements of witnesses, collecting the evidence and preparation of site map has remained unmindful. The Investigating Officer, dealing with a murder case, is expected to be diligent, truthful and fair in his approach and his performance should always be in conformity with the police manual and a default or breach of duty may prove fatal to the prosecution's case. We may hasten to add that in the present case the investigation was carried out with unconcerned and uninspiring performance. There was no firm and sincere effort with the needed zeal and spirit to bring home the guilt of the accused. We feel that there are no compelling and substantial reasons for the High Court to interfere with the order of acquittal when the prosecution has miserably failed to establish the guilt of the accused. **2016 10 SCC 220; 2016 7 Supreme 601; 2016 0 Supreme(SC) 882; MAHAVIR SINGH Vs. STATE OF MADHYA PRADESH.**

The rule regarding the benefit of doubt does not warrant acquittal of the accused by resorting to surmises, conjectures or fanciful considerations.
Evidence of child witness must be evaluated more carefully and with greater circumspection. It must be adequately corroborated before acceptance.
Testimony of closely related witness requires careful scrutiny and appreciation before basing conviction on such evidence. It can be relied upon if truthful, cogent, credible and trustworthy.
Minor contradictions, inconsistencies or insignificant embellishments do not affect the core of the prosecution case.
Lapses in investigation does not invalidate the proceedings.
Delay in sending report to Magistratewill not invalidate prosecution story if FIR recorded and investigation started without unreasonable delay, there is no other infirmity, and no prejudice is caused to the accused.
Inquest report is not a substantive piece of evidence. It can only be looked into for testing veracity of witnesses of inquest.
Evidentiary value of medical evidence is only corroborative and not conclusive. In case of conflict, ocular evidence is preferred.
Motive loses its significance in case the direct evidence of witnesses are trustworthy.
Mere non-recovery of weapon is not fatal where there is ample unimpeachable ocular evidence.
Non-compliance of mandatory provisions of Section 313 does not entitle the accused to acquittal.

Otherwise credible testimony of eye-witnesses cannot be disbelieved on basis of the site plan.
2016 0 Supreme(SC) 853;2017(1) ALD (Crl) 57 (SC) YOGESH SINGH Vs. MAHABEER SINGH & OTHERS

Once eye witnesses are found worthy of credence, conviction can be based on their testimonies even if they were related to deceased.
in the cross-examination or otherwise it has not even been brought out by the defence that there were other persons at the scene of occurrence who were independent persons. The learned counsel also could not point out as to how, in these circumstances, non-examination of independent persons acted to the prejudice of the appellants. **2016 0 Supreme(SC) 819; 2017(1) ALD (Crl) 104(SC) Kamta Yadav & Ors. Vs. State of Bihar**

Though all the material witnesses have turned hostile, as we are convinced from the contents of Ex.P.9- dying declaration that there is nothing to discredit its contents, there is no necessity for its corroboration through oral evidence.
2017(1) ALD (Crl) 111; https://indiankanoon.org/doc/185117125/; Kavali Chandraiah Vs State of A.P.

there is no requirement in law that dying declaration must be recorded only by a Judicial Magistrate. However, the fact remains that the dying declarations recorded by Judicial Officers enjoy higher credibility than those recorded by the non-judicial authorities. The admission of P.W.6 that he has not even made an attempt to send the requisition for recording dying declaration to the in-charge Magistrate shows that the investigating agency was not serious in conducting the investigation in proper manner. **2016 0 Supreme(AP) 380; 2017(1) ALD (Crl) 135; Elaprolu Ramesh & Another Vs. The State of A.P.**

36. Distinction between the relationship in the nature of marriage and marital relationship has to be noted first. Relationship of marriage continues, notwithstanding the fact that there are differences of opinions, marital unrest etc., even if they are not sharing a shared household, being based on law. But live-inrelationship is purely an arrangement between the parties unlike, a legal marriage. Once a party to a livein- relationship determines that he/she does not wish to live in such a relationship, that relationship comes to an end. Further, in a relationship in the nature of marriage, the party asserting the existence of the relationship, at any stage or at any point of time, must positively prove the existence of the identifying characteristics of that relationship, since the legislature has used the expression "in the nature of".
37. Reference to certain situations, in which the relationship between an aggrieved person referred to in Section 2(a) and the respondent referred to in Section 2(q) of the DV Act, would or would not amount to a relationship in the nature of marriage, would be apposite. Following are some of the categories of cases which are only illustrative:

(a) Domestic relationship between an unmarried adult woman and an unmarried adult male: Relationship between an unmarried adult woman and an unmarried adult male who lived or, at any point of time lived together in a shared household, will fall under the definition of Section 2(f) of the DV Act and in case, there is any domestic violence, the same will fall under Section 3 of the DV Act and the aggrieved person can always seek reliefs provided under Chapter IV of the DV Act.

(b) Domestic relationship between an unmarried woman and a married adult male: Situations may arise when an unmarried adult women knowingly enters into a relationship with a married adult male. The question is whether such a relationship is a relationship "in the nature of marriage" so as to fall within the definition of Section 2(f) of the DV Act.

(c) Domestic relationship between a married adult woman and an unmarried adult male: Situations may also arise where an adult married woman, knowingly enters into a relationship with an unmarried adult male, the question is whether such a relationship would fall within the expression relationship "in the nature of marriage".

(d) Domestic relationship between an unmarried woman unknowingly enters into a relationship with a married adult male: An unmarried woman unknowingly enters into a relationship with a married adult male, may, in a given situation, fall within the definition of Section 2(f) of the DV Act and such a relationship may be a relationship in the "nature of marriage", so far as the aggrieved person is concerned.

(e) Domestic relationship between same sex partners (Gay and Lesbians): DV Act does not recognize such a relationship and that relationship cannot be termed as a relationship in the nature of marriage under the Act. Legislatures in some countries, like the Interpretation Act, 1984 (Western Australia), the Interpretation Act, 1999 (New Zealand), the Domestic Violence Act, 1998 (South Africa), the Domestic Violence, Crime and Victims Act, 2004 (U.K.), have recognized the relationship between the same sex couples and have brought these relationships into the definition of Domestic relationship.

2013 STPL(Web) 944 SC; https://indiankanoon.org/doc/192421140/ ; Indra Sarma Vs. V.K.V. Sarma

NEWS

- Re-constitution of Departmental Promotion Committee for the First and Second level Gazetted posts in Prosecutions Department – Orders - Issued-Vide G.O.Rt.No. 110 HOME (COURTS-A1) DEPARTMENT Dated: 31-01-2017, Govt of Telangana.
- Re-Constitution of Departmental Promotion Committee for the First and Second level Gazetted posts in Prosecutions Department – Orders - Issued- vide G.O.RT.No. 88 HOME (COURTS-A) DEPARTMENT Dated: 02-02-2017 Govt of A.P.
- Public Services - Prosecuting Officers – Promotion of Sri M.Gangaraj Prasad, Additional Public Prosecutor Grade-I as Public Prosecutor / Joint Director of Prosecutions on adhoc basis and placing his services as Legal Advisor in the Office of the Director General, Telangana State Prisons and Correctional Services Department on foreign service deputation – Not existing of Legal Advisor post – Posting as Public Prosecutor, Principal Sessions Court, Warangal - Modification orders – Issued- G.O. RT 67 Home Courts -A Dept dt.18.01.2017.
- Public Services – Director of Prosecutions – Continuation of Sri A.Prabhakar Rao, Retired Administrative Officer (Legal), O/o. the Director of Prosecutions as Officer on Special Duty in the Director of Prosecutions, Telangana on contract basis for a further period of one year i.e., from 24-12-2016 to 23-12-2017 - Orders - Issued- vide G.O.RT 14 Home Courts-A dt. 4-1-2017.

ON A LIGHTER VEIN

Ever since Rob was a child, he had a fear of someone under his bed at night. So he went to a Psychiatrist and told him, "I've got problems. Every time I go to bed I think there's somebody under it. I'm scared. I think I'm going crazy."

"Just put yourself in my hands for one year", said the psychiatrist. "Come talk to me three times a week and we should be able to get rid of those fears."

"How much do you charge?"

'Eighty dollars per visit,' replied the doctor.

'I'll sleep on it and if needed I will come back to you,' Rob said.

Six months later he met the Psychiatrist on the street.

'Why didn't you come to see me about those fears you were having?' he asked.

'Well, eighty bucks a visit three times a week for a year is an awful lot of money! A friend cured me for $10. I was so happy to have saved all that money that I went and bought me a new SUV".

'Is that so!' With a bit of an attitude he said, 'and how, may I ask, did the friend cure you?'

'He told me to cut the legs off the bed - There ain't nobody under the bed now!

TO HELL WITH THOSE PSYCHIATRISTS.. GO TALK TO A FRIEND. There is always another way to solve a problem...

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.

BOOK-POST

If undelivered please return to:	To,
The Prosecution Replenish, 4-235, Gita Nagar, Malkajgiri, Hyderabad-500047 Ph: 9849365955; 9440723777 9848844936, 9908206768 e-mail:- prosecutionreplenish@gmail.com Website : prosecutionreplenish.com	_____ _____ _____ _____

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

Vol- VI
Part-3

Prosecution Replenish

An Endeavour for Learning and Excellence

March, 2017

Aano Bhadra Krtavo Yantu Vishwatah.(RIG VEDAM)
"Let Noble Thoughts Come To Me From All Directions"

Simple Principle of Life.....
Never think you are nothing....
Never think you are everything....
But always think you are something and you can achieve anything.
- Anonymous.

CITATIONS

Even if recovery of dead body and other articles is under cloud, accused can be convicted on the basis of other circumstances against him.
2017 0 Supreme(SC) 150; DILIP MALLICK Versus STATE OF WEST BENGAL

In State Through Central Bureau of Investigation, New Delhi Vs. Jitender Kumar Singh, reported in (2014) 11 SCC 724, this Court held that once the power has been exercised by the Special Judge under sub-section (3) of Section 4 of the P.C. Act to proceed against non-PC offences alongwith PC offences, the mere fact that the sole public servant dies after the exercise of powers under sub-section (3) of Section 4, will not divest the jurisdiction of the Special Judge or vitiate the proceedings pending before him. Therefore, we hold that as the sole public servant has died being A1 in this matter, in our opinion, though the appeals against her have abated, even then A2 to A4 are liable to be convicted and sentenced in the manner as has been held by the Trial Judge.
The Trial Court held that even private individuals could be prosecuted for the offence under Section 109 of I.P.C. and we find that the Trial Court was right in coming to the conclusion relying on the decision of Nallammal (supra), wherein it was observed that acquisition and possession by a public servant was capable of being abetted, and observed that Under Section 3 of the 1988 Act, the Special Judge had the power to try offences punishing even abetment or conspiracy of the offences mentioned in the PC Act and in our opinion, the Trial Court correctly held in this matter that private individuals can be prosecuted by the Court on the ground that they have abetted the act of criminal misconduct falling under Section 13(1)(e) of the 1988 Act committed by the public servant.
2017 0 Supreme(SC) 160; State of Karnataka Versus Selvi J. Jayalalitha & Ors

Advocates Act, 1961 – Section 35 – Professiobnal misconduct – Mere negligence or error of judgment on part of an Advocate would not amount to professional misconduct – Error of judgment cannot be completely eliminated in all human affairs and mere negligence may not necessarily show that Advocate who is guilty of it can be charged with misconduct – Concept of “gross negligence” cannot be construed in a narrow or a restricted sense – Honesty of an Advocate is extremely significant – Conduct of an Advocate has to be worthy so that he can be called as a member of noble fraternity of Lawyers – It is his obligation to look after interest of litigant when is entrusted with responsible task in trust – An Advocate has to bear in mind that profession of law is a noble one – Nobility, sanctity and ethicality of profession has to be kept uppermost in mind of an Advocate.
2017 0 Supreme(SC) 166; T.A. KATHIRU KUNJU VERSUS JACOB MATHAI & ANR.

No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge.
Another very significant caution that the courts have to observe is that it cannot examine the facts, evidence and materials on record to determine whether there is sufficient material on the basis of which the case would end in a conviction; the Court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of court leading to injustice.
2017 0 Supreme(SC) 111; STATE OF RAJASTHAN VERSUS FATEHKARAN MEHDU

Magistrate cannot order further investigation suo motu or on an application by informant after cognizance has been taken on the basis of the earlier report, process has been issued and accused has entered appearance in response thereto.
2017 0 Supreme(SC) 105; AMRUTBHAI SHAMBHUBHAI PATEL VERSUS SUMANBHAI KANTIBHAI PATEL & ORS.

Constitution of India – Article 16(4A) – Reservation in public employment – Could only be at the stage of entry into the State service and not in promotion – Roster only ensures percentage of reservation in promotion but cannot affect seniority. **2017 0 Supreme(SC) 141; B.K. PAVITRA & ORS. VERSUS UNION OF INDIA & ORS**

Only because PW-6 is related to the deceased that may not by itself be a ground to discard his evidence. Where the prosecution case rests upon the evidence of a related witness, it is well-settled that the court shall scrutinize the evidence with care as a rule of prudence and not as a rule of law. The fact of the witness being related to the victim or deceased does not by itself discredit the evidence.
Merely because the witnesses have turned hostile in part their evidence cannot be rejected in toto. The evidence of such witnesses cannot be treated as effaced altogether but the same can be accepted to the extent that their version is found to be dependable and the court shall examine more cautiously to find out as to what extent he has supported the case of the prosecution.
2017 0 Supreme(SC) 152; ARJUN AND ANR. Versus STATE OF CHHATTISGARH

National anthem – Clarified, when the National Anthem is sung or played in the storyline of a feature film or part of the newsreel or documentary, apart from what has been stated in the order dated 30.11.2016, the audience need not stand.
2017 0 Supreme(SC) 149; SHYAM NARAYAN CHOUKSEY VERSUS UNION OF INDIA

Continuation of proceedings after compromise will only prolong the trial which may end in a decision which may be of no consequence to any of the parties. It would amount to abuse of process of Court and an exercise in futility.
2017 0 Supreme(SC) 192; Central Bureau of Investigation Versus Sadhu Ram Singla & Ors.

Administration of criminal justice – Retrial – Certain lapses either in the investigation or in the 'conduct of trial' – Not sufficient to direct retrial – High Court being First Appellate Court duty bound to scrutinize evidence and arrive at an independent finding and examine whether such lapses actually affect the prosecution case; or such lapses have actually resulted in failure of justice – Instantly, High Court pointing out certain lapses; but not stating as to how such alleged lapses has resulted in miscarriage of justice necessitating retrial – Direction for retrial not sustainable.
2017 0 Supreme(SC) 96; AJAY KUMAR GHOSHAL ETC. Versus STATE OF BIHAR & ANR.

Appreciation of evidence – Section 161 and 164, Code of Criminal Procedure, 1973 – The three renditions of the victim (PW1) u/s 161, 164 and at the trial not having any mutually mutative inconsistency – Cannot render prosecution case untrustworthy and discardable .
Omission to hold the TIP is not fatal.
In absence of a certificate relating to the call details u/s 65B(4) Evidence Act, 1872 mere printouts would not be admissible in evidence u/s 65B(2) of the Act.
Conspiracy requires an act i.e. actus reus and an accompanying mental state i.e. mens rea.
2017(1) ALD (Crl) 199 (SC); 2016 0 Supreme(SC) 915; Harpal Singh @ Chhota Versus State of Punjab

We have been coming across various cases where while the investigation and prosecuting agency are not taking effective steps to ensure conviction of offenders, the State appears to be trying to find an easy way out to check the activities of the offenders by invoking Preventive Detention Law, even in cases where the offenders are not habitual and the nature of offences does not call for invocation of such law. The State cannot resort to invoking preventive detention laws as a substitute for ordinary penal laws. In our opinion, such a tendency leads to unrest in the society, as more often it may cause serious hardship to the citizens by way of deprivation of their personal liberty, a fundamental right guaranteed under the Constitution of India. The case on hand is an instance where the State on account of its inability to ensure conviction of the detenu has invoked the provisions of the Preventive Detention Act. The two criminal cases out of which one ended in acquittal does not justify detention of the detenu, under the Act. The grounds on which the detention is made being wholly unsustainable for the aforementioned reasons, the impugned detention order is liable to be set aside.
2017(1) ALD (Crl) 228(A.P); 2016 0 Supreme(AP) 521; Mukkupogula Lavanya Versus The State of Telangana, rep.by its Principal Secretary, Department of Home & Others.

In his highly acknowledged work "Medical Jurisprudence and Toxicology", '3rd Edition', Dr. K.S. Narayan Reddy has described the signs of asphyxia due to strangulation as under:

> "A sudden compression of the windpipe often makes a person powerless to call for help, and causes almost immediate consciousness and death. If there is slight vagal effect and some venous obstruction, there will be slight congestion of head and neck and occasional petechial haemorrhages, with moderate venous construction and some respiratory obstruction asphyxial signs are moderate. When constricting force is great, asphyxial signs are marked. Intense congestion and deep cyanosis of the head and neck is seen, because the vertebral arteries continue to supply blood to the head and venous drainage is very less. The face is puffy, oedematous, congested and cyanotic. The eyes are wide open, bulging and suffused, with confluent scleral haemorrhage; the pupils dilated, the tongue swollen and often bruised, dark-coloured and protruded. Petechial haemorrhages are common in the skin of the eyelids, conjunctivae, face, forehead, behind the ears and scalp. Bloody froth may escape from the mouth and nostrils, and there may be bleeding from the nose and ears. The hands are usually clenched. The genital organs may be congested and there may be discharge of urine, faces and seminal fluid. These asphyxial signs may be absent if death occurs quickly and vagal inhibition, due to pressure on carotid sheath."

In Prabhudayal v. State of Maharashtra (1993) 3 SCC 573, the Supreme Court quoted from the book 'The Essentials of Forensic Medicine and Toxicology, Sixth Edn. at page 255, by Dr. K. S. Narayan Reddy, to distinguish between the death due to asphyxia and the death due to burn injuries, described the signs of asphyxia, which were the same as noted hereinbefore. In case of burn injuries, the learned author was quoted as under:

> "…the brain is usually shrunken, firm and yellow to light brown due to cooking. The dura matter is leathery." (Dura matter is meninges of the brain). If the death has occurred from suffocation, aspirated blackish coal particles are seen in the nose, mouth and whole of the respiratory tract. Their presence is proof that the victim was alive when the fire occurred. The pleurae are congested or inflamed. The lungs are usually congested, may be shrunken and rarely anaemic … Visceral congestion is marked in many cases ….The heart is usually filled with clotted blood. The adrenals (glands above kidneys) may be enlarged and congested."

No doubt, the histopathology report would have conclusively revealed whether the burns were post-mortem or ante-mortem and we find laxity on the part of the investigating agency in this regard. However, the accused cannot take undue advantage of the lapse of the investigating agency, when all the other incriminating circumstances rule out the possibility of the burns as the cause of the death. In this regard, the conduct of the appellant is worth discussing.

2017(1) ALD (Crl) 246; 2016 0 Supreme(AP) 394; Lanke Mohana Rao Versus State of Andhra Pradesh

As held by the Supreme Court in a catena of decisions, the dying declaration recorded by the Judicial Magistrate enjoys higher degree of probatory value and unless the evidence available on record is inconsistent with the version of the victim as reflected in his/her dying declaration, the Court shall not reject the dying declaration.

The eye witnesses turning hostile will not effect the case as both the Dying declarations given by the deceased are confirming the fact of her husband being responsible for her burns.

If at all, there was any lapse on the part of the Police in not immediately registering the FIR, as the victim has given a categorical statement in the two dying declarations, there is no scope for further embellishments or exaggerations in the FIR. Therefore, the delay in registration of the FIR has not affected to the credibility of the case of the prosecution.

2017 (1) ALD (Crl) 257 (A.P) Shaik Ahammad Basha @ Basha Vs State of A.P.

It may be noted that when no fatal weakness or defect is found in the investigation process or the findings emanating therefrom, it would be wholly improper and unconscionable for the appellate Court, on the strength of mere technicalities which have no real consequence, to let the guilty walk free, unsullied by the heinousness of his offence which is otherwise proved beyond doubt. This Court must therefore balance the right of the accused to be subjected to a fair and unbiased investigation so as to ascertain his guilt or innocence, as the case may be, and the weighty duty that is visited upon it to bring wrongdoers to justice.

No doubt, investigation being commenced by the police even before registration of the FIR may, in a given case, give rise to an adverse inference of planning and manipulation of the criminal law process to the prejudice of the accused, thereby vitiating the whole case of the prosecution. While this may be so, there is no edict or rule that this unorthodox procedure, if adopted, would invariably taint the investigation and consequently, the case of the prosecution, in every such case.

2017 (1) ALD (Crl) 265 (A.P); 2016 0 Supreme(AP) 461; S.K. Dawood Versus The State of A.P. rep. by its Public Prosecutor

non-recording of dying declaration by the Magistrate cannot be a ground to disbelieve the declaration recorded by any other functionary. Though the Doctor P.W.20 has not certified that the patient was coherent, he clearly stated in his evidence that the patient was not only conscious but also coherent. In our opinion, there was no need either for P.W.19 - the Head Constable who recorded Ex.P-16 dying declaration or for P.W.20 – the Doctor, to falsely implicate the accused. No reasons were elicited from these two witnesses in their cross examination on the necessity for such implication. The Apex Court in Ramakant Mishra vs. State of U.P. (2015) 8 SCC 299) held that once the statement of the victim is found to be genuine, voluntary, consistent, credible and untutored, it assumes great probative value and can form sole basis of conviction without requiring any corroboration. In the instant case, we find Ex.P-16 - dying declaration of the deceased possessing all the above mentioned qualities and leaving us without any manner of doubt that the said statement was genuinely made by the deceased.

2017 (1) ALD (Crl) 285; 2016 0 Supreme(AP) 254; Golla Katuvappagari Krishna Murthy @ Murthy Versus The State of Andhra Pradesh, represented by its Public Prosecutor (AP)

As regards the credibility of the two dying declarations, we feel that Ex.P.13, which is the earliest version of the victim, deserves higher credibility, though the same was recorded by a Police Officer. However, the trial Court appeared to have acquitted accused No.2 as her name did not find place in Ex.P.10 recorded by PW.11. In any event, when there are inherent contradictions between the two statements, it is always desirable to accept the earliest version of the victim.

2017(1) ALD (Crl) 302 (AP); 2016 0 Supreme(AP) 260; Moithe Seetharam Versus The State of Andhra Pradesh

Though there appears to be some degree of negligence on the part of the investigating agency on the aspect, such as, not ensuring recording of dying declaration of the deceased by the Magistrate and not producing the second statement of the deceased recorded by PW 9 under Section 161 Cr.P.C, we are of the opinion that they are not fatal to the case of the prosecution in view of the direct evidence let in through PWs 1 to 4.

2017(1) ALD (Crl) 315 (A.P); 2016 0 Supreme(AP) 417; Elamuthu Selvam Versus State of A.P

howsoever defective the investigation may be, so long as it does not affect the case of prosecution, and if the evidence on record is strong enough, the real culprit cannot be allowed to escape punishment (State of U.P. v. Jagdeo, (2003) 1 SCC 456). In Karnel Singh v. State of M.P., (1995) 5 SCC 518) the Supreme Court held that in cases of defective investigation the Court has to be circumspect in evaluating the evidence but it would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing into the hands of the Investigating Officer if the investigation is designedly defective. In that case, though the Investigating Officer has failed to record the statements of two important witnesses to the incident of rape and also draw up a proper seizure memo with regard to the ‘chaddi’ (underwear), while holding the investigation as slipshod and defective, the Court has nevertheless confirmed the conviction of the accused.

In State of U.P. v. Ram Veer Singh, (2007 (6) Supreme 164), the Supreme Court held that miscarriage of justice which may arise out of acquittal of the guilty is no less than that results from the conviction of an innocent. Therefore, on the facts and circumstances of the case, we feel that it would be a grave miscarriage of justice, if the appellant is acquitted based on the loose ends of investigation. In the case on hand, the evidence of PW-1 was amply corroborated by the other evidence as discussed hereinbefore. Therefore, though the investigation was faulty and defective and was left a lot to be desired, we are not prepared to let off the appellant whose guilt is proved beyond reasonable doubt.

2017 (1) ALD (Crl) 319 (A.P); 2016 0 Supreme(AP) 222; Boppana Beeraiah Versus The State

For ascertaining what exactly is the object sought to be achieved by an enactment, Statement of objects and reasons, the Preamble and the provisions of the Act as a whole have to be considered.

Perpetrators and abettors of domestic violence can be women or even minors

Over emphasis on classification may end in substituting the doctrine of classification for the doctrine of equality.

The words “adult male” before the word “person” in Section 2(q) struck down.

The words “adult male” in Section 2(q) of the 2005 Act will stand deleted since these words do not square with Article 14 of the Constitution of India. Consequently, the proviso to Section 2(q), being rendered otiose, also stands deleted. DOCTRINE OF SEVERABILITY.

Doctrine of ‘Reading down’ – It would apply only when general words used in a statute or regulation can be confined in a particular manner so as not to infringe a constitutional right – Otherwise it is not permissible – Similarly, ‘reading up’ is not permissible.

2016 10 SCC 165; (2017) 1 SCC (Cri)1; 2016 7 Supreme 232; 2016 0 Supreme(SC) 832; Hiral P. Harsora & Ors. Versus Kusum Narottamdas Harsora & Ors

Normally, when a culprit perpetrates a heinous crime of murder and takes away the life of a human being, if appropriate punishment is not awarded to that offender, the Court will be failing in its duty. Such crime, when indulged by a criminal blatantly, is not committed against an individual alone, but is committed against the society as well to which the criminal and victim are a part. It needs no emphasis from this Court that the punishment to be awarded for such a crime must be relevant and it should conform to and be consistent with the atrocity and brutality with which the crime has been carried out.

26. Here in the instant case, no doubt, an innocent man has lost his life at the hands of another man, and looking at the way in which the investigation was handled, we are sure to observe that it was carried out in a lackluster manner. The approach of the Investigating Officer in recording the statements of witnesses, collecting the evidence and preparation of site map has remained unmindful. The Investigating Officer, dealing with a murder case, is expected to be diligent, truthful and fair in his approach and his performance should always be in conformity with the police manual and a default or breach of duty may prove fatal to the prosecution's case. We may hasten to add that in the present case the investigation was carried out with unconcerned and uninspiring performance. There was no firm and sincere effort with the needed zeal and spirit to bring home the guilt of the accused. We feel that there are no compelling and substantial reasons for the High Court to interfere with the order of acquittal when the prosecution has miserably failed to establish the guilt of the accused. Added to this, the accused has already undergone nine years' of imprisonment and we feel that it is a fit case inviting interference by this Court.

2016 10 SCC 220; 2016 7 Supreme 601; 2016 0 Supreme(SC) 882; MAHAVIR SINGH VERSUS STATE OF MADHYA PRADESH

Code of Criminal Procedure, 1973 – Section 302 – Intended only for magistrate courts – Complainant seeking to conduct the case himself, has to file a written application making out a case so that the Magistrate can exercise the jurisdiction and form the requisite opinion – Section 302 applies to every stage including the stage of framing charge, if complainant is permitted by the Magistrate to conduct the prosecution.

2016 3 Crimes(SC) 405; 2016 10 SCC 378; 2017(1) SCC(Cri) 116; 2016 6 Supreme 576; 2016 0 Supreme(SC) 701; Dhariwal Industries Ltd. VERSUS Kishore Wadhwani & Ors.

When the two courts below arrive at irreconcilable conclusions on the same materials on records, it becomes indispensable for the Supreme Court to analyse the materials independently.

Evidence of hostile witness ought not stand effaced altogether in all eventualities. Can be accepted to the extent found dependable on a careful scrutiny.

Evidence of prosecutrix can never be taken as gospel truth.

Judgment of acquittal can be interfered only if found to be perverse.

2016 10 SCC 506; 2017 (1) SCC (Cri) 158; 2016 7 Supreme 212; 2016 0 Supreme(SC) 833; Raja & Others Versus State of Karnataka

Burden of proof is always on prosecution. Accused is presumed to be innocent unless proved guilty.

Minor discrepancies not touching the core of the case should be ignored.

"Falsus in uno, falsus in omnibus" has no application in India.

Common object of the members of unlawful assembly can be gathered from their conduct.

Not explaining injury to accused is not enough to reject the prosecution version.

Recoveries and Chemical Analyzer's report only have corroborative value.

Every GD Entry or cryptic information cannot be treated as FIR.

Appellate court is fully empowered to review the evidence and to reach at its own conclusion.

2016 0 AIR(SC) 4531; 2016 4 Crimes(SC) 246; 2017 (1) SCC (Cri) 189; 2016 10 SCC 537; 2017 1 Supreme 129; 2016 0 Supreme(SC) 790; Bhagwan Jagannath Markad & Ors. Versus State of Maharashtra

Members of unlawful assembly sharing common object are not required to be shown to have committed some overt act individually.

Conviction can be made even in absence of motive if there is direct trustworthy evidence of witnesses as to commission of an offence.

2017 (1) SCC (Cri) 206; 2016 10 SCC 663; 2016 7 Supreme 202; 2016 0 Supreme(SC) 834; Saddik @ Lalo Gulam Hussein Shaikh & Ors. Versus State of Gujarat

(a) Code of Criminal Procedure, 1973 – Section 340(1) r/w sections 199 and 200, Indian Penal Code, 1860 – Initiating an inquiry into any offence punishable u/s 199 and 200 – Mere making a contradictory statement in a judicial proceeding by itself not always sufficient to justify a prosecution u/s 199 and 200 – Intentionally giving a false statement at any stage of the judicial proceedings or fabricated false evidence for the purpose of using the same at any stage of the judicial proceedings attracts section 199 and 200 – Even then, the court has to form an opinion that it is expedient in the interests of justice to initiate an inquiry – Court having a prima facie satisfaction of the offence which appears to have been

committed should suffice – Even after forming the opinion court has to decide if compliant is required to be filed – Then only the court may file a complaint. (Para 7, 8, 11)
(b) Code of Criminal Procedure, 1973 – Section 340(1) – Complaint filed u/s 340 has to be dealt with as if on a police report – Procedure for trial of warrant case to be followed – Sections 195(1)(b)(i) and 238 to 243 – Code therefore providing meticulous procedures u/s 340
2017 (1) SCC (Cri) 237; 2016 4 Crimes(SC) 190; 2017 1 SCC 113; 2016 8 Supreme 318; 2016 0 Supreme(SC) 918; Amarsang Nathaji as Himself & as Karta & Manager Versus Hardik Harshadbhai Patel & Others

The administration of justice is a sacrosanct function of the judicial institutions or the persons entrusted with that onerous responsibility and principle of judicial review has now been declared as a part of the basic structure of the Constitution. Therefore, if anything has the effect of impairing or hampering the quality of administration of justice either due to lack of knowledge or proper qualification on the part of the persons involved in the process of justice dispensation or they being not properly certified by the Bar Council as provided under the Act and the Rules made there under, it will surely affect the administration of justice and thereby affecting the rights of litigants who are before the Courts seeking justice. **2017 (1) SCC (Cri) 247; 2016 10 SCC 554; 2016 6 Supreme 525; 2016 0 Supreme(SC) 663; Jamshed Ansari Versus High Court of Judicature At Allahabad & Ors.**

Not naming a witness in inquest report is not fatal.
There is no bar on making two accused part of the same TIP.
When all co-accused are acquitted of the charges, the accused concerned cannot be convicted.
2017 (1) SCC (Cri) 290; 2016 0 AIR(SC) 1844; 2016 0 CrLJ 2356; 2016 11 SCC 265; 2016 3 Supreme 752; 2016 0 Supreme(SC) 290; Sheikh Sintha Madhar @ Jaffer @ Sintha Etc. Versus State Rep. by Inspector of Police.

Narcotic Drugs and Psychotropic Substances Act, 1985 – Section 42 and 50 – Search officer himself a gazette officer – Not necessary to ensure compliance of section 42 – Offer to search given to appellant in writing – Appellant searched only after his consent – Section 50 complied with – No error in conviction.
2016 0 CrLJ 4182; 2017 (1) SCC (Cri) 328; 2016 11 SCC 368; 2016 6 Supreme 107; 2016 0 Supreme(SC) 496; Sekhar Suman Verma Versus The Superintendent of N.C.B. & Anr

(a) Indian Evidence Act, 1872 – Section 32 – Multiple dying declarations – Each dying declaration has to be considered independently on its own merit for appreciating its evidentiary value – One cannot be rejected because of the contents of the other.
(b) Indian Evidence Act, 1872 – Section 32 – Conviction can be recorded on the basis of the dying declaration alone if wholly reliable. (Para 28)
(c) Indian Evidence Act, 1872 – Section 32 – Dying declaration – Need not necessarily be in question answer form – First two declarations similar in content – Corroborated by evidence Third declaration quite different – Stating cause of fire being chimney in the house and that the deceased was sleeping – Evidence disproving the same – Burn injuries not accidental – Courts below rightly rejecting third declaration and convicting the accused.
2017 (1) SCC (Cri) 334; 2016 0 CrLJ 3568; 2016 11 SCC 673; 2016 5 Supreme 201; 2016 0 Supreme(SC) 485; Raju Devade Versus State of Maharashtra.

Code of Criminal Procedure, 1973 – Section 41-A to 41-C – Guidelines laid down by Supreme Court in (1997) 1 SCC 416 – Petitioners charged under section 66-A(b), IT Act, 2000 and section 420, IPC – Mandatory to follow procedures in section 41-A – Not followed – No notice issued to petitioners – Procedures of arrest and seizure grossly violated.
2017 (1) SCC (Cri) 364; 2016 0 CrLJ 3156; 2016 11 SCC 703; 2016 4 Supreme 397; 2016 0 Supreme(SC) 425; Dr. Rini Johar & Anr. Versus State of M.P. & Ors

Cr.P.C., 1973, Sec. 306, 460(g) read with Prevention of Corruption Act, 1988, Sec. 4, 5 — Tender of pardon to accomplice/approver — Whether the Magistrate has power to grant tender of pardon u/Sec. 306 of the code or such powers are to be necessarily exercised only by the Special Judge having regards to the provisions of the P.C. Act? — Held — Both the Magistrate as well as the Special Judge has concurrent jurisdiction in granting pardon u/Sec. 306 Cr.P.C. while the investigation is going on — In case where the Magistrate has exercised his jurisdiction u/Sec. 306 even after the appointment of a Special Judge under the P.C. Act and has passed an order granting pardon, the same is only a curable irregularity, which will not vitiate the proceedings, provided the order is passed in good faith — RLW 2003(3) (Raj.) 1865, overruled — Order of High Court set-aside.
2016 0 CrLJ 3127; 2017 (1) SCC (Cri)381; 2016 11 SCC 733; 2016 0 Supreme(SC) 748; State through CBI, Chennai Versus V. Arul Kumar.

Though it may be true that the rupture of the hymen may not occur in all cases of sexual intercourse, but it is the burden of the prosecution to extract from the medical examiner examining a rape victim, that the nature of the hymen was such that it could remain intact despite there being intercourse with the girl on several occasions within a period of 15 to 20 days. The medical examiner has merely mentioned that there were no signs of recent sexual intercourse which is inadequate to establish that sexual intercourse took place before that at all.

2017 (1) SCC (Cri) 408;(2015) 16 SCC 752; 2015 7 Supreme 364; 2015 0 Supreme(SC) 922; STATE OF KARNATAKA VERSUS F. NATARAJ.

NOSTALGIA

as long back as in the year 1944, in EMPEROR V/s. KHWAJA NAZIR AHMAD (AIR (32) 1945 Privy Council 18), the Privy Council pointed out that receipt and recording of an information report is not a condition precedent to the setting in motion of a criminal investigation. While observing that in a great majority of cases, criminal prosecutions are undertaken as a result of information received and recorded in this way, the Privy Council stated that there is no reason as to why the police, if in possession through their own knowledge or by means of credible though informal intelligence, should not of their own motion undertake an investigation into the truth of the matter alleged. The Privy Council concluded by stating that the provisions as to the information report (commonly called a first information report) were enacted for obtaining early information of alleged criminal activity, to record the circumstances before there is time for them to be forgotten or embellished, and to put in evidence such report when the informant is examined, if it is desired to do so.

In APREN JOSEPH ALIAS CURRENT KUNJUKUNJU V/s. THE STATE OF KERALA (AIR 1973 SC 1), a three Judge Bench of the Supreme Court quoted with approval the observations of the Privy Council in KHWAJA NAZIR AHMAD4 that receipt and recording of the information report by the police is not a condition precedent to the setting in motion of a criminal investigation.

NEWS

- Prosecution replenish congratulates the prosecutors promoted as Sr.APP, in State of A.P.
  - Ms Sandhya
  - Mr Anthony.
  - Mr Satyanarayana.

- Prosecutions Department – Permission for filling up of vacancies on Outsourcing basis in the Office of the Directorate of Prosecutions, Telangana, Hyderabad – Accorded - Orders – Issued vide G.O.Rt. No. 260 HOME (COURTS.A1) DEPARTMENT Dated: 02-03-2017.

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.

BOOK-POST

If undelivered please return to:
The Prosecution Replenish,
4-235, Gita Nagar,
Malkajgiri, Hyderabad-500047
Ph: 9849365955; 9440723777
9848844936, 9908206768
e-mail:- prosecutionreplenish@gmail.com
Website : prosecutionreplenish.com

To,
_____
_____
_____
_____

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

Vol- VI
Part-4

Prosecution Replenish

An Endeavour for Learning and Excellence

April, 2017

Aano Bhadra Krtavo Yantu Vishwatah.(RIG VEDAM)
"Let Noble Thoughts Come To Me From All Directions"

When things go wrong, and time is tough, I just look up and say, I know you are testing me, I will wait for the day, you will reward me for being strong. *- Anonymous.*

CITATIONS

Minor inconsistencies in 161 CRPC Statement; 164 CRPC Statement and the deposition before the court cannot render prosecution case untrustworthy and discardable. Omission to hold the TIP is not fatal.
In absence of a certificate relating to the call details u/s 65B(4) Evidence Act, 1872 mere printouts would not be admissible in evidence u/s 65B(2) of the Act. **2017(1) ALD (Crl) 199(SC) ; 2016 0 Supreme(SC) 915; Harpal Singh @ Chhota Versus State of Punjab**

Evidence of a witness cannot be disbelieved merely because of his/her relation with the deceased.
Minor discrepancies in evidence of a witness cannot affect prosecution case. **(2017) 1 SCC (Cri) 419; (2017) 2 SCC 321; 2017 0 AIR(SC) 568; 2017 1 Supreme 257; 2017 0 Supreme(SC) 9; Ram Chander & Ors. Versus State of Haryana**

Indian Penal Code, 1860 – Section 149 – An overt act is not an inflexible requirement to establish culpability of a member of an unlawful assembly – Accused being member of an unlawful assembly and common unlawful object of the unlawful assembly are crucial considerations – Unlawful assembly formed with common object of committing an offence and that offence committed, in prosecution of the object, by any member of the unlawful assembly, all the members of the assembly will be vicariously liable for that offence even if one or more, but not all committed the offence – Members of an unlawful assembly may have a community of object upto a certain point, beyond which they may differ in their objects, and the knowledge possessed by each member of what is likely to be committed in prosecution of their common object may vary not only according to the information at his command, but also according to the extent to which he shares the community of object
(2017) 1 SCC (Cri) 450; 2016 4 Crimes(SC) 404; 2017 1 SCC 477; 2016 8 Supreme 528; 2016 0 Supreme(SC) 962; Muthuramalingam & Ors. Versus State.

two articles by Daniela Berti delve into a sociological analysis of hostile witnesses, noting how village compromises (and possibly peer pressure) are a reason for witnesses turning hostile. In one of his articles [Daniela Berti : Courts of Law and Legal Practice (pp. 6-7)], he writes:

"For reasons that cannot be explained here, even the people who initiate a legal case may change their minds later on and pursue non-official forms of compromise or adjustment. Ethnographic observations of the cases that do make it to the criminal courtroom thus provide insight into the kinds of tensions that arise between local society and the state judicial administration. These tensions are particularly palpable when witnesses deny before the judge what they allegedly said to the police during preliminary investigations. At this very moment they often become hostile. Here I must point out that the problem of what in common law terminology is called "hostile witnesses" is, in fact, general in India and has provoked many a reaction from judges and politicians, as well as countless debates in newspaper editorials. Although this problem assumes particular relevance at high-profile, well-publicized trials, where witnesses may be politically pressured or bribed, it is a recurring everyday situation with which judges and prosecutors of any small district town are routinely faced. In many such cases, the hostile behavior results from various dynamics that interfere with the trial's outcome – village or family solidarity, the sharing of the same illegal activity for which the accused has been incriminated (as in case of cannabis cultivation), political interests, family pressures, various forms of economic compensation, and so forth. Sometimes the witness becomes "hostile" simply because police records of his or her earlier testimony are plainly wrong. Judges themselves are well aware that the police do write false statements for the purpose of strengthening their cases. Though well known in judicial milieus, the dynamics just described have not yet been studied as they unfold over the course of a trial. My research suggests, however, that the witness's withdrawal from his or her previous statement is a crucial moment in the trial, one that clearly encapsulates the tensions arising between those involved in a trial and the court machinery itself."

"In my fieldwork experiences, witnesses become "hostile" not only when they are directly implicated in a case filed by the police, but also when they are on the side of the plaintiff's party. During the often rather long period that elapses between the police investigation and the trial itself, I often observed, the party who has lodged the complaint (and who becomes the main witness) can irreparably compromise the case with the other party by means of compensation, threat or blackmail."

2017 (1) ALD (Crl) 387; (2017) 1 SCC (Cri) 460; 2016 4 Crimes(SC) 169; 2017 1 SCC 529; 2016 8 Supreme 296; 2016 0 Supreme(SC) 917; RAMESH AND OTHERS VERSUS STATE OF HARYANA

Indian Evidence Act, 1872 – Section 32 – Even if eyewitness account is partly inconsistent with dying declaration, once the dying declaration is found reliable, trustworthy and consistent with circumstantial evidence on record, such dying declaration by itself is adequate to convict the accused. (Para 16)

Juvenile Justice (Care and Protection of Children) Act, 2000 – Section 20 – Appellant more than 16 years of age but less than 18 years of age at the time of occurrence – Not a juvenile under Juvenile Justice Act, 1986 in force at relevant time – A juvenile under Act 2000 – Pending proceeding shall continue in the court and taken to logical end – However if found guilty, the juvenile shall not be sentenced – Instead, matter shall be referred to Juvenile Board for awarding appropriate fine u/s Section 21(1)(e) of Act, 1986 – Juvenile Justice (Care and Protection of Children) Act, 2015 – Section 25 – Matter remitted to Jurisdictional Juvenile Justice Board for determining appropriate quantum of fine on the appellant and compensation to the family of the deceased.

(2017) 1 SCC (Cri) 610; 2016 11 SCC 786; 2016 4 Supreme 711; 2016 0 Supreme(SC) 500; Mumtaz@ Muntyaz Versus State of U.P. (Now Uttarakhand)

Where the prosecution case rests upon the evidence of a related witness, it is well-settled that the court shall scrutinize the evidence with care as a rule of prudence and not as a rule of law. The fact of the witness being related to the victim or deceased does not by itself discredit the evidence. **2017(1) ALD (Crl) 353; 2017 0 Supreme(SC) 152; (2017) 3 SCC 247; ARJUN AND ANR. Versus STATE OF CHHATTISGARH.**

Police have statutory right to investigate, without any interference or direction form judiciary.

Unless the information discloses commission of a cognizable offence, immediate registration of FIR is not mandatory.

High Court refusing to stay the same and at the same time directing that accused persons shall not be arrested amounts to an order u/s 438 without satisfying conditions therefor and is legally not acceptable.

2017 (1) ALD (Crl) 372(SC); 2017 0 AIR(SC) 373; 2017 1 Supreme 324; 2017 0 Supreme(SC) 26; (2017) 2 SCC 779; **The State of Telangana Versus Habib Abdullah Jeelani & Ors.**

at the trial as well as before the High Court, the prosecution case was sought to be discredited for the absence of explanation of the injuries suffered by some of the accused persons, in absence of any evidence forthcoming that at the relevant time, the deceased was armed or that the prosecution witnesses present did launch a counter attack, the courts below rightly dismissed this plea.

2017 (1) ALD (Crl) 383; 2016 0 AIR(SC) 5550; 2016 4 Crimes(SC) 325; 2016 12 Scale 352; 2017 1 Supreme 515; 2016 0 Supreme(SC) 940; RAM AUTAR & ORS. VERSUS STATE OF U.P.

(a) Code of Criminal Procedure, 1973 – Section 340(1) r/w sections 199 and 200, Indian Penal Code, 1860 – Initiating an inquiry into any offence punishable u/s 199 and 200 – Mere making a contradictory statement in a judicial proceeding by itself not always sufficient to justify a prosecution u/s 199 and 200 – Intentionally giving a false statement at any stage of the judicial proceedings or fabricated false evidence for the purpose of using the same at any stage of the judicial proceedings attracts section 199 and 200 – Even then, the court has to form an opinion that it is expedient in the interests of justice to initiate an inquiry – Court having a prima facie satisfaction of the offence which appears to have been committed should suffice – Even after forming the opinion court has to decide if compliant is required to be filed – Then only the court may file a complaint.

(b) Code of Criminal Procedure, 1973 – Section 340(1) – Complaint filed u/s 340 has to be dealt with as if on a police report – Procedure for trial of warrant case to be followed – Sections 195(1)(b)(i) and 238 to 243 – Code therefore providing meticulous procedures u/s 340 – High Court not following all requirements u/s 340 –

Parties deciding to settle the matter amicably – Invoking section 340 not sustainable. **2017(1) ALD (Crl) 407; 2016 4 Crimes(SC) 190; 2017 1 SCC 113; 2016 8 Supreme 318; 2016 0 Supreme(SC) 918; Amarsang Nathaji as Himself & as Karta & Manager Versus Hardik Harshadbhai Patel & Others.**

The provision prescribing the period of detention in custody during investigation of a case punishable with imprisonment for a term of not less than ten years and the investigation for an offence for which the punishment is for imprisonment for a term which may extent to ten years is distinct and different.
In such view of the matter, the petitioner could be authorized to be detained in custody for a maximum period of 60 days in view of the proviso (a) (ii) to sub- section (2) of Section 167, Cr.P.C.
2017 (1) ALD (Crl) 449; 2016 0 Supreme(AP) 540; Thangavel Ravi & Others Versus State of A.P.

Though P.W.13 stated in his examination-in-chief that he recorded the statement of the deceased, the same never saw the light of day. As pointed out supra, the anxiety shown by the police to establish the guilt of the accused was wholly unnecessary and would ultimately be counter-productive, as demonstrated by the argument now advanced on behalf of A1. When P.W.14 had already been requisitioned to record the dying declaration of the deceased, there was no necessity for the police to overreach themselves by coming up with Ex.P10 dying declaration, allegedly recorded by P.W.11, and hinting at a third dying declaration, allegedly recorded by P.W.13. This Court therefore denounces the practice adopted by the police to emboss and exaggerate the actual evidence by concocting evidence to establish the guilt of the accused, or worse, create lapses and discrepancies to aid the accused. However, these overzealous measures on the part of the police do not in any way detract from the credibility that attaches to Ex.P18 dying declaration recorded by P.W.14. The evidence of P.W.16 who certified the mental fitness of the deceased before, during and after recording of the said statement remained unshaken. P.W.14 also followed the letter of the law in true and proper spirit while recording Ex.P18 and gave no scope to doubt the veracity of the said dying declaration. The navet and innocence of the deceased, who was at the threshold of death, clearly comes through in her use of language indicting A1, which was recorded verbatim by P.W.14 in the dying declaration.
crimes against women are not ordinary crimes committed in a fit of anger or for property but they are social crimes disrupting the entire social fabric and therefore, call for harsh punishment.
2017(1) ALD (Crl) 460; 2016 0 Supreme(AP) 371; A. Rajesh Goud Versus The State of Andhra Pradesh.

Coming to the role of the police officials in the present matter, we have already observed that the conduct exhibited by the concerned police officials in not ensuring compliance of the Orders passed by the Trial Court calls for strict administrative action. The actions in that behalf have already been initiated and for the present we rest content by observing that the disciplinary proceedings shall be taken to logical end and the guilty shall be brought to book. We request the Director General of Police of Haryana and the Home Secretary to look into the matter and ensure that the departmental proceedings are taken to logical end at the earliest. The status report/action taken report in that behalf shall be filed in this court within three months from the date of this judgment.
the Medical Professionals namely Dr. Munish Prabhakar and Dr. K.S. Sachdev extended medical asylum to the respondent without there being any reason or medical condition justifying prolonged admission of the respondent as an indoor patient as a cover to defeat the Orders passed by this Court and the Trial Court, as stated above and thereby aided and assisted the respondent in violating the Order of this Court. By such conduct these Medical Professionals have obstructed administration of justice. **2017(1) ALD (Crl) 473 (SC)(FB); 2017 0 AIR(SC) 242; 2016 0 Supreme(SC) 1004; Sita Ram Vs Balbir @ Bali**

When order had already been passed to fast-track the trial, and the application for bail by co-accused Sandeep Suman @ Pushpanjay was also rejected, the High Court, while considering the bail application of the respondent, was supposed to take into consideration this material fact as well. Further, while making a general statement of law that the accused is innocent, till proved guilty, the provisions of Section 29 of POCSO Act have not been taken into consideration,

Reasons for granting bail must be recorded – Discussing evidence is totally different from giving reasons for a decision – Granting bail by ignoring material evidence on record and without giving reasons would be perverse and contrary to principles of law – Such order granting bail liable to be cancelled.

Cancellation of bail – For ensuring fair trial – Possible only if witnesses are able to depose without fear, freely and truthfully – If granting bail to accused may hamper fair trial, bail can be cancelled – Liberty of accused and interest of society of fair trial need to be balanced

2017 (1) ALD (Crl) 498 (SC); 2016 0 Supreme(SC) 926; (2017) 2 SCC 178; STATE OF BIHAR VERSUS RAJBALLAV PRASAD @ RAJBALLAV PD. YADAV @ RAJBALLABH YADAV

(a) Criminal trial – FIR and Investigation – Recording of FIR not condition precedent for initiating criminal investigation – Discrepancy in recording time, not fatal to prosecution case – Held FIR not antetimed.

(b) Criminal trial – Delay in forwarding FIR to Magistrate – Not fatal if investigation commenced promptly on the basis of the FIR – Only extraordinary and unexplained delay raises doubts about authenticity of FIR.

(c) Criminal trial – Appreciation of evidence – Statement given by the eyewitness in the court – Cannot be discarded merely because the statement u/s 164, Code of Criminal Procedure, 1973 was not immediately recorded – Further no question asked on this point in cross-examination – Trial court discarding evidences on flimsy ground and based on surmises and conjectures – High Court rightly re-appraised the same and reversed the order of acquittal.

2017 (1) ALD (Crl) 511 (SC); 2016 0 Supreme(SC) 930; Anjan Das Gupta Versus The State of West Bengal & Ors.

Standard of proof for age determination is the degree of probability and not proof beyond reasonable doubt.

Ossification test does not yield accurate and precise conclusions after the examinee crosses the age of 30 years.

Medical evidence though a very useful guiding factor is not conclusive and has to be considered along with other circumstances.

2017 (1) ALD (Crl) 520(SC); 2016 4 Crimes(SC) 310; 2016 12 Scale 379; 2017 1 Supreme 560; 2016 0 Supreme(SC) 949; (2017) 2 SCC 210; MUKARRAB ETC. Versus STATE OF U.P

the Lokayukta nor Upa-Lokayukta has any jurisdiction or authority to direct implementation of his report by the constitutional functionary but when after investigation, it is found that the public servant has committed any criminal offence, prosecution can be initiated for which prior sanction of any authority is required under any law for such prosecution and the same shall be deemed to have been granted.

2017 0 Supreme(SC) 271 (FB) ; Ram Kishan Fauji Versus State of Haryana and Ors

When evidence against appellant and acquitted co-accused are different, acquittal of the latter will not help the appellant in any way. **2017 0 Supreme(SC) 225; Dinesh Yadav Versus State of Jharkhand**

To sum up:-

(i) The High Courts may issue directions to subordinate courts that-

(a) Bail applications be disposed of normally within one week;

(b) Magisterial trials, where accused are in custody, be normally concluded within six months and sessions trials where accused are in custody be normally concluded within two years;

(c) Efforts be made to dispose of all cases which are five years old by the end of the year;

(d) As a supplement to Section 436A, but consistent with the spirit thereof, if an undertrial has completed period of custody in excess of the sentence likely to be awarded if conviction is recorded such undertrial must be released on personal bond. Such an assessment must be made by the concerned trial courts from time to time;

(e) The above timelines may be the touchstone for assessment of judicial performance in annual confidential reports. (emphasis added)

(ii) The High Courts are requested to ensure that bail applications filed before them are decided as far as possible within one month and criminal appeals where accused are in custody for more than five years are concluded at the earliest;

(iii) The High Courts may prepare, issue and monitor appropriate action plans for the subordinate courts;

(iv) The High Courts may monitor steps for speedy investigation and trials on administrative and judicial side from time to time;

(v) The High Courts may take such stringent measures as may be found necessary in the light of judgment of this Court in Ex. Captain Harish Uppal (supra).

2017 0 Supreme(SC) 249; Hussain and Anr. Versus Union of India

(a) Criminal trial – Appreciation of evidence – PW 4 recorded as witness in the complaint itself – Statement of PW 4 recorded by Magistrate u/s 202 CrPC – High Court recording a finding that the evidence of PW4 cannot be rejected only on the ground that he was not questioned by the police – It then held that evidence of PW4 can be used only for corroboration of PW3's evidence – No reason given – Not sustainable – Trial court rightly believed testimony of PW 4.

(b) Indian Penal Code 1860 – Section 149 – Common object – Can be gathered from the nature of the assembly, arms used and behaviour of the assembly at or before the scene of occurrence – It is an inference to be deduced from the fact and circumstances of the case – Mere presence in the unlawful assembly may vicariously fasten criminal liability u/s 149.

2017 0 Supreme(SC) 295; JT 2017 (3) SC 506; **KATTUKULANGARA MADHAVAN (DEAD) THR. LRS. Versus MAJEED & ORS.; KATTUKULANGARA MADHAVAN (DEAD) THR. LRS. Versus SIDDIK & ORS.; STATE OF KERALA Versus ABOOBACKER @ ARABI ABOOBACKER & ORS.**

Criminal trial – Related witness – Daughter and wife of deceased giving details of blows inflicted on deceased – Their presence at the spot natural – Their conduct of following deceased who running for his life also natural – Their testimony cannot be doubted.

Criminal trial – Prosecution not required to meet any and every hypothesis put forward by the accused – Proof beyond reasonable doubt only a guideline, not a fetish – Court not only to see that that no innocent man is punished – But also that a guilty man does not escape

2017 0 Supreme(SC) 292; Ganesh Shamrao Andekar & Anr. Versus State of Maharashtra

Code of Criminal Procedure, 1973 – Section 439 – Subsequent application for bail – Change of circumstance – Filing of charge sheet is not change of circumstance – Does not lessen allegations made by the prosecution – Trial court oblivious of pendency of SLP against rejection of second bail application – Principle of innocence of accused till he is found guilty cannot be sole consideration for granting bail – There has to be application of mind. **2017 0 Supreme(SC) 297; VIRUPAKSHAPPA GOUDA AND ANR VS THE STATE OF KARNATAKA AND ANR.**

Words and phrases – Legal fiction and presumption – Distinction – Legal fictions create an artificial state of affairs by a mandate of the legislature – Cannot be created by a subordinate law making body – Legal fiction assumes existence of a fact which may not really exist – A presumption of a fact depends on satisfaction of certain circumstances – Section 112, Indian Evidence Act, 1972 does not create a legal fiction but provides for presumption – Presumptions are closely related to legal fiction, but they operate differently – Fictions always conflict with reality, presumptions may prove to be true – Presumptions are rules of evidence – Presumptions – Normally rebuttable unless legislature creates an irrebuttable presumption. **2017 0 Supreme(SC) 276; M/s. Bhuwalka Steel Industries Ltd. & Another Versus Union of India & Others**

(a) Criminal trial – Appreciation of evidence – Minor discrepancies in testimony do not discredit prosecution story – Statement of witness recorded belatedly, delay having been duly explained, would be admissible.

(b) Criminal trial – Appreciation of evidence – Ballistic report – Mismatch of recovered empty cartridges and recovered weapon – Eye witnesses establishing firing – Ocular evidence to prevail – Police might not have

been able to recover actual weapon. **2017 0 Supreme(SC) 216; Himanshu Mohan Rai Versus State of U.P. and Anr.**

Indian Penal Code, 1860 – Sections 302/34, 506 and 354 – Murder – Criminal intimidation and attempt to outrage modesty – Common intention – Reversal of acquittal by High Court – First Information Report is prompt and copy of same sent on very next day to Magistrate without delay – Trial court has disbelieved evidence of injured eye-witness observing that same is not corroborated by other witnesses of fact who have turned hostile or partly hostile – Trial court has committed grave error in ignoring fact that such witnesses were not witnesses of incident – Prosecution case is that they reached spot subsequently – Trial court committed grave error by accepting defence case that deceased might have died of injuries suffered in an accident as possibility was not ruled out by Doctor – There is no suggestion of fact that at place of incident any vehicle had passed through at the time of incident – Trial court appears to have taken support of conjectures and surmises – High Court correctly held that view taken by trial court is perverse and against evidence on record – There appears nothing unusual in taking injured to hospital where the injured could be given better treatment and time is not lost – Addition of stitched wounds in post mortem report does not create doubt regarding incident in question – Identification of accused is not in doubt – There is no question of recording of dying declaration of patient in a critical condition – View taken by trial court was perverse and rightly held so by High Court – Appeal dismissed.
Criminal Procedure Code, 1973 – Section 154 – FIR – First Information Report is not an encyclopaedia and if necessary details are there, on its basis detailed narration by witnesses cannot be doubted.
2017 0 Supreme(SC) 210; M.G. Eshwarappa and others Versus State of Karnataka

It has come to the notice of the Court that in certain cases, the High Courts, while dismissing the application under Section 482 CrPC are passing orders that if the accused-petitioner surrenders before the trial magistrate, he shall be admitted to bail on such terms and conditions as deemed fit and appropriate to be imposed by the concerned Magistrate. Sometimes it is noticed that in a case where sessions trial is warranted, directions are issued that on surrendering before the concerned trial judge, the accused shall be enlarged on bail. Such directions would not commend acceptance in light of the ratio in Rashmi Rekha Thatoi (supra), Gurbaksh Singh Sibbia (supra), etc., for they neither come within the sweep of Article 226 of the Constitution of India nor Section 482 CrPC nor Section 438 CrPC. This Court in Ranjit Singh (supra) had observed that the sagacious saying “a stitch in time saves nine” may be an apposite reminder and this Court also painfully so stated. Having reminded the same, presently we can only say that the types of orders like the present one, are totally unsustainable, for it is contrary to the aforesaid settled principles and judicial precedents. It is intellectual truancy to avoid the precedents and issue directions which are not in consonance with law. It is the duty of a Judge to sustain the judicial balance and not to think of an order which can cause trauma to the process of adjudication. It should be borne in mind that the culture of adjudication is stabilized when intellectual discipline is maintained and further when such discipline constantly keeps guard on the mind.
The State Of Telangana vs Habib Abdullah Jeelani & Ors. https://indiankanoon.org/doc/143800718/

Murder of wife - Recovery of brick at the instance of accused - Letters written by deceased to her father as proved by PW5, show that accused used to beat deceased in drunken condition - A litigation between the two for conjugal rights had ended in compromise - On day of incidence also there was a quarrel - Accused could not explain how deceased died at his home - - FSL report proved presence of human blood on clothes of accused, clothes of deceased and piece of floor - Though PWs 1, 2, 3, 4 and 6 turned hostile, but PW1 proved inquest report, PW2 proved recovery of brick at the instance of accused and PW6 nephew of deceased admitted lodging FIR soon after the incident. Held, it is proved that appellant caused homicidal death of deceased. **JT 2017 (3) SC 613 Devendra Nath Srivastava Vs. State of U.P.**

Criminal Trial — Appreciation of evidence — Medical evidence vis-à-vis ocular evidence: Minor variations between medical evidence and ocular evidence do not take away the primacy of the latter. Unless medical evidence in its term goes so far as to completely rule out all possibilities whatsoever of injuries taking place in

the manner stated by eyewitnesses, the testimony of eyewitnesses cannot be thrown out. **[Baleshwar Mahto v. State of Bihar, (2017) 3 SCC 152]**

Juvenile Justice (Care and Protection of Children) Act, 2000 — S. 7-A — Claim of juvenility: Documentary evidence as contemplated in statutory provisions/Rules, enough to establish juvenility, if it is available and found to be reliable. There is no further need for medical examination in such a case. [**Sri Ganesh v. State of T.N., (2017) 3 SCC 280]**

Penal Code, 1860 — S. 302 r/w Ss. 34/149, Ss. 324 & 325 r/w Ss. 34/149 and S. 326 r/w S. 149 — Essential ingredients of S. 149: Common object to commit offence can be inferred from weapons used and violent manner of attack but common object to commit murder cannot be inferred only on basis that weapons carried by accused were dangerous, a holistic view has to be taken of all the facts. Finding of commission of offence under S. 326 r/w S. 149 can be recorded against other members of an unlawful assembly, even if it is established that offence under S. 302 was committed by one or more member(s) of such assembly. **[Najabhai Desurbhai Wagh v. Valerabhai Deganbhai Vagh, (2017) 3 SCC 261]**

Constitution of India — Arts. 213 & 123 and Arts. 249(3), 250(2), 357, 358(1) & 359(1-A) — Obliteration of rights, privileges, obligations or liabilities under an Ordinance upon its ceasing to operate: Laying of Ordinance before the legislative is mandatory. Repromulgation of Ordinances is constitutionally impermissible. Upon an Ordinance ceasing, no rights, privileges, obligations or liabilities survive except where pubic interest or constitutional necessity is demonstrated. **[Krishna Kumar Singh v. State of Bihar, (2017) 3 SCC 1]**

NOSTALGIA

the law laid down by this Court in Dalbir Kaur and Ors. v. State of Punjab, (1976) 4 SCC 158, and Harbans Kaur and Anr. v. State of Haryana, (2005) 9 SCC 195, which lays down the following proposition:

"There is no proposition in law that relatives are to be treated as untruthful witnesses. On the contrary, reason has to be shown when a plea of partiality is raised to show that the witnesses had reason to shield actual culprit and falsely implicate the accused."

NEWS

- Prosecution replenish appreciates the initiative of the Director of Prosecutions, Telangana State, in commissioning speakers to lecture on the new trends in laws and its applications. The first class of such lectures was on 25/3/2017, which was a grand success, with both police and prosecutors having their qualms cleared, for better interpretation and implementation of the welfare provisions of various laws.
- Prosecution Replenish congratulates Sri T.Srinivas Reddy garu for being promoted as the Addl. Director of prosecutions.

ON A LIGHTER VEIN

Just came home from a training session. Two hours on the treadmill did me really good. If only I could somehow stop the constant beeping and the irritated comments of the cashier.

Vol- VI
Part-5

Prosecution Replenish

An Endeavour for Learning and Excellence

May, 2017

Aano Bhadra Krtavo Yantu Vishwatah.(RIG VEDAM)
"Let Noble Thoughts Come To Me From All Directions"

Keep away from people who try to belittle your dreams. Small people always do that, but the really great ones make you feel that you, too, can become great. ***- Mark Twain***

CITATIONS

2017(2) SCC 18; 2017 (1) SCC (Cri) 628; 2017(1) ALD (CRL) 602 (SC); 2016 0 Supreme(SC) 977; Sharat Babu Digumarti Versus Govt. of NCT of Delhi

Indian Penal Code, 1860 – Section 292 r/w section 67, 79 and 81, Information Technology Act, 2000 – Act 2000 is a special enactment specifically dealing with obscene material in electronic form – Section 67 stipulating punishment for publishing, transmitting obscene materials in electronic form – Section 79 is an exemption to section 67 conferring protection to individuals – Section 81 gives overriding effect to Act, 2000 on any law being in force – Section 292 providing for punishment for publishing, transmitting etc of obscene material in printed form – As soon as the material in question is in electronic form, the Code ceases to have effect and the Act, 200 shall prevail – A special law shall prevail over the general and prior laws – Offences relating to electronic record can only be proceeded under the Act, 2000 – If a charge relating to electronic record has not been made out under Section 67 of the IT Act, the person cannot be proceeded under Section 292 IPC.

2017 (2) SCCC 51; 2017 (1) SCC (Cri) 648; 2017(1) ALD (Crl) 588(SC); 2016 4 Crimes(SC) 424; 2016 12 Scale 831; 2016 8 Supreme 709; 2016 0 Supreme(SC) 992; STATE OF HIMACHAL PRADESH VERSUS SANJAY KUMAR @ SUNNY

(A) Indian Penal Code, 1860 – Sections 376 and 506 –Rape and criminal intimidation – Acquittal appeal – Minor victim – Prosecutrix subjected to rape on various occasions by accused – Prosecution case fully corroborated by medical evidence – Reluctance on part of prosecutrix in not narrating incident to anybody for a period of three years and not sharing the same event with her mother, is clearly understandable – It is not easy to lodge a complaint of this nature exposing prosecutrix to risk of social stigma which unfortunately still prevails in our society – Decision to lodge FIR becomes more difficult and hard when accused happens to be a family member – After taking all due precautions which are necessary, when it is found that prosecution version is worth believing, case is to be dealt with all sensitivity that is needed in such cases – In such a situation one has to take stock of realities of life as well – Evidence brought on record contains positive proof, credible sequence of events and factual truth linking respondent with rape of prosecutrix and had criminally intimidated her

(B) Indian Penal Code, 1860 – Section 376 – Rape – Testimony of a victim in cases of sexual offences is vital and unless there are compelling reasons which necessitate looking for corroboration of a statement, court should find no difficulty to act on testimony of victim of a sexual assault alone to convict accused – Seeking corroboration to a statement before relying upon the same as a rule, in such cases, would literally amount to adding insult to injury – Deposition of prosecutrix has to be taken as a whole – Victim of rape is not an accomplice and her evidence can be acted upon without corroboration – She stands at a higher pedestal than an injured witness does – If court finds it difficult to accept her version, it may seek corroboration from some evidence which lends assurance to her version – To insist on corroboration, except in rarest of rare cases, is to equate one who is a victim of lust of another with an accomplice to a crime and thereby insult womanhood – It would be adding insult to injury to tell a woman that her claim of rape will not be believed unless it is corroborated in material particulars, as in case of an accomplice to a crime.

2017 (2) SCC 178; 2017 (1) SCC(Cri) 678; 2016 0 Supreme(SC) 926; STATE OF BIHAR VERSUS RAJBALLAV PRASAD @ RAJBALLAV PD. YADAV @ RAJBALLABH YADAV

Code of Criminal Procedure, 1973 – Section 438 and 439(2) – Grant and cancellation of bail – Reasons for granting bail must be recorded – **Discussing evidence is totally different from giving reasons for a decision** – Granting bail by ignoring material evidence on record and without giving

reasons would be perverse and contrary to principles of law – Such order granting bail liable to be cancelled.
Code of Criminal Procedure, 1973 – Section 439(2) – Respondent surrendering only after initiation of process u/s 83 – Direct and specific allegations of raping minor girl – Threatening and intimidating prosecutrix and her family members – Has a criminal antecedent – Even then High Court granting bail making casual and cryptic remarks – High Court not dealing with chances of the accused person fleeing from justice or reasonable apprehension of him tampering with evidence/trial if released on bail – High Court ignoring rejection of bail application of co- accused – **High Court also not considering provisions of Section 29 of Protection of Children from Sexual Offences Act, 2012 – Not a fit case for granting bail.**

2017 (2) SCC 210; 2017 (1) SCC (Cri) 710; 2016 4 Crimes(SC) 310; 2017 1 JLJR(SC) 152; 2016 12 Scale 379; 2017 1 Supreme 560; 2016 0 Supreme(SC) 949; MUKARRAB Versus STATE OF U.P.
Juvenile Justice (Care and Protection of Children) Act, 2000 – Section 7A and Section 49(1) r/w Rule 12, Juvenile Justice Rules, 2007 – Determination of age – Ossification test – Ossification test does not yield accurate and precise conclusions after the examinee crosses the age of 30 years as in the present case – Object of the Act is not to give shelter to accused of grave and heinous offences.

2017 (2) SCC 538; 2017(1) SCC (Cri) 768; 2017 0 AIR(SC) 25; 2016 12 Scale 1044; 2017 1 Supreme 225; 2016 0 Supreme(SC) 1009; STATE BANK OF INDIA VERSUS SANTOSH GUPTA AND ANR. ETC. & STATE BANK OF INDIA AND ORS. VERSUS ZAFFAR ULLAH NEHRU AND ANR. ETC
State of Jammu & Kashmir is and shall be an integral part of the Union of India.
Notwithstanding Article 370 being a temporary provision, its current usage would cease only when the President declares so on recommendation of the State's Constituent Assembly.
Consultation and concurrence – distinction.
Parliament has legislative jurisdiction to make laws in relation to the subject matters of all Entries in List I and List III as specified by the 1954 Order for State of J&K.
Decisions of Supreme Court on principles of repugnancy (Article 254) would apply in full force to laws made on specified subject matters.
It is not correct to first dissect an Act into various parts and then refer those parts to different Entries in the legislative Lists.
Section 140 of the Jammu & Kashmir Transfer of Property Act has to be harmonised with SARFAESI failing which Section 140 of the Jammu & Kashmir Transfer of Property Act has to give way to SARFAESI. Doctrine of Pith and substance applied.

2017 (1) ALD (Crl) 533(SC); 2016 3 Crimes(SC) 388; 2016 0 CrLJ 4666; 2016 8 SCC 762; 2016 6 Supreme 462; 2016 0 Supreme(SC) 660; State of Haryana Versus Ram Mehar & Others
Concept of fair trial cannot be stretched limitlessly.
Recall of witnesses cannot be allowed on grounds of accused persons being in custody, prosecution having been allowed to recall some of its witnesses earlier, illness of the counsel, and magnanimity commands fairness should be shown.
Court is duty-bound to see that neither the prosecution nor the defence takes unnecessary adjournments and take the trial under their control.
Criminal justice is not accused-centric – Balance has to be struck between interests of the accused, the victim and the society

Chilla Rambabu Versus The State of Andhra Pradesh 2016 0 Supreme(AP) 370; 2017(1) ALD (Crl) 564
In the light of the aforestated settled legal position, the framing of a charge under Section 302 IPC r/w Section 34 IPC against A1 in relation to the murder of Papayamma would not be fatal to his conviction under Section 302 IPC simplicitor and it would be legally sustainable if established beyond doubt.

It is no doubt true that there were lapses in the investigation. The blood-stained and controlled earth, seized from the scene of the offence, was not produced before the Sessions Court. This would have been a serious lapse but for the fact that there is other overwhelming evidence to establish the offence and the culpability of A1 therefor. Similarly, the failure to mark in evidence the statement of Appala Reddy recorded by P.W.18 under Section 161 CrPC also pales into insignificance in the light of this Courts finding as to the nature of his death and given the evidence of P.W.s 6 and 8 as to the guilt of A1 for the knife attack upon him.

Seema Bai Vs State of Telangana; 2017 (1) ALD (Crl) 583.
Single case not sufficient to invoke preventive detention act.
Cases under IPC only to be considered for passing PD, other offence not eligible.

2017 (1) ALD (Crl)639(SC); 2017 1 Supreme 465; 2017 0 Supreme(SC) 28; Baleshwar Mahto & Anr. Versus State of Bihar & Anr.
Contradictory stands taken in statement u/s 313 CrPC and during arguments goes against the accused.
When there is no contradiction between the medical and ocular evidence, conviction cannot be faulted.
Due credence needs to be accorded to evidence of injured witnesses.
When group of persons come to the place of occurrence armed with deadly weapons, their intention and purpose would be more than apparent.

2017 (1) ALD (Crl) 648(SC); 2017 1 Supreme 408; 2017 0 Supreme(SC) 19; Vijendra Singh Versus State of Uttar Pradesh
Under section 34 IPC each person sharing the common intention is constructively liable for criminal act done by any one of them.
In some ways sections 34 and 149 IPC are similar and in some cases they may overlap.
A close relative, being a natural witness, cannot be regarded as an interested witness.
Evidence of such witness if intrinsically reliable or inherently probable may, by itself, be sufficient to base a conviction thereon.
Non-examination of material witness would not be fatal to prosecution story if other evidence is trustworthy.

2017(1) ALD (Crl) 662; 2016 0 Supreme(AP) 74; S. Bala Krishna VersusThe State of Telangana.
When such is the case, the learned Magistrate by recording 34 sworn statements of the complainant and the persons to his tunes brought by him, taken cognizance of the case totally ignoring the police referred report supra and none of the even independent witnesses who categorically stated no such incidents as happened, even not examined at least one to say the investigating officer did not record his statement or he did so state or even he stated to the investigating office about any abuse taken place it is not properly reflected even to defer with the investigating officer from the so called protest to take cognizance, thereby the cognizance taken by the learned Magistrate simply based on the few versions of the complainant/protest petitioner and his three or four more persons which he cited to his tunes is unsustainable and it is nothing but abuse of process by the complainant to wreak vengeance for which the legal machinery cannot be allowed to use and any such permission is nothing but grave abuse of process and the inherent powers are there to prevent such abuse to subserve the ends of justice.
It is a fit case for quashing the same is really by the recent expression of the Apex Court in D.T.Virupakshappa supra where categorically held even there is excess of discharge of official duty, sanction is mandatory in quashing the proceedings and referring to it and also the Apex Court including Anjani Kumar Vs. State of Bihar (2008) 5 SCC 248), it was held when complaint filed against the government official as a counterblast to the action taken by him and when the facts show the complaint as afterthought with deliberations roped the official in continuation of proceedings amounts to abuse of process therefrom quashed the proceedings and for that conclusion referred several expressions.

2017 0 Supreme(SC) 421; Pawan Kumar Vs State of H.P.

Eve-teasing, as has been stated in Deputy Inspector General of Police and another v. S. Samuthiram, (2013) 1 SCC 598 has become a pernicious, horrid and disgusting practice. The Court therein has referred to the Indian Journal of Criminology and Criminalistics (January-June 1995 Edn.) which has categorized eve-teasing into five heads, viz. (1) verbal eve-teasing; (2) physical eve-teasing; (3) psychological harassment; (4) sexual harassment; and (5) harassment through some objects. The present case eminently projects a case of psychological harassment. We are at pains to state that in a civilized society eve-teasing is causing harassment to women in educational institutions, public places, parks, railways stations and other public places which only go to show that requisite sense of respect for women has not been socially cultivated. A woman has her own space as a man has. She enjoys as much equality under Article 14 of the Constitution as a man does. The right to live with dignity as guaranteed under Article 21 of the Constitution cannot be violated by indulging in obnoxious act of eve-teasing. It affects the fundamental concept of gender sensitivity and justice and the rights of a woman under Article 14 of the Constitution. That apart it creates an incurable dent in the right of a woman which she has under Article 15 of the Constitution. One is compelled to think and constrained to deliberate why the women in this country cannot be allowed to live in peace and lead a life that is empowered with a dignity and freedom. It has to be kept in mind that she has a right to life and entitled to love according to her choice. She has an individual choice which has been legally recognized. It has to be socially respected. No one can compel a woman to love. She has the absolute right to reject.

46. In a civilized society male chauvinism has no room. The Constitution of India confers the affirmative rights on women and the said rights are perceptible from Article 15 of the Constitution. When the right is conferred under the Constitution, it has to be understood that there is no condescendation. A man should not put his ego or, for that matter, masculinity on a pedestal and abandon the concept of civility. Egoism must succumb to law. Equality has to be regarded as the summum bonum of the constitutional principle in this context. The instant case portrays the deplorable depravity of the appellant that has led to a heart breaking situation for a young girl who has been compelled to put an end to her life. Therefore, the High Court has absolutely correctly reversed the judgment of acquittal and imposed the sentence. It has appositely exercised the jurisdiction and we concur with the same.

2017 0 Supreme(SC) 407; Raj Talreja Versus Kavita Talreja

This Court in Para 16 of K. Srinivas Rao v. D.A. Deepa, 2013 (5) SCC 226 has held as follows:

“16. Thus, to the instances illustrative of mental cruelty noted in Samar Ghosh v. Jaya Ghosh, 2007 (4) SCC 511, we could add a few more. Making unfounded indecent defamatory allegations against the spouse or his or her relatives in the pleadings, filing of complaints or issuing notices or news items which may have adverse impact on the business prospect or the job of the spouse and filing repeated false complaints and cases in the court against the spouse would, in the facts of a case, amount to causing mental cruelty to the other spouse.”

In Ravi Kumar v. Julmidevi, 2010 (4) SCC 476 this Court while dealing with the definition of cruelty held as follows:

“19. It may be true that there is no definition of cruelty under the said Act. Actually such a definition is not possible. In matrimonial relationship, cruelty would obviously mean absence of mutual respect and understanding between the spouses which embitters the relationship and often leads to various outbursts of behaviour which can be termed as cruelty. Sometime cruelty in a matrimonial relationship may take the form of violence, sometime it may take a different form. At times, it may be just an attitude or an approach. Silence in some situations may amount to cruelty.

20. Therefore, cruelty in matrimonial behaviour defies any definition and its categories can never be closed. Whether the husband is cruel to his wife or the wife is cruel to her husband has to be ascertained and judged by taking into account the entire facts and circumstances of the given case and not by any predetermined rigid formula. Cruelty in matrimonial cases can be of infinite variety—it may be subtle or even brutal and may be by gestures and words. That possibly explains why Lord Denning in Sheldon v. Sheldon, (1966) 2 WLR 993 held that categories of cruelty in matrimonial cases are never closed.”

10. Cruelty can never be defined with exactitude. What is cruelty will depend upon the facts and circumstances of each case. In the present case, from the facts narrated above, it is apparent that the wife made reckless, defamatory and false accusations against her husband, his family members and colleagues, which would definitely have the effect of lowering his reputation in the eyes of his peers. Mere filing of complaints is not cruelty, if there are justifiable reasons to file the complaints. Merely because no action is taken on the complaint or after trial the accused is acquitted may not be a ground to treat such accusations of the wife as cruelty within the meaning of the Hindu Marriage Act 1955 (for short 'the Act'). However, if it is found that the allegations are patently false, then there can be no manner of doubt that the said conduct of a spouse levelling false accusations against the other spouse would be an act of cruelty.
Though we have held that the acts of the wife in filing false complaints against the husband amounts to cruelty, we are, however, not oblivious to the requirements of the wife to have a decent house where she can live. Her son and daughter-in-law may not continue to live with her forever. Therefore, some permanent arrangement has to be made for her alimony and residence. Keeping in view the status of the parties, we direct that the husband shall pay to the wife a sum of Rs.50,00,000/-(Rupees Fifty Lakhs only) as one time permanent alimony and she will not claim any further amount at any later stage. This amount be paid within three months from today. We further direct that the wife shall continue to live in the house which belongs to the mother of the husband till the husband provides her a flat of similar size in a similar locality. For this purpose, the husband is directed to ensure that a flat of the value up to Rs.1,00,00,000/-(Rupees One Crore Only) be transferred in the name of his wife and till it is provided, she shall continue to live in the house in which she is residing at present.

2017 (0) Supreme (SC) 384; Fazar Ali Vs State of Assam
This Court in Chandrappa and Others versus State of Karnataka, (2008) 11 SCC 328 has laid down that it is unreasonable to expect from a witness to give a picture perfect report of the incident and minor discrepancies in their statement have to be ignored.

2017 (0) Supreme (SC) 389; MAHENDRA SINGH DHONI Vs. YERRAGUNTLA SHYAMSUNDAR AND ANR
we would like to sound a word of caution that the Magistrates who have been conferred with the power of taking cognizance and issuing summons are required to carefully scrutinize whether the allegations made in the complaint proceeding meet the basic ingredients of the offence; whether the concept of territorial jurisdiction is satisfied; and further whether the accused is really required to be summoned. This has to be treated as the primary judicial responsibility of the court issuing process.

2017 (0) Supreme (SC) 409; Balakram Vs State of Uttarakand & ors.
neither the police officer has refreshed his memory with reference to entries in the police diary nor has the trial court used the entries in the diary for the purposes of contradicting the police officer (PW-15), it is not open for the accused to produce certain pages of police diary obtained by him under the provisions of Right to Information Act for the purpose of contradicting the police officer

2017 0 Supreme(SC) 356; Sudha Renukaiah & Ors. Versus State of A.P.
Ocular evidence supported by medical evidence cannot be discarded.
Court is duty bound to examine prosecution evidence de hors some lapses.

2017 0 Supreme(SC) 350; Anant Singh @ Anant Kumar Singh Versus The State of Bihar & Ors.
Second detention order issued after revocation of the earlier order must be based on fresh grounds.

2017 0 Supreme(SC) 326; Roopendra Singh Vs State of Tripura & Anr
Criminal Procedure Code, 1973 – Sections 372 and 378 – Appeal against acquittal – Right of questioning correctness of judgment and order of acquittal by preferring appeal to High Court is conferred upon victim including legal heir and others, as defined under Section 2(wa) Cr.P.C., under proviso to Section 372, but only after obtaining leave of High Court as required under sub-section (3) of Section 378 Cr.P.C.

2014 1 ALD(Cri) 711; 2014 2 ALT(Cri) 246; 2014 0 Supreme(AP) 52; Boya Kothi Lakshmanna (A-13) & Others Versus The State of A.P. rep. by P.P. High Court of A.P., Hyderabad & Another
(A) Criminal Procedure Code 1973 - Section 284 -- Rejection of petition seeking appointment of Advocate Commissioner to note down physical features of venue of offence---There is no provision in Cr.P.C. for appointing advocate-commissioner for that purpose - Petition not maintainable.
(B) Criminal Procedure Code 1973 - Section 310 - Local inspection—If a Judge or Magistrate makes a local inspection, he must record a memorandum of the relevant facts observed by him in such local inspection—Material in the memorandum prepared by the Judge or Magistrate cannot be treated as evidence---Under revisional jurisdiction, High Court cannot interfere with judicial discretion of trial Judge and issue a positive direction to make local inspection.

Criminal Procedure Code, 1973 — S. 202 [as amended by S. 19 of Code of Criminal Procedure (Amendment) Act (25 of 2005)] — Object: Enquiry by Magistrate in cases where accused resides at a place beyond his jurisdiction is mandatory. Enquiry envisages proper application of mind by examination of witnesses by Magistrate. [Abhijit Pawar v. Hemant Madhukar Nimbalkar, [(2017) 3 SCC 528]

Criminal Procedure Code, 1973 — Ss. 216, 397 and 401 — Power of court under S. 216, to alter or add any charge — Scope of, and manner of exercise of: Power of court under S. 216, to alter or add any charge, vested under S. 216 vested in court is exclusive to the court and there is no right in any party, neither de facto complainant nor accused nor prosecution, to seek such addition or alteration by filing any application as a matter of right. [P. Kartikalakshmi v. Sri Ganesh, (2017) 3 SCC 347]

Medical Termination of Pregnancy Act, 1971 — Ss. 5, 3 and 4 — Termination of pregnancy: Termination of pregnancy after 20 weeks to save life of pregnant woman, permissible when there is grave danger to physical and mental health of pregnant woman and death of foetus outside womb is inevitable. Also, affidavit seeking such abortion must be filed by woman concerned herself. Relator action is not permissible. [X v. Union of India, (2017) 3 SCC 458]

In Karnel Singh Vs. State of M.P., (1995) 5 SCC 518, the Supreme Court was also dealing with a case of defective investigation. Having expressed unhappiness over the nature of the investigation, the Supreme Court observed that the Court has to be circumspect in evaluating the evidence but it would not be right in acquitting an accused person solely on account of a defect as to do so would tantamount to playing into the hands of investigating officers, if the investigation is designedly defective. It was further observed that to acquit solely on the ground of defective investigation would be adding insult to injury.

AND

This Court has in a recent judgment in the case of Yogesh Singh Vs. Mahabeer Singh & Ors., AIR 2016 SC 5160 = 2016 (10) JT 332, reiterated the said principle in the following words:

"It is a cardinal principle of criminal jurisprudence that the guilt of the accused must be proved beyond all reasonable doubts. However, the burden on the prosecution is only to establish its case beyond all reasonable doubt and not all doubts. Here, it is worthwhile to reproduce the observations made by Venkatachaliah, J., in State of U.P. Vs. Krishna Gopal and Anr., (1988) 4 SCC 302:

'25. … Doubts would be called reasonable if they are free from a zest for abstract speculation. Law cannot afford any favourite other than truth. To constitute reasonable doubt, it must be free from an overemotional response. Doubts must be actual and substantial doubts as to the guilt of the accused person arising from the evidence, or from the lack of it, as opposed to mere vague

apprehensions. A reasonable doubt is not an imaginary, trivial or a merely possible doubt; but a fair doubt based upon reason and common sense. It must grow out of the evidence in the case.

26. The concept of probability, and the degrees of it, cannot obviously be expressed in terms of units to be mathematically enumerated as to how many of such units constitute proof beyond reasonable doubt. There is an unmistakable subjective element in the evaluation of the degrees of probability and the quantum of proof. Forensic probability must, in the last analysis, rest on a robust common sense and, ultimately on the trained intuitions of the judge. While the protection given by the criminal process to the accused persons is not to be eroded, at the same time, uninformed legitimization of trivialities would make a mockery of administration of criminal justice."

NEWS

- Prosecution replenish congratulates Joint Director of Prosecutions Smt Vyjayanthi garu on being promoted as Addl. DOP, Telangana State.
- Public Services - Prosecuting Officers – Placing of certain prosecutors as incharge of the posts of Special Public Prosecutors, Special Courts for Trial of Offences under SC&ST (POA) Act, 1989 – Notification under section 15 of the SC &ST Act to conduct prosecution of the cases filed under SC&ST Act, 1989 – Ratified – Notification - Orders – Issued. vide G.O.Rt.No. 413 HOME (COURTS.A1) DEPARTMENT Dated: 04-04-2017 (TS)
- LAW OFFICERS – State of Telangana - Enhancement of honorarium to the Government Pleaders / Special Government Pleaders / Additional Government Pleaders, Assistant Government Pleaders, Public Prosecutors, Additional Public Prosecutors, Special Public Prosecutors in the Courts subordinate to the High Court of Judicature at Hyderabad - Orders – Issued. G.O.Rt.No. 228 LAW (E) DEPARTMENT Dated: 07-04-2017. (TS)
- LAW OFFICERS – State of Telangana – State Public Prosecutor and Additional Public Prosecutors in the High Court of Judicature at Hyderabad – Enhancement of rates of fee - Orders – Issued. G.O.Rt.No. 227 LAW (E) DEPARTMENT Dated: 07-04-2017. (TS)
- ALLOWANCES – Dearness Allowance – Dearness Allowance to the State Government Employees from 1st of January, 2016 – Sanctioned – Orders – Issued. G.O.Ms.No.16 FINANCE (HRM.IV) DEPARTMENT Dated: 03-02-2017(A.P.)
- ALLOWANCES – Dearness Allowance – Dearness Allowance to the State Government Employees from 1st of July, 2016 – Sanctioned – Orders – Issued. G.O.Ms.No.58 FINANCE (HRM.IV) DEPARTMENT Dated: 20-04-2017 (T.S).

ON A LIGHTER VEIN

Two Golfers were approaching the first tee.
The first guy goes into his golf bag to get a ball and says to his friend - "Hey, why don't you try this ball." He draws a green golf ball out of his bag. "Use this one - You can't lose it!"
His friend replies, "What do you mean you can't lose it?!!"
The first man replies, "I'm serious, you can't lose it.
If you hit it into the woods, it makes a beeping sound, if you hit it into the water it produces bubbles, and if you hit it on the fairway, smoke comes up in order for you to find it."
Obviously, his friend doesn't believe him, but he shows him all the possibilities until he is convinced. The friend says, "Wow! That's incredible! Where did you get that ball?"
The man replies, "I found it."

Vol- VI
Part-6

Prosecution Replenish

An Endeavour for Learning and Excellence

June, 2017

Aano Bhadra Krtavo Yantu Vishwatah.(RIG VEDAM)
"Let Noble Thoughts Come To Me From All Directions"

There are seven things that will destroy us:
Wealth without work;
Pleasure without conscience;
Knowledge without character;
Religion without sacrifice;
Politics without principle;
Science without humanity;
Business without ethics.

- Gandhi (1869-1948)

CITATIONS

2017 (1) ALD (Crl)639(SC); 2017 2 SCC(Cri) 26; 2017 3 SCC 152; Baleshwar Mahto & Anr. Versus State of Bihar & Anr.

Contradictory stands taken in statement u/s 313 CrPC and during arguments goes against the accused.

When there is no contradiction between the medical and ocular evidence, conviction cannot be faulted.

Due credence needs to be accorded to evidence of injured witnesses.

When group of persons come to the place of occurrence armed with deadly weapons, their intention and purpose would be more than apparent.

2017 1 Crimes(SC) 294; 2017 3 SCC 198; 2017 2 Supreme 155; 2017 0 Supreme(SC) 111; STATE OF RAJASTHAN VERSUS FATEHKARAN MEHDU

Code of Criminal Procedure, 1973 – Section 397 – Revision – Stage of framing of charge – Court not concerned with proof of allegation – To contend that at the stage of framing the charge itself the court should form an opinion that the accused is certainly guilty of committing an offence, not permissible.

Code of Criminal Procedure, 1973 – Section 397 – Revision – Scope – Provision aiming to set right a patent defect or an error of jurisdiction or law or the perversity which has crept in the proceeding – Quashing of charge.

2017 1 Crimes(SC) 317; 2017 3 SCC 247; 2017 2 SCC (Cri) 53; ARJUN AND ANR. ETC. Versus STATE OF CHHATTISGARH

Though four eye witnesses were treated as hostile by prosecution, their testimony insofar as place of occurrence and presence of accused in place of incident and their questioning as to cutting of trees and two accused surrounding deceased with weapons is not disputed – Evidence of such witnesses cannot be treated as effaced altogether but same can be accepted to the extent that their version is found to be dependable and court shall examine more cautiously to find out as to what extent he has supported case of prosecution – Injuries/incised wound caused on head i.e. right parietal region and right temporal region and also occipital region, injuries indicate that appellants had intention and knowledge to cause injuries and thus it would be a case falling under Section 304 Part I IPC – Conviction of appellants under Section 302 read with Section 34 IPC modified under Section 304 Part I IPC

Where prosecution case rests upon evidence of a related witness, court shall scrutinize evidence with care as a rule of prudence and not as a rule of law – Fact of witness being related to victim or deceased does not by itself discredit evidence.

2017 1 Crimes(SC) 270; 2017 3 SCC 261; 2017 2 SCC(Cri) 67; NAJABHAI DESURBHAI WAGH Versus VALERABHAI DEGANBHAI VAGH & ORS.
Indian Penal Code, 1860 – Section 149 – Common object to commit a murder cannot be inferred only on the basis that the weapons carried by the accused were dangerous – Conviction u/s 302 with the aid of section 149 not sustainable.
(c) Indian Penal Code, 1860 – Section 326 r/w section 149 – Common object to murder not made out – However the unlawful assembly had common object to attack the appellant and others – Liable to be convicted u/s 326 r/w 149 – However, in facts of the case, sentence limited to period undergone.

2017 0 AIR(SC) 537; 2017 1 Crimes(SC) 64; 2017 3 SCC 280; 2017 2 SCC (Cri) 78; 2017 1 Supreme 351; 2017 0 Supreme(SC) 24; Sri Ganesh Vs State of Tamilnadu and another.
if the allegations of the prosecution are that the offence under Section 376 IPC was committed on more than one occasion, in order to see whether the appellant was juvenile or not, it is enough to see if he was juvenile on the date when the last of such incidents had occurred.
When documentary evidence as to age are available on record, medical examination of the accused for age determination would be unwarranted.

2017 0 AIR(SC) 373; 2017 1 Crimes(SC) 85; 2017 2 SCC 779; 2017 2 SCC (Cri) 142; 2017 1 Supreme 324; 2017 0 Supreme(SC) 26; State of Telangana Vs Habib Abdullah Jeelani & Ors
Police have statutory right to investigate, without any interference or direction form judiciary.
Unless the information discloses commission of a cognizable offence, immediate registration of FIR is not mandatory.
Extraordinary power under Article 226 or inherent power under Section 482 could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, but the power to quash FIR has to be exercised sparingly and cautiously.
High Court refusing to stay the same and at the same time directing that accused persons shall not be arrested amounts to an order u/s 438 without satisfying conditions therefor and is legally not acceptable.

2017 0 AIR(SC) 391; 2017 1 Crimes(SC) 38; 2017 3 SCC 286; 2017 1 Supreme 484; 2017 0 Supreme(SC) 36; Saloni Arora Vs State of NCT of Delhi
For prosecution under section 182 IPC, it is mandatory to follow procedure u/s 195 CrPC.

2017 0 AIR(SC) 299; 2016 4 Crimes(SC) 379; 2017 3 SCC 528; 2017 2 SCC (Cri) 192; 2016 0 Supreme(SC) 999;ABHIJIT PAWAR Vs HEMANT MADHUKAR NIMBALKAR & ANR
Requirement of conducting enquiry or directing investigation before issuing process u/s 202 CrPC is not an empty formality.
Pure question of law can be raised at any stage of proceedings, more so, when it goes to the jurisdiction of the matter.

2017 1 Crimes(SC) 1; 2017 3 SCC 658; 2017 2 SCC (Cri) 228; 2017 1 Supreme 198; 2017 0 Supreme(SC) 2; IMTIYAZ AHMED VS STATE OF UTTAR PRADESH
The Chairperson of NCMSC has proposed an interim approach which augments the disposal rate method of the Law Commission with the prevailing unit system of the High

Courts to attribute a weightage to cases based on their nature and complexity. Under the unit system the High Courts have established disposal norms for the district judiciary based on units allocated for disposal of different cases. On the basis of the units prescribed, performance is rated from “excellent” and ‘very good’ to ‘unsatisfactory’.

2017 0 Supreme(SC) 572; SATISH AND ANOTHER VS STATE OF HARYANA

Criminal trial – Child witness – Child of 12 years – Deposing against his mother, the appellant – Courts below finding his evidence reliable and convincing – Appellant filing FIR after delay of 8 hours – Not taking any defence u/s 313 CrPC – Rightly convicted

2017 0 Supreme(SC) 550; THE STATE OF MADHYA PRADESH Vs SMT. KALLO BAI

Forest Act" confiscatory proceedings are independent of the main criminal proceedings. In view of our detailed discussion in the preceding paragraph we are of opinion that High Court as well as the revisional court erred in coming to a conclusion that the confiscation under the law was not permissible unless the guilt of the accused is completely established.

2017 0 Supreme(SC) 439; Mukesh & Anr Vs State of NCT of Delhi.

(1) Even a long delay in lodging of FIR can be condoned if the informant has no motive for implicating the accused.
(2) FIR is not an encyclopedia of facts. Victim not expected to give details of the incident either in the FIR or in the brief history given to the doctors.
(3) Evidence of a witness is not to be disbelieved simply because he is a partisan witness or related to the prosecution.
(4) Court is not merely to see that no innocent man is punished. It has also to be seen that a guilty man does not escape.
(5) Recovery is a part of investigation and permissible u/s 27. It is not permissible to argue that section 27 is constantly abused by prosecution or is used as a lethal weapon against anyone it likes.
(6) TIP does not constitute substantive evidence. It can only be used to corroborate statement in court.
(7) Dying declaration cannot be discarded on account of meagre technical errors. Dying declaration recorded on the basis of nods and gestures is not only admissible but also possesses evidentiary value.
(8) DNA (Deoxyribo Nucleic Acid) profiling is now a part of statutory scheme in case of rape.
(9) Onus of presence of accused on the spot having been discharged by prosecution, burden to establish plea of alibi lies on accused.
(10) Conspiracy subsists till it is executed or rescinded or frustrated by the choice of necessity and its objective can be inferred from surrounding circumstances and conduct of the accused.
(11) When the aggravating circumstances outweigh the mitigating circumstances and the case falls in the category of ‘rarest of rare’ case, death sentence is the only punishment.
(12) Testimony of rape victim is not legally required to be corroborated.
(13) Multiple dying declarations must be consistent with each other.
(14) Injuries on the person of a rape victim is not a sine qua non for proving charge of rape.
(15) Burden of rebutting the proof of recovery lies on defence and it is very strict.
(16) DNA (De-oxy-ribonucleic acid) profiling is an important forensic tool to connect accused to the crime and is almost hundred per cent precise and accurate.
(17) Essence of the offence of conspiracy is in agreement to break the law. Anything done by any one of the accused in reference to their common intention, is admissible against the others. All accused bear joint liability.

2017 0 Supreme(SC) 434; State of Haryana and Another Versus Ved Kau

Service law – Disciplinary action – Moral turpitude – Rule 7(2)(b), P&A Rules, 1978, Instructions dated 26.03.1975 and section 323, Indian Penal Code, 1860 – Conviction u/s 323 does not constitute one involving moral turpitude – Dismissal and forfeiture of all benefits not sustainable.

2017(1) ALD (Crl) 712; S.K.Musthaq Ahmed @ Goremiyan and others Vs The State of Andhra Pradesh

Enmity is a double edged weapon providing motive both for the offence as well as for false implication. Therefore, we have scrutinised the evidence with care so that neither the guilty party wrongly escapes on the plea of enmity, nor an innocent person gets wrongly convicted on that basis.

No doubt, the Doctor of the Mamatha Hospital, before whom the dead body was first brought, did not give a medico-legal intimation to the police after he declared that the deceased was brought dead. That failure on the part of a medical officer of a private hospital is not sufficient to doubt the veracity of the well established prosecution case

the prosecution as well as the Presiding Officer of the trial Court failed in their duty to elicit from the medical witness his opinion as to whether or not all the stab injuries found on the deceased could have been caused with MOs10 & 11, knives, and the head injury with MO1, cement stone. such lapse on the part of the prosecution and as well as the Presiding Officer of the trial Court, is not fatal to the case of the prosecution, more particularly, as the accused are not disputing the homicidal death of the deceased but are only contending that they are not the culprits.

2017(1) ALD(Crl) 744; C.S.Ravi Vs S. Mallamma and another

Section 311 Cr.P.C. gives general power to the Court to summon material witness or examine any person as a witness if the evidence is essential for just decision of the Court and the object of the section is to enable the Court to arrive at the truth irrespective of the fact that the prosecution or the defence has failed to produce some evidence it is necessary for a just and proper disposal of the case. The section consists of two parts. First part is to summon the witness at any stage of enquiry, trial or other proceedings under the Court on the application of the party is discretionary and the second part is mandatory and the Court is required to summon or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case.

2017(1) ALD (Crl) 760; 2016 0 Supreme(AP) 384; Upputala Venkateswarlu & Others Vs State of A.P.

The learned counsel for accused No.5 has pointed out certain shortcomings in the investigation, such as, PW.18 not examining the persons who were at the scene of offence when he has visited there and obtaining the opinion of the doctor on the fitness of PW.1 to give Ex.P1, report.

In our opinion, when as many as four injured witnesses have given their evidence in support of the prosecution, these shortcomings or lacunae in the investigation do not affect the case of the prosecution. As regards the fitness of PW.1 to make a statement, he has received two injuries on his left leg only which were described as simple in nature and therefore there could be no doubt about his fitness in giving a statement. The defence has not put forth its case suggesting the probable manner in which the witnesses, such as, PWs.1 to 4, would have suffered the injuries otherwise than in the manner the prosecution has set up in its case.

2017(1) ALD (Crl) 790; Korra Praveen Vs State of Telangana

Directed the Director General of Police for the states of Telangana and Andhra Pradesh to issue immediate standing orders to all the police stations in their states that if FIR is registered on complaint of either side parents that their daughter is absconding /

kidnapped etc., and the police thereafter came to know that the marriage has performed mutually by consent between the two and they are major, then the Investigating officer shall take appropriate steps to file final report and get the FIR closed from the concerned court.

2017(1) ALD (Crl) 852(SC); 2017 4 SCC 177; 2017 0 Supreme(SC) 105; AMRUTBHAI SHAMBHUBHAI PATEL Vs. SUMANBHAI KANTIBHAI PATEL & ORS.
the investigating agency concerned has been invested with the power to undertake further investigation desirably after informing the Court thereof, before which it had submitted its report and obtaining its approval, no such power is available therefor to the learned Magistrate after cognizance has been taken on the basis of the earlier report, process has been issued and accused has entered appearance in response thereto. At that stage, neither the learned Magistrate suo motu nor on an application filed by the complainant/informant direct further investigation. Such a course would be open only on the request of the investigating agency and that too, in circumstances warranting further investigation on the detection of material evidence only to secure fair investigation and trial, the life purpose of the adjudication in hand.
The un-amended and the amended sub-Section (8) of Section 173 of the Code if read in juxtaposition, would overwhelmingly attest that by the latter, the investigating agency/officer alone has been authorized to conduct further investigation without limiting the stage of the proceedings relatable thereto. This power qua the investigating agency/officer is thus legislatively intended to be available at any stage of the proceedings. The recommendation of the Law Commission in its 41st Report which manifesting heralded the amendment, significantly had limited its proposal to the empowerment of the investigating agency alone.

Criminal Procedure Code, 1973 — S. 53-A — Non-holding of DNA test, or, failure to prove DNA test report, or, DNA test result favouring accused: Failure to conduct DNA test of samples taken from accused or to prove the report of DNA profiling, would not necessarily result in failure of prosecution case. Though a positive result of DNA test would constitute clinching evidence against accused, if however, result of test is in the negative i.e. favouring accused or if DNA profiling had not been done or proved in a given case, weight of other materials and evidence on record will still have to be considered. **[Sunil v. State of M.P., (2017) 4 SCC 393]**

Service Law — Promotion — Criteria/Eligibility — Annual confidential report (ACR): Though, ACR forms part of service record which is required to be sent to Selection Committee for consideration, but officer cannot be prejudiced merely because his officers delayed writing it. Further held, prescription for writing ACR as per the Rules concerned was only directory and not mandatory. **[P. Sivanandi v. Rajeev Kumar, (2017) 4 SCC 579]**

NOSTALGIA

10. Criminal jurisprudence attaches great weightage to the evidence of a person injured in the same occurrence as it presumes that he was speaking the truth unless shown otherwise. Though the law is well settled and precedents abound, reference may usefully be made to Brahm Swaroop v. State of U.P., (2011) 6 SCC 288 observing as follows:-

"28. Where a witness to the occurrence has himself been injured in the incident, the testimony of such a witness is generally considered to be very reliable, as he is a witness that comes with an in-built guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailants in order to falsely implicate someone."

11. The failure of the prosecution to place the injury report of the witness from the Udumalpet Government Hospital, where he was first taken for treatment is a lacuna, but cannot be held to be fatal as to doubt the entire prosecution case or shake the credibility of the witness. It cannot lead to any conclusion of his injury report, Exhibit P-6 from the Ramakrishna Hospital being fabricated. No such suggestion was made by the defence to PW-12 Dr. Krishnaraj. The appellants are named in the FIR registered soon after the occurrence. The fact that the witness may have stated of assault by two known persons to PW-12, without naming any of the appellants is inconsequential. The Doctor was a prosecution witness for the limited purpose of the injury report and not a prosecution witness with regard to the occurrence. The observations in Pattipati Venkaiah v. State of A.P., (1985) 4 SCC 80 as follows are considered relevant:-

"17. Another argument advanced before us was that although PWs 1 and 2 were supposed to be eyewitnesses, they never cared to disclose the name of the assailant to the doctor when the body of the deceased was taken to the hospital. This argument is only stated to be rejected. A doctor is not at all concerned as to who committed the offence or whether the person brought to him is a criminal or an ordinary person, his primary effort is to save the life of the person brought to him and inform the police in medico-legal cases. In this state of confusion, PWs 1 and 2 may not have chosen to give details of the murder to the doctor. It is well settled that doctors before whom dead bodies are produced or injured persons are brought, either themselves take the dying declaration or hold the post-mortem immediately and if they start examining the informants they are likely to become witnesses of the occurrence which is not permissible."

12. The fact that the witness may be related to the deceased by marriage, cannot be sufficient reason to classify him as a related and interested witness to reject his testimony. It may only call for greater scrutiny and caution in consideration of the same. The animosity of the appellants was primarily with the deceased on account of his acquittal the previous day, in the criminal prosecution. The transfer of lands by the deceased in favour of the witness, being a completed transaction, is considered too remote a circumstance for enmity between the appellants and the witness as a ground for false implication. In any event, because of the reliable ocular evidence available, motive loses much of its relevance in the facts of the case.

NEWS

- Prosecution Replenish congratulates Joint Director of Prosecutions Smt Vyjayanthi garu on being promoted as Addl. DOP, Telangana State.
- Prosecution Replenish wishes Sri T.Srinivasulu Reddy, ADOP, A.P, a very happy and healthy retired life.
- The official logo of the department of prosecutions, Telangana State, was inaugurated by the Hon'ble Chief Minister of Telangana State on 18/5/2017.
- Prosecution Replenish congratulates Sri B. Rama Koteswara Rao, Deputy Director of Prosecutions, Vijayawada for being placed in full additional charge of the post of Joint Director in the O/o. the Director of Prosecutions, Andhra Pradesh,
- Budget Estimates 2017-18 – Budget Release Order for Rs.30,00,000/- to the Director of Prosecutions, Telangana State, Hyderabad – Administrative Sanction - Orders – Issued. G.O.Rt.No. 293 LAW (LA, LA&J-HOME-COURTS-B2) DEPARTMENT Dated: 08-05-2017
- Budget Estimates 2017-18 - Comprehensive Budget Release Order for Rupees Five Crores Thirty One Lakhs Four Thousand Only (Rs.5,31,04,000/-) - Apportionment of Approved Budget for the Prosecutions Department - Orders - Issued. G.O.Rt 1249 FINANCE (FMU-ENY,HOME AND COURTS) DEPARTMENT dt. 26/5/2017.

- Public Services – Directorate of Prosecutions – Sri T.Srinivasulu Reddy, Additional Director of Prosecutions is permitted to retire from service on attaining the age of superannuation w.e.f 31-05-2017 AN - Sri M.Srihari Babu, Secretary (I/C), Law Department is kept in-charge of the post of Addl.Director of Prosecutions, A.P., Vijayawada - Orders - Issued. G.O.RT.No. 446 HOME (COURTS.A) DEPARTMENT Dated: 31-05-2017.
- Public Services – Prosecuting Officers – Sri T.Sreenivasulu Reddy, Additional Director of Prosecutions, Directorate of Prosecutions, Andhra Pradesh, Vijayawada - Fixation of pay under FR-22-B - Orders – Issued. G.O.RT.No. 422 HOME (COURTS.A) DEPARTMENT Dated: 23-05-2017
- Public Services – Prosecuting Officers - Public Prosecutors (Tenure) working in the District & Sessions Courts and ASJ courts of Andhra Pradesh – Sanction of 15 Days of Casual Leave per year or admissible CLs corresponding to their tenure whichever is less - Orders - Issued. G.O.Rt.No. 408 HOME (COURTS.A) DEPARTMENT Dated. 17.05.2017.
- Public Services – Directorate of Prosecutions – Sri B. Rama Koteswara Rao, Deputy Director of Prosecutions, Vijayawada is placed in full additional charge of the vacant post of Joint Director in the O/o. the Director of Prosecutions, Andhra Pradesh, Vijayawada – Orders - Issued. G.O.RT.No. 367 HOME (COURTS.A) DEPARTMENT Dated: 05-05-2017.
- Prosecutions - Case & Court Cases - Entrustment of the counter cases to other Public Prosecutors - Authorization to the Secretary, Law Department - orders- issued. G.O.MS.No. 93 HOME (COURTS.A) DEPARTMENT Dated: 29-05-2017

ON A LIGHTER VEIN

Little Johnny asks his father:
"Where does the wind come from?"
"I don't know."
"Why do dogs bark?"
"I don't know."
"Why is the earth round?"
"I don't know."
"Does it disturb you that I ask so much?"
"No son. Please ask. Otherwise you will never learn anything."

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.

Vol- VI
Part-7

Prosecution Replenish

An Endeavour for Learning and Excellence

July, 2017

Aano Bhadra Krtavo Yantu Vishwatah.(RIG VEDAM)
"Let Noble Thoughts Come To Me From All Directions"

When people hurt you over and over, think of them like sandpaper.
They may scratch and hurt you a bit, but in the end, you end up polished
and they end up useless.

- Chris Colfer

CITATIONS

When more than one accused Nos.2 and 3 disclose, one after another, the spot of disposal of body of deceased and the dead body is discovered only after accused Nos.2 and 3 were taken together to the spot; such fact disclosed by them, and discovery made at their instance, would be admissible against all the accused.
Signature of accused on recovery Panchnama is not required under any provision of law.
2017 0 AIR(SC) 279; 2017 3 SCC 760; 2017 1 Supreme 303; 2017 0 Supreme(SC) 15; 2017 2 SCC Cri 262; 2017 1 ALD Crl 990; KISHORE BHADKE VS STATE OF MAHARASHTRA

Minor discrepancies in evidence are immaterial.
In case of conflict between ocular and ballistic evidence, ocular one will prevail.
Statement of witness recorded belatedly will be admissible if delay is duly explained.
There is also no requirement that the FIR must be in the handwriting of the informant. Neither is it necessary to doubt the FIR because Girjesh Rai was not examined. The FIR has been otherwise proved in the evidence of the Police Officer (P.W. 7)
2017 4 SCC 161; 2017 0 Supreme(SC) 216; 2017 2 SCC Cri 322 ; 2017 1 ALD Crl 958(SC); Himanshu Mohan Rai Vs State of U.P. and Anr.

The direction for investigation by the Magistrate under Section 202, while dealing with a complaint, though is at a post-cognizance stage, it is in the nature of an inquiry to derive satisfaction as to whether the proceedings initiated ought to be furthered or not. Such a direction for investigation is not in the nature of further investigation, as contemplated under Section 173(8) of the Code.(this is in addition to the ratio decidendi reported in june leaflet) **2017(1) ALD (Crl) 852(SC); 2017 4 SCC 177; 2017 0 Supreme(SC) 105; 2017 2 SCC Cri 331; AMRUTBHAI SHAMBHUBHAI PATEL Vs. SUMANBHAI KANTIBHAI PATEL & ORS.**

DNA Test- the non-holding of DNA Test or failure to prove the DNA Report or DNA Test favouring the Accused- the weight of other materials and evidence on record will have to be considered. **Sunil Vs State, 2017 4 SCC 393; 2017 2 SCC Cri 372**

Trial by Video Conferencing- The Court, thereafter, referred to the authorities in State of Karnataka v. State of A.P. & Ors, (2000) 9 SCC 572 State of W.B. & Ors v. Sampat Lal & Ors, (1985) 1 SCC 317 Ashok Kumar Gupta & another v. State of U.P. & Ors54 and eventually opined:-

"43. It is true that in a normal trial the Criminal Procedure Code requires the accused to be present at the trial but in the peculiar circumstances of this case a procedure will have to be evolved, which will not be contrary to the rights given to an accused under the Criminal Procedure Code but at the same time protect the administration of justice. Therefore, as held by this Court in the case of State of Maharashtra v. Dr. Praful B. Desai,

(2003) 4 SCC 601 and Sakshi v. Union of India, (2004) 5 SCC 518 we think the above requirement of the Code could be met by directing the trial by video-conferencing facility.
The right to fair trial is not singularly absolute from the perspective of the accused. It takes in its ambit and sweep the right of the victim(s) and the society at large.
A fair trial is not what the accused wants in the name of fair trial. Fair trial must soothe the ultimate justice which is sought individually, but is subservient and would not prevail when fair trial requires transfer of the criminal proceedings.
An accused cannot be permitted to jettison the basic fundamentals of trial in the name of fair trial.
2017 1 Crimes(SC) 221; 2017 4 SCC 397; 2017 2 Supreme 643; 2017 2 SCC Cri 376; Asha Ranjan Vs State of Bihar & Ors. AND Chandrakeshwar Prasad Vs. Union of India & Ors

Admitted position in law is that in those cases where the accused is residing at a place beyond the area in which the Magistrate exercises his jurisdiction, it is mandatory on the part of the Magistrate to conduct an enquiry or investigation before issuing the process. Section 202 of the Cr.P.C. was amended in the year by the Code of Criminal Procedure (Amendment) Act, 2005, with effect from 22nd June, 2006 by adding the words 'and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction'. There is a vital purpose or objective behind this amendment, namely, to ward off false complaints against such persons residing at a far off places in order to save them from unnecessary harassment. Thus, the amended provision casts an obligation on the Magistrate to conduct enquiry or direct investigation before issuing the process, so that false complaints are filtered and rejected. The aforesaid purpose is specifically mentioned in the note appended to the Bill proposing the said amendment. The essence and purpose of this amendment has been captured by this Court in Vijay Dhanuka v. Najima Mamtaj, (2014) 14 SCC 638
2017 0 AIR(SC) 299; 2016 4 Crimes(SC) 379; 2017 3 SCC 528; 2016 0 Supreme(SC) 999; 2017 1 ALD Crl 898 (SC); ABHIJIT PAWAR Vs. HEMANT MADHUKAR NIMBALKAR & ANR

Concept of expediency and fair trial is applicable to the accused as well as to the victim.
In absence of sufficient grounds for proceeding against the accused, the accused may be acquitted.
Judgment once pronounced cannot be altered.
Pronouncing just the result without any judgment or with incomplete and unsigned judgment is grossly illegal.
When there is only an order sheet pronouncing the result without any judgment, trial should be treated as pending.
Power of superintendence under Article 227 is not confined to administrative superintendence only. Also includes power of judicial review and can be exercised suo motu.
2017 0 AIR(SC) 310; 2017 1 Crimes(SC) 75; 2017 3 SCC 330; 2017 1 Supreme 335; 2017 0 Supreme(SC) 21; 2017 1 ALD Crl 911; Ajay Singh and Anr. Vs State of Chhattisgarh and Anr.

For ascertaining what exactly is the object sought to be achieved by an enactment, Statement of objects and reasons, the Preamble and the provisions of the Act as a whole have to be considered.
Perpetrators and abettors of domestic violence can be women themselves.
Domestic relationships includes male as well as female in-laws, quite apart from male and female members of a family related by blood.
Over emphasis on classification may end in substituting the doctrine of classification for the doctrine of equality.

The words "adult male" before the word "person" in Section 2(q) struck down.
The words "adult male" in Section 2(q) of the 2005 Act will stand deleted since these words do not square with Article 14 of the Constitution of India. Consequently, the proviso to Section 2(q), being rendered otiose, also stands deleted.

2016 10 SCC 165; 2016 7 Supreme 232; 2016 0 Supreme(SC) 832; 2017 1 ALD Crl 923; Hiral P. Harsora & Ors. Vs Kusum Narottamdas Harsora & Ors.

To sum up:-

(i) The High Courts may issue directions to subordinate courts that-

(a) Bail applications be disposed of normally within one week;

(b) Magisterial trials, where accused are in custody, be normally concluded within six months and sessions trials where accused are in custody be normally concluded within two years;

(c) Efforts be made to dispose of all cases which are five years old by the end of the year;

(d) As a supplement to Section 436A, but consistent with the spirit thereof, if an undertrial has completed period of custody in excess of the sentence likely to be awarded if conviction is recorded such undertrial must be released on personal bond. Such an assessment must be made by the concerned trial courts from time to time;

(e) The above timelines may be the touchstone for assessment of judicial performance in annual confidential reports. (emphasis added)

(ii) The High Courts are requested to ensure that bail applications filed before them are decided as far as possible within one month and criminal appeals where accused are in custody for more than five years are concluded at the earliest;

(iii) The High Courts may prepare, issue and monitor appropriate action plans for the subordinate courts;

(iv) The High Courts may monitor steps for speedy investigation and trials on administrative and judicial side from time to time;

(v) The High Courts may take such stringent measures as may be found necessary in the light of judgment of this Court in Ex. Captain Harish Uppal (supra).

2017 0 Supreme(SC) 249; 2017 1 ALD Crl 946 (SC); Hussain and Anr.Vs. Union of India AND Aasu Vs State of Rajasthan.

Filing of charge sheet is not change of circumstance for granting bail.

2017 0 Supreme(SC) 297; 2017 1 ALD Crl 1028 (SC); VIRUPAKSHAPPA GOUDA AND ANOTHER VERSUS THE STATE OF KARNATAKA AND ANOTHER

In the result, we answer the reference as under:-

(1) The cases involving offences under SC/ST Act are exclusively triable by a Special Court created under Section 14 of the SC/ST Act.

(2) Section 193 of the Code has no application to trial of offences under the SC/ST Act by the Special Court and the Special Court under SC/ST Act has jurisdiction to deal with the cases involving offences under SC/ST Act right from the initial stages in the same manner as a Magistrate can deal with them under the code.

(3) The Magistrates having jurisdiction over the area in which offences under SC/ST are alleged to be committed, empowered to deal with the cases under Section 190 of the Code will also have the jurisdiction to deal with cases during the "inquiry" i.e. pre-trial stages including exercise of power under Section 156 (3) of the code and thereafter he shall transmit all such cases to the Special Court situated within that jurisdiction.

2016 0 Supreme(AP) 549; 2017 1 ALD Crl 1035; Boda Rakesh Naik Vs The State of Telangana

Criminal Procedure Code, 1973 — S. 427(1) — Person already undergoing a sentence of imprisonment sentenced on a subsequent conviction to imprisonment: Such subsequent term of imprisonment would normally commence at the expiration of imprisonment to which he was previously sentenced. Only in appropriate cases, considering facts of the case, can court make the sentence run concurrently with an earlier sentence imposed. Investiture of such discretion, presupposes that such discretion be exercised by court on sound judicial principles and not in a mechanical manner. Whether or not the discretion is to be exercised in directing sentences to run concurrently, would depend upon nature of offence/offences and facts and circumstances of each case. **[Anil Kumar v. State of Punjab, (2017) 5 SCC 53]**

Criminal Procedure Code, 1973 — Ss. 228 and 216 — Framing of additional charge: There is plea for framing of additional charge, by complainant/victim, when investigating officer drops a charge against the accused, hence, direction to trial court before whom case is pending to consider the same. **[Sarada Prasanna Dalai v. Inspector General of Police, (2017) 5 SCC 381]**

Section 197 – Acts of omission or commission totally alien to the discharge of the official duty – Section 197 cannot be invoked – Instantly issue being entrustment and missing of the entrusted items – The act cannot be done as public servant – Breach of trust cannot be connected with official duty – Section 197 not attracted. Fabricating false records and misappropriation of funds and cheating cannot be official duty of a public servant – Official capacity only enables him to fabricate the record or misappropriate the public fund or cheat – Official duty cannot be said to be integrally connected with official capacity. **2017(2)ALT (crl) 12(SC); 2016 0 CrLJ 3579; 2016 4 Supreme 680; 2016 0 Supreme(SC) 470; Punjab state warehousing corporation vs bhushan chander and another**

It is also not in dispute that the appellant failed to adduce any evidence in defence except to record his statement in Section 313 proceedings taking therein a plea of denial. It is also not in dispute that the affidavit relied upon by the appellant of one Maan Singh (Annexure-A/3) was not proved in evidence in as much as Maan Singh was neither examined nor cross-examined.

In these circumstances, in our view, the two Courts below rightly did not consider such affidavit as evidence, which was of no use and could not be construed as piece of evidence for deciding the rights of the parties.

In our opinion, if the evidence adduced by the prosecution was found sufficient to warrant the conviction then it was not necessary for the prosecution to examine all the witnesses cited by them .

2017(2)ALT(crl)23(SC); 2016 3 Crimes(SC) 300; 2016 0 CrLJ 4407; Mahiman Singh vs state of utharakhand

Delay of eight hours in filing FIR becomes immaterial in view of direct evidence. Similarly motive also becomes insignificant in view of direct evidence.

2017(2)ALT(crl)32(SC) Rajagopal Vs Muthupandi @ Thavakkalai and others

Ossification test does not yield accurate and precise conclusions after the examinee crosses the age of 30 years. Object of the Act is not to give shelter to accused of grave and heinous offences.

Medical evidence though a very useful guiding factor is not conclusive and has to be considered along with other circumstances.

2017(2)ALT(crl)35(SC) ; 2017 1 Crimes(SC) 144; 2016 4 Crimes(SC) 310; 2017 1 JLJR(SC) 152; 2016 12 Scale 379; 2017 2 SCC 210; Mukarrab Vs state of UP

Undue sympathy in imposing sentence - undue sympathy in impose inadequate sentence would do more harm to the justice dispensation system to undermine the public confidence in the efficacy of law.

In State of M.P. v. Mehtaab, (2015) 5 SCC 197 the Court directed compensation of Rs.2 lakhs to be fixed regard being had to the limited final resources of the accused despite the fact that the occurrence took place in 1997. It observed that the said compensation was not adequate and accordingly, in addition to the said compensation to be paid by the accused, held that the State was required to pay compensation under Section 357-A CrPC. For the said purpose, reliance was placed on the decision in Suresh v. State of Haryana, (2015) 2 SCC 227.

2017(2)ALT(crl)60(SC); 2017 0 Supreme(SC) 200; Ravada sasikala Vs state of AP

Leaving out the real culprits is no less a miscarriage of justice, than conviction of an innocent

2017(2)ALT(crl)35(AP) P.Satyam Babu Vs state of AP

NOSTALGIA

Deonandan Mishra v. State of Bihar, (1955) 2 SCR 570 at p.582 to buttress his submission that the circumstance of last seen together coupled with lack of any satisfactory explanation by the accused is a very strong circumstance on the basis of which the accused can be convicted. It was held by this Court in the above judgment as follows:-

"It is true that in a case of circumstantial evidence not only should the various links in the chain of evidence be clearly established, but the completed chain must be such as to rule out a reasonable likelihood of the innocence of the accused. But in a case like this where the various links as stated above have been satisfactorily made out and the circumstances point to the appellant as the probable assailant, with reasonable definiteness and in proximity to the deceased as regards time and situation, and he offers no explanation, which if accepted, though not proved, would afford a reasonable basis for a conclusion on the entire case consistent with his innocence, **such absence of explanation or false explanation would itself be an additional link which completes the chain**. We are, therefore, of the opinion that this is a case which satisfies the standards requisite for conviction on the basis of circumstantial evidence."

NEWS

- Prosecution Replenish congratulates the Addl.PP. Gr-II's of A.P. State , who got promoted as Addl.PP Gr-I, (as per information, as such not as per seniority)
  - Smt D. Srivani Bai.
  - Smt N.Saradamani
  - Smt M.K.Vijayalakshmi
  - Smt Ch.Subhasini.
  - Sri P.Sreenath
  - Sri P.Madhusudhan.
  - Sri SRA Rozedar
  - Sri Y.Parasuram.
  - Sri C.Srinivas Murthy
  - Sri I.Raja Ratnam.

- Prosecution Replenish congratulates the Sr.APP's of A.P. State , who got promoted as Addl.PP Gr-II, vide G.O.RT.No. 492 **HOME (COURTS.A) DEPARTMENT** Dated: 15-06-2017

Sl. No	**Name & Designation of the Sr. A.P.P. to be promoted** S/Sri /Smt.	**Name of the post on promotion and Place of posting**
1	S.Bharathi, Sr. APP, Ongole, Praksam District.	Addl. PP Gr-II, Addl. Assistant Sessions Court, Ongole, Prakasam District.
2	M.Shylaja,Sr.APP, F.M. Police Academy, Hyderabad.	Addl. PP Gr-II, Assistant Sessions Court, Nandyal, Kurnool District.
3	Y.Prasanthi Kumari, Sr. APP, Nandyal, Kurnool District.	Addl. PP Gr-II, Prl. Assistant Sessions Court, Guntur
4	S. Venkata Narayana, Sr.APP., Chittoor.	Addl. PP Gr-II, Prl. Assistant Sessions Court, Tirupathi, Chittoor District
5	K. Venkata Lakshmi, Sr.APP., Srikakulam	Addl. PP Gr-II, Assistant Sessions Court, Amalapuram, E.G. District,
6	P. Nageswara Rao, Sr.APP., Gudur, Nellore district.	Addl. PP Gr-II, Prl. Assistant Sessions Court, Madanapalli, Chittoor District,
7	K.E. Swarnalatha Bhanu, Sr. APP, Guntur	Addl. PP Gr-II, Prl. Assistant Sessions Court, Narasaraopet, Guntur District.
8	K. Rama Naik, Sr. APP, Ananthauram.	Addl. PP Gr-II, Assistant Sessions Court, Gooty, Ananthapuramu District.
9	S. Tarakeswari, Sr. APP, Vizianagaram.	Addl. PP Gr-II, Assistant Sessions Court, Rajam, Srikakulam District.
10	K. Radhakrishna Raju, Sr. APP, Vijayawada, Krishna Dist.	Addl. PP Gr-II, Prl. Assistant Sessions Court, Kakinada, E.G. District.
11	M. Padmaja. Sr. APP, Tenali, Guntur District.	Addl. PP Gr-II, Prl. Assistant Sessions Court, Machilipatnam, Krishna District.
12	G.S. Sailaja, Sr. APP, Kurnool.	Addl. PP Gr-II, Prl. Assistant Sessions Court, Chittoor.
13	D. Srinivasa Patnaik, Sr. APP, Anakapalli, Visakhapatnam Dist.	Addl. PP Gr-II, Assistant Sessions Court, Vizianagaram.
14	D.L. Narayanamma, Sr. APP, Adoni, Kurnool District.	Addl. PP Gr-II, Prl. Assistant Sessions Court, Nellore.
15	MVSS Prakasa Rao, Sr. APP, Kakinada, E.G. District.	Addl. PP Gr-II, Assistant Sessions Court, Ramachandrapuram E.G. District.
16	K.V. Sreenivasa Rao, Sr. APP, Markapuram,Prakasam District.	Addl. PP Gr-II, Assistant Sessions Court, Bhimavaram W.G. District.

- Prosecution Replenish congratulates the following A.P.P's of TS, on being promoted as Sr.APP's (as per Zonal preferences and information)

S/Sri/Smt

1	M.Santhoshi, APP,Mahboobabad	Sr.APP, I Addl.JMFC, Khammam.
2	P.V.D.Laxmi, APP, Yellandu	Sr.APP, I Addl.JMFC, Warangal
3	G.Bhadradri, APP, Warangal	Sr.APP, JMFC, Adilabad.
4	A.Phani Kumar, APP, Kothagudem	Sr.APP, Prl. JMFC, Kothagudem
5	D.Upender, APP, Godavarikhani	Sr.APP, JMFC, Luxettipet.
6	K.Naresh Kumar, APP, Hayatnagar	Sr.APP, XI ACMM Court, Secunderabad
7	Rajani, APP, Malkajgiri	Sr.APP, Nizamabad.
8	Shobha, APP, Ibrahimpatnam	Sr.APP, Medak
9	Kiran Kumar Reddy, APP, Siddipet	Sr. APP, Bhodan.

- CID- Transfer of Sri M. Lakshmana Rao, Additional Public Prosecutor Grade-II, Assistant Sessions Court, Bapatla, Guntur District, on usual terms and conditions of deputation, to work as Legal Advisor-cum-Special Public Prosecutor in CID, Andhra Pradesh at Vijayawada and withdrawal of services of Smt. J.H. Josephine, Additional Public Prosecutor, Legal Adviser from CID, by transferring and posting her as Additional Public Prosecutor Grade-II, Assistant Sessions Court, Bapatla, Guntur District-Orders-Issued vide G.O.MS.No. 111, LAW (HOME - COURTS.A) DEPARTMENT Dated: 29-06-2017.

ON A LIGHTER VEIN

In a rural area a farmer was tending to his horse named Buddy, and along came a stranger who desperately needed the farmer's help.

The stranger had lost control of his vehicle and ran it off into a ditch.

The stranger asked the farmer if his horse could somehow pull the vehicle out of the ditch for him and told the farmer that the vehicle was small.

The farmer said he would come, bring his horse, and take a look, but could not promise he could help if his horse might be injured in some way from attempting to pull the vehicle out of the ditch.

The farmer did see that the stranger was correct and that the vehicle was small, so the farmer took a rope and fixed it so that his horse, Buddy, would be able to pull the vehicle out of the ditch.

The farmer then said, "Pull, Casey, Pull," but the horse would not budge.

The farmer then said, "Pull, Bailey, Pull," but the horse would not budge again.

The farmer then said, "Pull, Mandy, Pull," and again the horse would not move.

The farmer then said, "Pull, Buddy, Pull," and the horse pulled until the vehicle was out of the ditch.

The stranger was so very grateful, but asked the farmer why he called the horse by different names?

The farmer said, "Buddy is blind, and I had to make him think he had help pulling the car out of the ditch or he would not have pulled."

Lesson: don't wait on others in order to accomplish something or you may always be in a ditch. Sometimes we won't attempt to do something if we know we don't have help.

Vol- VI
Part-8

Prosecution Replenish

An Endeavour for Learning and Excellence

August, 2017

Aano Bhadra Krtavo Yantu Vishwatah.(RIG VEDAM)
"Let Noble Thoughts Come To Me From All Directions"

Integrity is choosing courage over comfort; choosing what is right over what is fun, fast, or easy; and choosing to practice our values rather than simply professing them. **--Brené Brown**

CITATIONS

Indian Evidence Act, 1872 – Section 32 – Dying declaration – A dying declaration is an independent piece of evidence – Can be acted upon without corroboration if it is found to be otherwise true and reliable – Instantly dying statement recorded by a competent Magistrate having no animosity with anyone – Doctor certifying about her fit state of mind to record statement – Trial court not giving reasons for disbelieving the dying declaration or the certificate of attending doctor or the Magistrate recording the statement – Approach of trial court legally unsustainable.
If a witness becomes hostile to subvert the judicial process, **the Courts shall not stand as a mute spectator** and every effort should be made to bring home the truth. Criminal judicial system cannot be overturned by those gullible witnesses who act under pressure, inducement or intimidation.
2017 (2) ALT (Crl) 249(SC); 2016 4 Crimes(SC) 169; 2017 1 SCC 529; 2016 8 Supreme 296; 2016 0 Supreme(SC) 917: Ramesh and others Vs State of Haryana.

The direction under Section 156(3) is to be issued, only after application of mind by the Magistrate.
As said earlier, in the case of a complaint regarding the commission of cognizable offence, the power under Section 156(3) can be invoked by the Magistrate before he takes cognizance of the offence under Section 190(1)(a). However, if he once takes such cognizance and embarks upon the procedure embodied in Chapter XV, he is not competent to revert back to the pre-cognizance stage and avail of Section 156(3).
while setting aside the order under challenge herein where FIR was registered pursuant to the said order, matter can be remitted requiring the learned Magistrate for exercising discretion by application of mind.
2017(2) ALT (Crl) 196; 2017(2) ALD (Crl) 139; Anne Srinivasa Rao Vs State of Telangana

that the ground agitated that **the earlier advocate did not cross examine PWs.1 to 3 and 5 on the aspect of harassment that was found out by the new advocate** of the petitioners/applicants themselves without assigning convincing reasons to satisfy the conscience of the Court to accede to their request; and acceding to such a request would lead to virtually a re-trial of the prosecution case; absolutely there is no merit in the present request. The order passed by the learned Additional Sessions Judge does not suffer from any legal infirmity, nor it is patently illegal warranting interference.
The High Court has been moved by the ground that the accused persons are in the custody and the concept of speedy trial is not nullified and no prejudice is caused, and, therefore, the principle of magnanimity should apply. Suffice it to say, a criminal trial does not singularly centres around the accused. In it there is involvement of the prosecution, the victim and the victim represents the collective. The cry of the

collective may not be uttered in decibels which is physically audible in the court premises, but the Court has to remain sensitive to such silent cries and the agonies, for the society seeks justice.
2017 2 Crimes(HC) 194; K. Vittala Rao and Ors Vs State of A.P.

certificate filed to comply the requirement contemplated by Section 65-B(4) of the Act, for the law is well settled that the certificate need not be filed with secondary evidence produced in Court, but can be later even, to validate and sanctify the secondary evidence vide Paras Jain Vs. State of Rajasthan3 of Rajasthan High Court and Kundan Singh Vs. State4 of Division Bench of Delhi High Court. Otherwise the Court is not powerless from the enabling provision under Section 165 of the Act, to direct the prosecution or the defacto complainant whoever in the custody of the original cell phone with memory card where the conversation is recorded to produce the said primary evidence therein, before the Court as per the law laid down in the three Judge Bench of the Apex Court in Anvar supra particularly in Para 24, either to play the contents if at all in the open Court or to direct any of the party to file the English contents of the translation and relevant photographs of the audio and video coverage for respective use with reference to original by confirming on displaying of the same if at all necessary.
2017 (2) ALT (Crl) 269 (AP) TMS Prakash Vs A.P.

Now it has become a threat of every officer from the staff to those belonging the Scheduled Castes and Scheduled Tribes which drastically effected the administration in the offices and any officer demanding employee belonging to those castes, they are simply lodging complaints against the supervising officers whereby they have to face criminal charges and there is a bar for granting a pre-arrest bail in view of Section 18 of the SC/STs (POA) Act also. Thus, it is difficult for any officer to discharge their duties effectively on account of these anomalous situation and it would lead to anarchy in day to day administration and in discharging their official duties. Therefore, to avoid such anarchy and to have effective control over the staff by the supervisors irrespective of they belonging to any caste or community, I find that it is a fit case to quash the proceedings exercising power under Section 482 of Cr.P.C. as the allegation made against the petitioner would amount to abuse of process of court.
2017 (2) ALD (Crl) 271 (AP) ;Gunda Sampath Vs A.P.

Criminal Trial — Acquittal — Acquittal of co-accused/some accused/Benefit of their acquittal — Acquittal of co-accused: As acquitted accused did not assault the informant but has allegedly instigated, hence appellant accused cannot be given benefit of acquittal as was given to acquitted accused on ground of parity.
[Dinesh Yadav v. State of Jharkhand, (2017) 5 SCC 764]

Penal Code, 1860 — S. 354 — Molestation of a girl about 15 yrs of age — Conviction of accused — Validity of: Mere knowledge that the modesty of a woman is likely to be outraged is sufficient to attract Section 354 IPC. Statements made to person authorized by state govt. to investigate the matter admissible u/s 157 Evidence Act.
[S.P.S. Rathore v. CBI, (2017) 5 SCC 817]

Inflicting bodily injury capable of causing death is not necessary for invoking section 307. An intention coupled with some common act in execution thereof is enough.
Undue sympathy leading to imposition of inadequate sentence would do more harm to the justice system and would undermine public confidence in the efficacy of law.
Chhanga @ Manoj Vs State of M.P. 2017 0 Supreme(SC) 241; 2017(2) ALD (Crl) 1(SC).

Reliable evidence of independent witnesses should not be disbelieved.
When evidence against appellant and acquitted co-accused are different, acquittal of the latter will not help the appellant in any way.
2017(2) ALD (Crl) 4(SC) ; 2017 0 Supreme(SC) 225; Dinesh Yadav Vs. State of Jharkhand

Indian Penal Code, 1860 – Section 149 – Accused present in unlawful assembly – No overt act attributed – No evidence of accused not harbouring same intention as that of unlawful assembly – Not being an onlooker or bystander – Suggestive of his participation in object of the assembly – Participated and going along with others attracts inference of his act being inculpatory or exculpatory – In absence of any evidence to contrary, mere participation of an accused in unlawful assembly would be inculpatory – A4 held liable u/s 326/149.
2017(2) ALD (Crl) 8 (SC); 2017 5 SCC 568; (2017) 2 SCC (Cri) 611; 2017 0 Supreme(SC) 295;KATTUKULANGARA MADHAVAN (DEAD) THR. LRS. Vs. MAJEED & ORS

It is settled law that mere latches on the part of Investigating Officer itself cannot be a ground for acquitting the accused. If that is the basis, then every criminal case will depend upon the will and design of the Investigating Officer. The Courts have to independently deal with the case and should arrive at a just conclusion beyond reasonable doubt basing on the evidence on record.
2017(2) ALD (Crl) 42; 2017 0 Supreme(SC) 289; KRISHNEGOWDA & ORS. Vs. STATE OF KARNATAKA

It is also relevant to notice that observation has been made by the Trial Court that IO, PW.23 ought to have been taken endorsement from the Doctor that PW.5 was in unconscious state of mind on 10.10.2003, although there is evidence that he was unconscious on 10.10.2003 when he was admitted in the Hospital, the mere fact that certificate was not obtained by IO from the Doctor is inconsequential. Furthermore, it is well settled that even if IO has committed any error and has been negligent in carrying out any investigation or in the investigation there is some omission and defect, it is the legal obligation on the part of the Court to examine the prosecution evidence de hors such lapses
mere non-showing of the weapons to the Doctors at the time of their depositions in the Court is inconsequential and in no manner weakens the prosecution case. Some discrepancies referred by the Trial Court in the statements of eyewitnesses were inconsequential. The eyewitnesses after lapse of time cannot give picture perfect report of the injuries caused by each accused and the minor inconsistencies were

inconsequential. **2017(2) ALD (Crl) 52; 2017 0 Supreme(SC) 356; Sudha Renukaiah & Ors. Vs. State of A.P**

Criminal Procedure Code, 1973---Section 482--- Criminal Law Amendment Ordinance 1944---Sections 2,3,4,5,6,7,8,9,10,13,14--- Prevention of Corruption Act, 1988 --- Sections 5,29---Constitution of India---Articles20, 123,300A,372(1)--- Government of India Act, 1935--- Section 72--- Indian Independence Act---Sections 18(3),8(2)--- reliefs sought by the petitioners to return the original sale deeds, link documents and pattadar passbooks, and direct the Sub-Registrar Offices to permit sale transactions in respect of the above documents, were rejected---Petition to quash the said order---There is no conflict between the provisions of the Ordinance and that of the provisions of the Code of Criminal Procedure, as both of them are independent and operate in different spheres(Para4)--- provisions of the Limitation Act with regard to extension of period of limitation viz., Sections 4 to 24 especially Section 5 of the Limitation Act are applicable to the Ordinance, which is a special law(Para15)--- property acquired or procured by resorting to Scheduled Offences is liable for confiscation in the public interest and such forfeiture would not amount to deprivation of right of enjoyment of property ordained in the Constitution of India(Para21)--- If really they are aggrieved by the order passed under Sections 4 and 8, the remedy available to them is to file an appeal by invoking Section 11 of the Ordinance(Para30)---Criminal Petition is dismissed

2017(2) ALD (Crl) 65; 2017 1 ALT(Cri) 372; 2017 0 Supreme(AP) 40; 2017 1 Crimes(HC) 548; A. Sambaiah Nayak and Anr. Vs. The State of Telangana

No doubt, from the above propositions what is the disclosure made by accused while in police custody if leads to discovery of a fact earlier not known but for from the disclosure which is within the knowledge of the accused there is an assurance to the fact to relate as true in carving out as an exception to any disclosure or confession before police is otherwise inadmissible under Section 25 to make it admissible as per Section 27 of the Evidence Act. Even Section 162 Sub-Section (2) Cr. P.C speaks that Section 162 has no application to the Section 27 of the Evidence Act. It is also the principle behind it saying no one can make a disclosure which incriminates him, unless there is truth, in which event, to consider from such a disclosure whether is it a confession or not leads to a fact discovered to make use of to that extent. Thus, only so much of information whether amounts to confession or not as relates distinctly to the fact discovered is admissible and not a rest as per the settled expressions. Thus, the fact discovered not only it mean the object produced but also to embrace the place from which it was produced and knowledge of the accused about it. Further, **the use of word fact discovered is not confined to object produced as it is not the object, but from it what is discovered of the exclusive knowledge of accused and the disclosure of it and the discovery of the fact leading from the disclosure.**

In fact, for a disclosure statement by accused while in police custody to the extent leading to discovery of any fact within the meaning of Section 27 of Evidence Act, no mediators panchanama is even required, as such, any mediators panchanama drafted of what is disclosed in their presence and what is discovered pursuant thereto the disclosure, there is no incumbent duty on the prosecution to examine the so called mediators. The Public Prosecutor is having absolute discretion to examine which witness among the prosecution witnesses cited

to prove the case and if he gets any doubt that any of the witnesses not supporting the truth or exhibiting hostility to the truth, there is no compulsion to examine even such witness and seek permission for cross-examination under Section 154 of the Evidence Act invariably as it is one of the choices with prosecution to give up. Thus, the non-examination of the mediators cannot be a ground to say that P.W.9 I.O cannot be recalled that too when it is the disclosure made before him during investigation of the case as a Police Officer and leading to discovery of fact from the disclosure to exhibit this statement to the admissible portion under Section 27 of the Act by shunning from exhibiting non-admissible portion hit by Section 25 of the Act. In fact, the accused are not helpless if at all they choose to examine the mediators, to call as defence witnesses, apart from any request to court by showing such necessity to call for as court witness with right of cross-examination to both sides.

2017(2) ALD (Crl) 117; 2017 0 Supreme(AP) 49; V. Naveen Goud, S/o V. Narsaiah Vs. The State of Telanagana

the cause of death is asphyxia as a result of pressure over front of neck caused by strangulation. He admitted that if throttling is caused by pressure of fingers on the neck of a person, finger pressure abrasion marks on the neck can be noticed, either on both sides or one side of the neck.

2017(2) ALD (Crl) 142; 2017 1 ALT(Cri) 441; 2016 0 Supreme(AP) 629;Arepalli Chalapathi Rao Vs State of A.P.

G.O.Ms No. 438, Home (Police-D) Department, dated 05.10.1988, was issued by the erstwhile Government of Andhra Pradesh declaring the office of the CID as a Police Station for the entire State of Andhra Pradesh under Section 2(s) of the Code of Criminal Procedure, 1973 and directed that one of the Deputy Superintendent of Police (DSP) working in the said office nominated for this purpose shall be the Station House Officer within the meaning of said Section. After bifurcation of the State, the Government of Telangana issued G.O.Ms No. 17, Home (Legal) Department, dated 07.08.2014, declaring the Crime Investigation Department, Telangana, Hyderabad as a Police Station. In view of the same, it cannot be said that the Crime Investigation Department cannot register a complaint.

2017 (2) ALT (Crl) 221 (AP); 2017 (2) ALD (Crl) 151; 2017 0 Supreme(AP) 77; Operation Mobilization India, rep. by Dr. Joseph DSouza and others Vs State of Telangana

The concept, what is thought of or experienced cannot be ingrained or engrafted into an order solely because such a thought has struck the adjudicator – Conclusions must flow from the factual base and based on law – There cannot be general comments on the investigation – Issuance of host of directions for constituting separate specialized cadre managed by officials or to require an affidavit to be filed whether sanctioned strength of police is adequate or not to maintain law and order or involvement of judicial officers or directions in the like manner – Impermissible – Such practice Deprecated.

A Judge should not perceive a situation in a generalised manner. He ought not to wear a pair of spectacles so that he can see what he intends to see. There has to be a set of facts to express an opinion and that too, within the parameters of law.

(2017) 2 SCC(Cri) 510; 2016 12 Scale 627; 2017 5 SCC 163; 2016 8 Supreme 754; 2016 0 Supreme(SC) 988; State of Uttar Pradesh and Others Vs. Subhash Chandra Jaiswal and Others

Filing of charge sheet is not change of circumstance for granting bail.
A bail application cannot be allowed solely or exclusively on the ground that the fundamental principle of criminal jurisprudence is that the accused is presumed to be innocent till he is found guilty by the competent court.

(2017) 2 SCC (Cri) 542; 2017 5 SCC 406; 2017 3 Supreme 325; 2017 0 Supreme(SC) 297;VIRUPAKSHAPPA GOUDA AND ANOTHER Vs THE STATE OF KARNATAKA AND ANOTHER

(i) The High Courts may issue directions to subordinate courts that-

(a) Bail applications be disposed of normally within one week;

(b) Magisterial trials, where accused are in custody, be normally concluded within six months and sessions trials where accused are in custody be normally concluded within two years;

(c) Efforts be made to dispose of all cases which are five years old by the end of the year;

(d) As a supplement to Section 436A, but consistent with the spirit thereof, if an undertrial has completed period of custody in excess of the sentence likely to be awarded if conviction is recorded such undertrial must be released on personal bond. Such an assessment must be made by the concerned trial courts from time to time;

(e) The above timelines may be the touchstone for assessment of judicial performance in annual confidential reports. (emphasis added)

(ii) The High Courts are requested to ensure that bail applications filed before them are decided as far as possible within one month and criminal appeals where accused are in custody for more than five years are concluded at the earliest;

(iii) The High Courts may prepare, issue and monitor appropriate action plans for the subordinate courts;

(iv) The High Courts may monitor steps for speedy investigation and trials on administrative and judicial side from time to time;

(v) The High Courts may take such stringent measures as may be found necessary in the light of judgment of this Court in Ex. Captain Harish Uppal (supra).

(2017) 2 SCC (Cri) 638; (2017) 5 SCC 702; 2017 0 Supreme(SC) 249; Hussain and another Vs UOI.

Complaint on oath – Renders complainant liable to prosecution and imprisonment, if false – Complainant entitled to be believed – Issue if process only if complaint shows sufficient grounds for proceeding – Power to issue process discretionary, to be utilized with proper care and caution

When four persons were accused and proceeded against on same set of facts in the same complaint and the complainant withdraws complaint against two; continuation of prosecution against officers of State Bank of Travancore, appellants 1 and 2 would not be justified.

(2017) 2 SCC (cri) 658; (2017) 5 SCC 725; 2017 0 Supreme(SC) 258; K. Sitaram & Anr. Vs. CFL Capital Financial Service Ltd. & Anr.

i) (a) In every district one or more Family Welfare Committees be constituted by the District Legal Services Authorities preferably comprising of three members. The constitution and working of such committees may be reviewed from time to time and at least once in a year by the District and Sessions Judge of the district who is also the Chairman of the District Legal Services Authority.

(b) The Committees may be constituted out of para legal volunteers/social workers/retired persons/wives of working officers/other citizens who may be found suitable and willing.

(c) The Committee members will not be called as witnesses.

(d) Every complaint under Section 498A received by the police or the Magistrate be referred to and looked into by such committee. Such committee may have interaction with the parties personally or by means of telephone or any other mode of communication including electronic communication.

(e) Report of such committee be given to the Authority by whom the complaint is referred to it latest within one month from the date of receipt of complaint.

(f) The committee may give its brief report about the factual aspects and its opinion in the matter.

(g) Till report of the committee is received, no arrest should normally be effected.

(h) The report may be then considered by the Investigating Officer or the Magistrate on its own merit.

(i) Members of the committee may be given such basic minimum training as may be considered necessary by the Legal Services Authority from time to time.

(j) The Members of the committee may be given such honorarium as may be considered viable.

(k) It will be open to the District and Sessions Judge to utilize the cost fund wherever considered necessary and proper.

ii) Complaints under Section 498A and other connected offences may be investigated only by a designated Investigating Officer of the area. Such designations may be made within one month from today. Such designated officer may be required to undergo training for such duration (not less than one week) as may be considered appropriate. The training may be completed within four months from today;

iii) In cases where a settlement is reached, it will be open to the District and Sessions Judge or any other senior Judicial Officer nominated by him in the district to dispose of the proceedings including closing of the criminal case if dispute primarily relates to matrimonial discord;

iv) If a bail application is filed with at least one clear day's notice to the Public Prosecutor/complainant, the same may be decided as far as possible on the same day. Recovery of disputed dowry items may not by itself be a ground for denial of bail if maintenance or other rights of wife/minor children can otherwise be protected. Needless to say that in dealing with bail matters, individual roles, prima facie truth of the allegations, requirement of further arrest/ custody and interest of justice must be carefully weighed;

v) In respect of persons ordinarily residing out of India impounding of passports or issuance of Red Corner Notice should not be a routine;

vi) It will be open to the District Judge or a designated senior judicial officer nominated by the District Judge to club all connected cases between the parties

arising out of matrimonial disputes so that a holistic view is taken by the Court to whom all such cases are entrusted; and

vii) Personal appearance of all family members and particularly outstation members may not be required and the trial court ought to grant exemption from personal appearance or permit appearance by video conferencing without adversely affecting progress of the trial.

viii) These directions will not apply to the offences involving tangible physical injuries or death.

2017 0 Supreme(SC) 698; Rajesh Sharma & ors Vs. State of U.P. & Anr.

Protection of Children from Sexual Offences Act, 2012 – Section 2(1)(d) – Age – Legislative intent to treat it biological age there being set principles and procedures for determination thereof – Mental age not determinable – even expert bodies will differ – The Act treats minors as a class – Saying that 'age' would cover 'mental age' would amount to adding words to the provision – Impermissible – To do so is within the sphere of legislature – Section 164(5A)(b), Code of Criminal Procedure, 1973 – Safeguards the interest of mentally disabled person

2017 0 Supreme(SC) 684; Ms. Eera Through Dr. Manjula Krippendorf Vs State of NCT Delhi

Interpretation of judgment – Applicability – Prospective overruling – a Retrospective unless prospective overruling applied – However this would result in reopening of cases which attained finality – When a subsequent decision changes an earlier one, it does not make law but rather discovers the correct principle of law – Resultantly it is necessarily retrospective in operation – However, there is no reason why Supreme Court cannot restrict operation of the subsequent law to the future and save transactions that were affected on the basis of earlier law

The question was whether the statements made by a witness in an earlier judicial proceeding can be considered relevant for proving the truth or facts stated in a subsequent judicial proceeding. Section 33 of the Evidence Act allows for this inter alia where the witness is incapable of getting evidence in the subsequent proceeding.

2017 0 Supreme(SC) 666; SONU @ AMAR Vs. STATE OF HARYANA.

Administration of justice – Custody matters – Comity of court – Pre-existing order of the foreign Court – Only one of the factors – Welfare of the child is of paramount importance – Summary or elaborate enquiry – Courts in India can decline relief of return of child – Comity of courts cannot be given primacy over welfare of the child.

2017 0 Supreme(SC) 616; Nithya Anand Raghavan Vs State of NCT of Delhi & Anr

(a) Criminal trial – FIR – Delay in lodging – Not fatal if delay satisfactorily explained.

(b) Criminal trial – Related witnesses – Testimony of injured eye witnesses – Cannot be disbelieved merely because they are related to deceased.

2017 0 Supreme(SC) 618; Muttaicose @ Subramani Vs State of Tamil Nadu

in Chandrappa and others vs. State of Karnataka, (2008) 11 SCC 328. In paragraphs 17 and 18 following was stated:-

"17. It has been contended by the learned counsel for the appellants that the discrepancies between the statements of the eyewitnesses inter se would go to show that they had not seen the incident and no reliance could thus be placed on their testimony. It has been pointed out that their statements were discrepant as to the actual manner of assault and as to the injuries caused by each of the accused to the deceased and to PW 3, the injured eyewitness. We are of the opinion that in such matters it would be unreasonable to expect a witness to give a picture perfect report of the injuries caused by each accused to the deceased or the injured more particularly where it has been proved on record that the injuries had been caused by several accused armed with different kinds of weapons.

18. We also find that with the passage of time the memory of an eyewitness tends to dim and it is perhaps difficult for a witness to recall events with precision. We have gone through the record and find that the evidence had been recorded more than five years after the incident and if the memory had partly failed the eyewitnesses and if they had not been able to give an exact description of the injuries, it would not detract from the substratum of their evidence. It is however very significant that PW 2 is the sister of the four appellants, the deceased and PW 3 Devendrappa and in the dispute between the brothers she had continued to reside with her father Navilapa who was residing with the appellants, but she has nevertheless still supported the prosecution. We are of the opinion that in normal circumstances she would not have given evidence against the appellants but she has come forth as an eyewitness and supported the prosecution in all material particulars."

NEWS

- Public Services – Smt. P.Manjula Devi, Additional Public Prosecutor Grade-II, Assistant Sessions Court, Khammam – Transferred and posted to Principal Assistant Sessions Court, LB Nagar on personal and health grounds in the existing vacancy in relaxation of ban on transfer orders – Orders – Issued. Vide GORT no. 831 Home Courts A dated 21/07/2017

- Public Services – Smt. G.Kasturi Bai, Additional Public Prosecutor Grade-II, Assistant Sessions Judge Court, Nalgonda – Transferred and posted to I Additional Assistant Sessions Court, L.B.Nagar on spouse grounds in the existing vacancy in relaxation of ban on transfer orders – Orders – Issued. Vide GORT no. 818 Home Courts A dated 21/07/2017.

- Public Services – Prosecutions Department - Appointment of Smt. A. Sudha Rani, W/o Late B. Venkata Ramana, former Principal Senior Civil Judge, who died while in service, Nandyal as Assistant Public Prosecutor in Andhra Pradesh Prosecutions Department temporarily on Compassionate Grounds as Special Case, in relaxation of

Rules – Notification – Orders - Issued. G.O.MS.No. 127 LAW (HOME-COURTS.A) DEPARTMENT Dated: 01-08-2017

ON A LIGHTER VEIN

A man was taken to court for calling a Honourable minister a Pig. He was a first offender and the judge was in a good mood and decided to show mercy. So he discharged him after warning him to desist from unguarded utterances in future.

The man removed his cap and thanked the benevolent judge profusely, "Thank you, your lordship. Honestly sir, I didn't know it was wrong to call a Honourable minister a pig. I won't do it again. I am sorry."

"It's okay", said the judge, "you may go."

"My lord, may I ask a question, sir?"

"Feel free" answered the judge.

"Now I know it's wrong to call a Honourable minister a Pig. But is it also wrong to call a Pig Honourable minister?"

Amused, the judge replied, "I don't know why you would want to address a pig as a minister. But I don't think the pig would mind. It's not unlawful, by the way. Yes, you can call any pig Honourable minister."

The man smiled and nodded, then he turned to look pointedly at the minister and said, "Goodbye, Honourable minister."

Vol- VI
Part-9

Prosecution Replenish

An Endeavour for Learning and Excellence

September, 2017

Aano Bhadra Krtavo Yantu Vishwatah.(RIG VEDAM)
"Let Noble Thoughts Come To Me From All Directions"

All beautiful relationships do not depend on how well we understand someone, but it depends on how well we manage the misunderstandings.

--- Anonymous

CITATIONS

The trite law expounded by Hon'ble Apex Court is that **when once the accused failed to avail the indefeasible right accrued to him under Sec.167(2) Cr.P.C on failure of the prosecution agency to file charge sheet on the appointed day and subsequently when the charge sheet was filed though belatedly, the accused cannot claim such indefeasible right.** The Apex Court in the case of Dr.Bipin Shantilal Panchal vs. State of Gujarat((1996) 1 SCC 718) , answered the question whether the accused who was entitled to be released on bail under proviso to sub-Section(2) of Sec.167 of the Code, not having made an application when such right had accrued, can exercise that right at a later stage of the proceeding. Referring its earlier judgment in Sanjay Dutt vs. State through CBI ((1994) 5 SCC 410) , it held that if an accused person fails to exercise his right to be released on bail for the failure of the prosecution to file the charge sheet within the maximum time allowed by law, he cannot contend that he had an indefeasible right to exercise at any time notwithstanding the fact that in the meantime charge sheet is filed.

It should be noted that merely because Sec.37(1)(b) of the NDPS Act is not applicable to the facts of the case, that would not lead to automatic conclusion that the petitioner is entitled to bail. Sec.37(2) of the Act lays that the limitations on granting of bail specified 12 in Clause (b) of sub-Section (1) are in addition to the limitations under Cr.P.C or any other law for the time being in force for granting bail. In that view, it is evident that even if rigor under Sec.37(1)(b) of the Act is not applicable, still the Court has to see whether petitioner is otherwise entitled to bail in terms of Sec.437 and 439 Cr.P.C. It is a case where the DRI Authorities on inspection of the premises of accused found in his possession 45 kgs of Ephedrine Hydrochloride, a controlled substance. Besides anti-allergetic drugs, it can also be used for manufacture of illegal drug namely Meta-amphetamine and its worth is Rs.4,51,65,000/-. The statement of petitioner/A.1 was also recorded under Sec.67 of the NDPS Act, which prima facie throw a strong suspicion against the accused involving in the offence. It is seen that the case is now in the stage of framing of charges and since there are only 13 witnesses shown by the prosecution, the trial can be completed in quick succession. The apprehension of learned Spl.P.P that if bail is granted the accused may not turn out for the trial is well founded in view of the gravity of the offence. In these circumstances, it is not a fit case to grant bail to the petitioner.

2017 (2) ALD (Crl) 346; 2017 (2) HLT (Crl) 248, Yerragudi Suryanarayana Reddy Vs Senior intelligence Officer, DRI, NDPS, Hyd.

PW-12/Mohd.Azeez, Assistant Sub-Inspector of Police, Nagarkurnool , stated that he did not record the dying declaration, however, recorded the statement of the deceased, but **since the deceased died, that statement became dying declaration.**

the confessional statement of appellant leading to discovery of the article is admissible in evidence, as the accused has voluntarily shown the place where he had thrown M.O.1/glass bottle after forcibly administering the poisonous granules to the deceased.

On the aforesaid issue, the case of Musheer Khan @ Badshah Khan vs. State of Madhya Pradesh (2010 (1) ALD (Cri.) 813 (SC)) is very relevant, whereby, the Supreme Court held as under : "The limited nature of the admissibility of the facts discovered pursuant to the statement of the accused under Section 27 can be illustrated by the following example : **Suppose a person accused of murder deposes to the police officer the fact as a result of which the weapon with which the crime is committed is discovered, but as a result of such discovery, no inference can be drawn against the accused, if there is no evidence connecting the knife with the crime alleged to have been committed by the**

accused. So, the objection of the defence Counsel to the discovery made by the prosecution in this case cannot be sustained. But the discovery by itself does not help the prosecution to sustain the conviction and sentence imposed on A-4 and A-5 by the High Court."

Manchala Balaiah Vs State of A.P. 2017(2) HLT (Crl) 237 (DB).

The offences alleged in the instant case are under Sec.323, 506 IPC and Sec.3(1)(x) of SC, ST (POA) Act, 1989. All the aforesaid offences are punishable with a term less than 7 years. Therefore, the procedure contemplated under Sec.41 and 41-A Cr.P.C, squarely apply to them and those Sections have not made any express distinction between the offences punishable under IPC and other Special enactments. Therefore, the contra view expressed by learned Addl. Junior Civil Judge, is incorrect. The explanation of the SDPO Madanapalle dated 13.04.2017 shows that **since the offence was punishable below 7 years of imprisonment and as the accused had not failed to comply with the terms of notice under Sec.41-A Cr.P.C, the I.O did not consider it necessary to arrest the accused. Therefore, the I.O granted station bail by securing the bail bonds of the sureties on behalf of the accused. This procedural order under Sec.41-A Cr.P.C cannot be equated with an order passed by a Court under Sec.438 Cr.P.C. Therefore, in my view, there is no procedural violation.** Consequently, the committal Court is directed to submit the bail bonds produced before the I.O by the accused and sureties to the Special Sessions Judge-cumIV Additional District Judge, Tirupati, in which case they shall be deemed to be the due compliance under Sec.209(a) of Cr.P.C by the Sessions Court.

Konidhana Ananda Sharma. Vs. State of Andhra Pradesh 2017(2) HLT (Crl) 167.

In a criminal trial, the accused need not take up a specific defence and if **he takes any defence** and it is proved to be false or incorrect, an adverse inference can be drawn. **Prashanth Bhala Chandru Mangrule Vs State of A.P. 2017 (2) ALD (Crl) 180 (DB).**

The next argument of the appellant is that the sons-in-law and neighbours such as Ramaiah ad Subramanyam were deliberately not examined by the prosecution lest the dispute between deceased and his sons-in-law and their committing the offence should come out. This argument, it must be stated, is quite far- fetching. That the sons-in-law are responsible for the death of deceased is the proposition of the defence and not that of prosecution. None of the prosecution witnesses admitted the said defence plea. It was also not admitted that Ramaiah and Subramanyam witnessed the altercation between deceased and his sons-in-law regarding the shares demanded by them in the properties of the deceased. That being so, **prosecution cannot be blamed for non-examination of the above persons. Since it is the defence plea, if advised, the defence has to examine** the so- called Ramaiah and Subramanyam to establish the altercation allegedly took place between the deceased and his sons-in-law on the previous day of incident. Therefore, this argument cannot be appreciated. **Pitchapati Ramana Reddy.Appellant Vs The State of A.P. 2017 (2) ALD (Crl) 187 (DB).**

Acquittal from charges u/s 307, 332 and 353 IPC is immaterial for conviction u/s 364(A) and 114 IPC.

Witness cannot be expected to give **picture perfect report** of the incident, and minor discrepancies have to be ignored.

Surajsinh Alias Sonu Surajsinh Collectorsinh Alias Sevaram Rajput Vs State of Gujarat. 2017 0 Supreme(SC) 391; 2017 (2) ALD (Crl) 207 (SC).

A certificate of fitness is not the requirement of law. The trial court has been swayed away by the burn injuries. It is worthy to note that **there cannot be an absolute rule that a person who has suffered 80% burn injuries cannot give a dying declaration.**

The evidence has to be appreciated regard being had to various circumstances. It is to be noted that the accused has been acquitted in the earlier offence and he has become a constant nuisance for the victim. In such a situation, the poor parents had no other option but to make a complaint to the Gram Panchayat. To hold that their evidence is reproachable as the complaint was not given in writing manifestation of perverse approach. On a perusal of the evidence in entirety, we find that the testimonies of the parents are absolutely unimpeachable and deserve credence.

Eve-teasing, as has been stated in Deputy Inspector General of Police and another v. S. Samuthiram, (2013) 1 SCC 598 has become a pernicious, horrid and disgusting practice. The Court therein has referred to the Indian Journal of Criminology and Criminalistics (January-June 1995 Edn.) which has **categorized eve-teasing into five heads, viz. (1) verbal eve-teasing; (2) physical eve-teasing; (3) psychological harassment; (4) sexual harassment; and (5) harassment through some objects**. The present case eminently projects a case of psychological harassment. We are at pains to state that in a civilized society eve-teasing is causing harassment to women in educational institutions, public places, parks, railways stations and other public places which only go to show that requisite sense of respect for women has not been socially cultivated. A woman has her own space as a man has. She enjoys as much equality under Article 14 of the Constitution as a man does. The right to live with dignity as guaranteed under Article 21 of the Constitution cannot be violated by indulging in obnoxious act of eve-teasing. It affects the fundamental concept of gender sensitivity and justice and the rights of a woman under Article 14 of the Constitution. That apart it creates an incurable dent in the right of a woman which she has under Article 15 of the Constitution. One is compelled to think and constrained to deliberate why the women in this country cannot be allowed to live in peace and lead a life that is empowered with a dignity and freedom. It has to be kept in mind that she has a right to life and entitled to love according to her choice. She has an individual choice which has been legally recognized. It has to be socially respected. No one can compel a woman to love. She has the absolute right to reject.

In a civilized society male chauvinism has no room. The Constitution of India confers the affirmative rights on women and the said rights are perceptible from Article 15 of the Constitution. When the right is conferred under the Constitution, it has to be understood that there is no condescendation. A man should not put his ego or, for that matter, masculinity on a pedestal and abandon the concept of civility. Egoism must succumb to law. Equality has to be regarded as the summum bonum of the constitutional principle in this context.

Pawan Kumar Vs. State of H.P, 2017 (2) ALD (Crl) 231 (SC); 2017 0 Supreme(SC) 421;

Accused or his agent is prohibited to call for case diary or even see them. **It is not even open for the accused to produce certain pages of police diary obtained by him under the provisions of Right to Information Act** for the purpose of contradicting the police officer. **Balakram Vs. State of Uttarakhand & Ors 2017 (2) ALD (Crl) 252 (SC); 2017 0 Supreme(SC) 409.**

It is clear that learned Magistrate carefully perused the complaint as well as the statement of the complainant and arrived at a conclusion that a prima facie case is made against the respondents which was upheld in revision before the Sessions Court and even in the High Court. **With regard to the plea that the complaint filed by the complainant is false and malicious and to wreck vengeance by the brother of the respondent No. 1 herein, we are of the view that it cannot be looked into at the stage of taking cognizance and issue of process and the mala fide or bona fide of a case can only be taken into consideration at the time of trial. Manju Devi Vs. Onkarjit Singh Ahluwalia @ Omkarjeet Singh & Others. 2017 (2) ALD (Crl) 272 (SC).**

if the allegations of the prosecution are that the offence under Section 376 IPC was committed on more than one occasion, in order to see whether the appellant was juvenile or not, it is enough to see **if he was juvenile on the date when the last of such incidents had occurred.**
When documentary evidence as to age are available on record, medical examination of the accused for age determination would be unwarranted. Sri Ganesh Vs. State of Tamil Nadu and Anr. 2017(2) ALD (Crl) 281(SC); 2017 0 AIR(SC) 537; 2017 1 Crimes(SC) 64; 2017 3 SCC 280; 2017 1 Supreme 351; 2017 0 Supreme(SC) 24;

Merely because no expert opinion was obtained to prove as to whether bones recovered were human or animal bones, in our view, would not weaken the case of prosecution in the light of overwhelming evidence available on record to prove the complicity of the appellants.
There is no proposition in law that relatives are to be treated as untruthful witnesses. On the contrary, reason has to be shown when a plea of partiality is raised to show that the witnesses had reason to shield actual culprit and falsely implicate the accused.
An argument on a point of fact which did not prevail with the Courts below cannot avail the appellants in Supreme Court.
Evidence of a witness cannot be disbelieved merely because of his/her relation with the deceased.
Minor discrepancies in evidence of a witness cannot affect prosecution case. **2017 (2) ALD (Crl) 285(SC); 2017 0 AIR(SC) 568; 2017 1 Crimes(SC) 12; 2017 2 SCC 321; 2017 1 Supreme 257; 2017 0 Supreme(SC) 9; Ram Chander and others Vs State of Haryana.**

This Court has restated the legal position that the facts need not be self-probatory and the **word "fact" as contemplated by Section 27 is not limited to "actual physical material object"**. It further noted that the discovery of fact arises by reason of the fact that the information given by the accused exhibited the knowledge or the mental awareness of the informant as to its existence at a particular place. **2017 (2) ALD (Crl) 304 (SC); 2017 0 Supreme(SC) 324; Charandas Swami Vs. State of Gujarat & Anr.**

1. Even a **long delay** in lodging of FIR can be condoned if the informant has no motive for implicating the accused.
2. FIR is not an encyclopedia of facts. Victim not expected to give details of the incident either in the FIR or in the brief history given to the doctors.
3. Evidence of a witness is not to be disbelieved simply because he is a partisan witness or related to the prosecution.
4. **Court is not merely to see that no innocent man is punished. It has also to be seen that a guilty man does not escape**.
5. Recovery is a part of investigation and permissible u/s 27. It is not permissible to argue that section 27 is constantly abused by prosecution or is used as a lethal weapon against anyone it likes.
6. TIP does not constitute substantive evidence. It can only be used to corroborate statement in court.
7. Dying declaration cannot be discarded on account of meagre technical errors. Dying declaration recorded on the basis of nods and gestures is not only admissible but also possesses evidentiary value.
8. DNA (Deoxyribo Nucleic Acid) profiling is now a part of statutory scheme in case of rape.
9. Onus of presence of accused on the spot having been discharged by prosecution, burden to establish plea of alibi lies on accused.
10. Conspiracy subsists till it is executed or rescinded or frustrated by the choice of necessity and its objective can be inferred from surrounding circumstances and conduct of the accused.

11. When the aggravating circumstances outweigh the mitigating circumstances and the case falls in the category of 'rarest of rare' case, death sentence is the only punishment.
12. Testimony of rape victim is not legally required to be corroborated.
13. Multiple dying declarations must be consistent with each other.
14. Injuries on the person of a rape victim is not a sine qua non for proving charge of rape.
15. Burden of rebutting the proof of recovery lies on defence and it is very strict.
16. DNA (De-oxy-ribonucleic acid) profiling is an important forensic tool to connect accused to the crime and is almost hundred per cent precise and accurate.
17. Essence of the offence of conspiracy is in agreement to break the law. Anything done by any one of the accused in reference to their common intention, is admissible against the others. All accused bear joint liability. **(2017) 2 SCC (Cri) 673; (2017) 6 SCC 1; 2017 0 Supreme(SC) 439; Mukesh & Anr. Vs. State for NCT of Delhi & Ors.**

alteration of 'forum' has been considered to be procedural, and that, we have no hesitation in accepting the contention advanced on behalf of the SEBI, that **change of 'forum' being procedural, the amendment of the 'forum' would operate retrospectively,** irrespective of whether the offence allegedly committed by the accused, was committed prior to the amendment. **2017 0 Supreme(SC) 769; Securities and Exchange Board of India Vs. Classic Credit Ltd.**

the Respondent was not available at the time when the Bailiff visited the last known address to serve the summons. Following the procedure prescribed in Section 65 Cr. P.C., **the Bailiff affixed the summons on the door of the Respondent's house at his last known address.** The Respondent is deemed to have been served. **2017 0 Supreme(SC) 762; THE ENFORCEMENT OFFICER Vs. MOHAMMED AKRAM.**

A reading of the aforesaid judgments leaves no manner of doubt that if an accused files an application for grant of default bail and is willing to furnish bail then he is deemed to have exercised his right to avail of bail and this right cannot be defeated by filing the charge-sheet thereafter. **2017 0 Supreme(SC) 749; Rakesh Kumar Paul Vs. State of Assam**

Delay in lodging FIR fully explained is not fatal to prosecution story.
Minor lapses in police investigation not sufficient to acquit the accused.
It is not every doubt but only a reasonable doubt of which benefit can be given to the accused.
In certain circumstances victim's FIR should be treated as her dying declaration.
Accused cannot derive any benefit from the variation in time mentioned in charge sheet unless it caused prejudice to him in defending himself.
Criminal justice system defined.
Corroboration of dying declaration is not always required for awarding conviction.
Negligent investigation or omissions or lapses, due to perfunctory investigation need to be effectively rectified. **2017 0 Supreme(SC) 738; Suresh Chandra Jana Vs. The State of West Bengal & Ors.**

Criminal trial – Appreciation of evidence – Medical evidence – Only an opinion lending support to direct evidence – Medical evidence contrary to credible and trustworthy direct evidence – Not conclusive. Time of death – Direct evidence and medical evidence – State of food in the stomach – Not the only factor. Evidence – **Minor contradictions** – Evidence cannot be brushed aside. **2017 0 Supreme(SC) 711; Sanjay Khanderao Wadane Vs State of Maharashtra.**

Andhra Pradesh Protection of Depositors of Financial Institutions Act, 1999—Section 7—National Legal Services Authority (Lok Adalats) Regulations, 2009—Regulation 17—Ad-interim order of attachment of properties—**Once an order of attachment is made, same will continue till an appropriate order is passed by Special Court under Section 7 of Act**—If any person is aggrieved by final order of attachment, he is entitled to file appeal under Section 11 of Act—Till final order of attachment is vacated or varied in appeal filed under Section 11 of Act, order of Special Court will remain in force—Award of Lok Adalat does not show that it has taken into consideration order of Special Court making ad-interim order of attachment absolute—Impugned Lok Adalat Award set aside. **2017 0 Supreme(AP) 270; Sai Vuma Chit Fund Co., & Group of Companies Suffers Welfare Association, reptd by its President-Voori NagalaxmiGirija Kumari Vs. The State of Andhra Pradesh.**

Criminal Procedure Code, 1973—Sections 154, 155, 156, 157, 162, 169, 170 and 173—Registration of multiple FIRs—Legality—There can be only one first information and all information that flows thereafter, could only be treated as material in furtherance of investigation—Where several distinct offences/incidents have been reported, in such a case investigating agency should issue separate FIRs—**No Court can issue a Mandamus directing Station House Officers of all police stations within jurisdiction of High Court not to register any further FIR**, as same would also tantamount to a restriction upon victims of such a huge scam from taking recourse to lawful remedies. **2017 0 Supreme(AP) 268; Jakir Hussain Kosangi, S/o Basheer Ahmed Kosigi and others Vs. State of Andhra Pradesh,**

Criminal Procedure Code, 1973 — Ss. 357, 421, 431 r/w Ss. 64 & 70 IPC — Recovery of compensation: Recovery of compensation whether or not fine is imposed, despite accused serving imprisonment for default thereof, is permissible. As long as compensation is directed to be paid, albeit under S. 357(3) CrPC, 1973, S. 431 CrPC, 1973, S. 70 IPC and S. 421(1) proviso of CrPC, 1973 make it clear by legal fiction that even though default sentence has been served, compensation would be recoverable in manner provided under S. 421(1) CrPC, 1973 without any need of recording special reasons. Last part inserted into S. 421(1) proviso, CrPC, 1973 is a category by itself which applies both to compensation payable out of fine under S. 357(1) CrPC, 1973 and, by applying fiction contained in S. 431 CrPC, 1973, to compensation payable under S. 357(3) CrPC, 1973. **Kumaran v. State of Kerala,(2017) 7 SCC 471.**

In the case of Mohan Lal & others v. State of Haryana(2007 AILD 55 (SC) , the Supreme Court has quoted several judgments on the principles governing dying declaration, which could be summed up as indicated in Smt.Paniben v. State of Gujarat(AIR 1992 SC 1817) as under :

1. There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration [See Munnu Raja and another vs. State of Madhya Pradesh (1976) 2 SCR 746].
2. If the Court is satisfied that the dying declaration is true and voluntary it can base conviction on it, without corroboration. [See State of Uttar Pradesh Vs. Ram Sagar Yadav and others, AIR 1985 SC 416 and Rama Devi Vs. State of Bihar, AIR 1983 SC 164].
3. The Court has to scrutinize the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination. The deceased had an opportunity to observe and identify the assailants and was in a fit state to make the declaration. [See K.Ramachandra Reddy and another Vs. Public Prosecutor, AIR 1976 SC 1994].
4. Whether the dying declaration is suspicious, it should not be acted upon without corroborative evidence. [See Rasheed Beg Vs. State of Madhya Pradesh, 1974 (4) SCC 264].
5. Whether the deceased was unconscious and could never make any dying declaration, the evidence with regard to it is to be rejected. [See Kaka Singh Vs. State of M.P., AIR 1982 SC 1021].

6. A dying declaration which suffers from infirmity cannot form the basis of conviction. [See Ram Manorath and others Vs. State of U.P., 1981 (2) SCC 654].
7. Merely because a dying declaration does contain the details as to the occurrence, it is not be rejected. [See State of Maharashtra Vs. Krishnamurthi Laxmipathi Naidu, AIR 1981 SC 617].
8. Equally, merely because it is a brief statement, it is not to be discarded. On the contrary, the shortness of the statement itself guarantees truth. [See Surajdeo Oza and others Vs. State of Bihar, AIR 1979 SC 1505].
9. Normally the Court in order to satisfy whether the deceased was in a fit mental condition to make the dying declaration looks up to the medical opinion. But where the eye-witness said that the deceased was in a fit and conscious state to make the dying declaration, the medical opinion cannot prevail. [See Nanahau Ram and another Vs. State of Madhya Pradesh, AIR 1988 SC 912].
10. Where the prosecution version differs from the version as given in the dying declaration that said declaration cannot be acted upon. [See State of U.P. Vs. Madam Mohan and others, AIR 1989 SC 1519].
11. Where there is more than one statement in the nature of dying declaration, one first in point of time must be preferred. Of course, if the plurality of dying declarations could be held to be trustworthy and reliable, it has to be accepted. [See Mohanlal Gangaram Gehani Vs. State of Maharashtra, AIR 1982 SC 839]."
12. In addition to above, in the case of Nallapati Sivaiah V. Sub-Divisional Officer, Guntur , the Hon'ble Supreme Court held that nobody would wish to die with a lie on his lips. A dying declaration has got sanctity and a person giving the dying declaration would be the last to give untruth as he stands before his creator. There is a legal maxim nemo moriturus praesumitur mentire, meaning that a man will not meet his maker with a lie in his mouth.

NEWS

- Budget Estimates 2017-18 – Budget Release Order for Rs.50,00,000/- to the Director of Prosecutions, Telangana State, Hyderabad – Administrative Sanction - Orders – Issued. G.O.Rt.No. 501 LAW (LA, LA&J-HOME-COURTS-B2) DEPARTMENT Dated: 11-08-2017. (Budget Estimates 2017-18 – Budget Release Order for Rs.50,00,000/- to the Director of Prosecutions, Telangana State, Hyderabad – Administrative Sanction - Orders – Issued. G.O.Rt.No. 491, LAW (LA, LA&J-HOME-COURTS-B2) DEPARTMENT Dated: 05-08-2017).
- Budget Estimates 2017-18 – Budget Release Order for Rs.18,22,000/- to the Director of Prosecutions, Telangana State, Hyderabad – Administrative Sanction - Orders – Issued. G.O.Rt.No. 496, LAW (LA, LA&J-HOME-COURTS-B2) DEPARTMENT Dated: 09-08-2017

ON A LIGHTER VEIN

Two Golfers were approaching the first tee.
The first guy goes into his golf bag to get a ball and says to his friend - "Hey, why don't you try this ball." He draws a green golf ball out of his bag. "Use this one - You can't lose it!"
His friend replies, "What do you mean you can't lose it?!!"
The first man replies, "I'm serious, you can't lose it.
If you hit it into the woods, it makes a beeping sound, if you hit it into the water it produces bubbles, and if you hit it on the fairway, smoke comes up in order for you to find it."
Obviously, his friend doesn't believe him, but he shows him all the possibilities until he is convinced.
The friend says, "Wow! That's incredible! Where did you get that ball?"
The man replies, "I found it."

Vol- VI
Part-10

Prosecution Replenish

An Endeavour for Learning and Excellence

October, 2017

Aano Bhadra Krtavo Yantu Vishwatah.(RIG VEDAM)
"Let Noble Thoughts Come To Me From All Directions"

All beautiful relationships do not depend on how well we understand someone, but it depends on how well we manage the misunderstandings.

--- Anonymous

CITATIONS

Contradiction in statements of accused before the court and before the police u/s 161, CrPC cannot shake the entire evidence or make the statement of witnesses unreliable.
Fazar Ali & Ors. Vs. State of Assam; 2017 0 Supreme(SC) 384; 2017(2) ALT (Crl) 360(SC).

To prosecute a medical professional for negligence under criminal law it must be shown that the accused did something or failed to do something which in the given facts and circumstances no medical professional in his ordinary senses and prudence would have done or failed to do. The hazard taken by the accused doctor should be of such a nature that the injury which resulted was most likely imminent.
The only allegation against the appellant is that she left the patient. We must remember that the appellant was a Surgeon on Call. She came to the hospital when she was called and examined the patient. As per her judgment, she could find no evidence of bleeding or injury and, therefore, she had noted that a Physician be called. Thereafter, she left the hospital at about 11.00 p.m. True it is that she did not wait for the Physician to come, but it can be assumed that she would have expected that the Physician would come soon. This may be an error in judgment but is definitely not a rash and negligent act contemplated under Section 304-A IPC. It is nobody's case that she was called again by the Nursing staff on duty. If the condition of the patient had worsened between 11.00 p.m. and 5.00 a.m., the next morning, the Nursing staff could have again called for the appellant, but they did not do so. Next morning, the doctor on Emergency Duty, Dr. Mohod attended upon the patient but, unfortunately, he died.
In view of the above discussion, we are of the view that no case of committing a rash and negligent act contemplated under Section 304-A IPC is made out against the appellant.
Dr. Sou Jayshree Ujwal Ingole Vs. State of Maharashtra & Anr; 2017 0 Supreme(SC) 317; 2017(2) ALT (Crl) 370(SC).

we consider it fit to give following directions :-

i) (a) In every district one or more Family Welfare Committees be constituted by the District Legal Services Authorities preferably comprising of three members. The constitution and working of such committees may be reviewed from time to time and at least once in a year by the District and Sessions Judge of the district who is also the Chairman of the District Legal Services Authority.
(b) The Committees may be constituted out of para legal volunteers/social workers/retired persons/wives of working officers/other citizens who may be found suitable and willing.
(c) The Committee members will not be called as witnesses.
(d) Every complaint under Section 498A received by the police or the Magistrate be referred to and looked into by such committee. Such committee may have interaction

with the parties personally or by means of telephone or any other mode of communication including electronic communication.

(e) Report of such committee be given to the Authority by whom the complaint is referred to it latest within one month from the date of receipt of complaint.

(f) The committee may give its brief report about the factual aspects and its opinion in the matter.

(g) Till report of the committee is received, no arrest should normally be effected.

(h) The report may be then considered by the Investigating Officer or the Magistrate on its own merit.

(i) Members of the committee may be given such basic minimum training as may be considered necessary by the Legal Services Authority from time to time.

(j) The Members of the committee may be given such honorarium as may be considered viable.

(k) It will be open to the District and Sessions Judge to utilize the cost fund wherever considered necessary and proper.

ii) Complaints under Section 498A and other connected offences may be investigated only by a designated Investigating Officer of the area. Such designations may be made within one month from today. Such designated officer may be required to undergo training for such duration (not less than one week) as may be considered appropriate. The training may be completed within four months from today;

iii) In cases where a settlement is reached, it will be open to the District and Sessions Judge or any other senior Judicial Officer nominated by him in the district to dispose of the proceedings including closing of the criminal case if dispute primarily relates to matrimonial discord;

iv) If a bail application is filed with at least one clear day's notice to the Public Prosecutor/complainant, the same may be decided as far as possible on the same day. Recovery of disputed dowry items may not by itself be a ground for denial of bail if maintenance or other rights of wife/minor children can otherwise be protected. Needless to say that in dealing with bail matters, individual roles, prima facie truth of the allegations, requirement of further arrest/ custody and interest of justice must be carefully weighed;

v) In respect of persons ordinarily residing out of India impounding of passports or issuance of Red Corner Notice should not be a routine;

vi) It will be open to the District Judge or a designated senior judicial officer nominated by the District Judge to club all connected cases between the parties arising out of matrimonial disputes so that a holistic view is taken by the Court to whom all such cases are entrusted; and

vii) Personal appearance of all family members and particularly outstation members may not be required and the trial court ought to grant exemption from personal appearance or permit appearance by video conferencing without adversely affecting progress of the trial.

viii) These directions will not apply to the offences involving tangible physical injuries or death. **Rajesh Sharma & ors. Vs. State of U.P. & Anr., 2017 0 Supreme(SC) 698; 2017(2) ALT (Crl) 393 (SC).**

No doubt, there have been some lapses on the part of the police authorities in not investigating the case with the vigour that was necessitated. The High Court may also be right in finding fault with the State administration for not conducting an inquiry into the circumstances which led to the tragedy for pin-pointing the shortcomings in the system which

permitted sale of spurious liquor from licenced liquor vendor. At the same time, insofar as culpability of the respondents is concerned, the same was proved beyond doubt by producing plethora of evidence. This Court is of the opinion that trial court had rightly come to the conclusion holding respondents to be the guilty of crime.
Consistent statements of large number of victims or their kin cannot be disbelieved.
STATE OF HARYANA Vs. KRISHAN & ANR. 2017 0 Supreme(SC) 598; 2017(2) ALT (Crl) 402 (SC).

Common intention is a state of mind. It is not possible to read a person's mind. There can hardly be direct evidence of common intention. The existence or non-existence of a common intention amongst the accused has to be deciphered cumulatively from their conduct and behavior in the facts and circumstances of each case. Events prior to the occurrence as also after, and during the occurrence, are all relevant to deduce if there existed any common intention. There can be no straight jacket formula. The absence of any overt act of assault, exhortation or possession of weapon cannot be singularly determinative of absence of common intention.
Rajkishore Purohit Vs. State of Madhya Pradesh & Others; 2017 0 Supreme(SC) 707; 2017(2) ALT (Crl) 415(SC).

While the bar against cognizance of a specified offence is mandatory, the same has to be understood in the context of the purpose for which such a bar is created. The bar is not intended to take away remedy against a crime but only to protect an innocent person against false or frivolous proceedings by a private person. The expression "the public servant or his administrative superior" cannot exclude the High Court. It is clearly implicit in the direction of the High Court quoted above that it was necessary in the interest of justice to take cognizance of the offence in question. Direction of the High Court is at par with the direction of an administrative superior public servant to file a complaint in writing in terms of the statutory requirement. The protection intended by the Section against a private person filing a frivolous complaint is taken care of when the High Court finds that the matter was required to be gone into in public interest. Such direction cannot be rendered futile by invoking Section 195 to such a situation. Once the High Court directs investigation into a specified offence mentioned in Section 195, bar under Section 195(1)(a) cannot be pressed into service. The view taken by the High Court will frustrate the object of law and cannot be sustained.
Central Bureau of Investigation Vs. M. Sivamani; 2017 0 Supreme(SC) 701; 2017(2) ALT (Crl) 419(SC).

Evidence of injured witness carries great weight.
Doctor is a prosecution witness only for injury report and not with regard to the occurrence.
A related witness is not necessarily an interested witness.
Chandrasekar and another Vs. State; 2017 0 Supreme(SC) 564; 2017(2) ALT (Crl) 424(SC).

it is clear that every information more-so a cryptic information of commission of a cognizable offence though first in point of time, need not be registered as FIR and in such an event, the police may rush to the spot to ascertain the truth and if need be, to save the victims by referring them to the hospital or to safeguard the crime scene and do some other preliminary works. Doing these acts cannot be termed as investigation, for, the meaning of investigation as envisaged in Sec.2(h) of Cr.P.C is the collection of evidence and preliminary works done by police was not collection of evidence. In such an event, the registration of FIR at a later stage will not be hit by Sec.162 Cr.P.C. **Maskoori Srinivas Vs. The State of A.P. 2017 0 Supreme(AP) 180; 2017(2) ALT (Crl) 289 (AP).**

Though there appears to be some degree of negligence on the part of the investigating agency on the aspect, such as, not ensuring recording of dying declaration of the deceased by the Magistrate and not producing the second statement of the deceased recorded by PW 9 under Section 161 Cr.P.C, we are of the opinion that they are not fatal to the case of the prosecution in view of the direct evidence let in through PWs 1 to 4.
Elamuthu Selvam Vs. State of A.P; 2017 (2) ALT(Crl) 355(DB).

Income tax returns/orders passed thereon – Not final and binding on a criminal court – At best only relevant and always subject to independent appraisal of court on merits – High Court accepting the returns as binding on criminal court – Not permissible.
Essential elements of conspiracy stated. In a conspiracy trial loosened standards prevail. Only the degree of probability has to be established.
Orders in I.T. Proceedings are not evidence of lawful income. Independent evidence is required.
Evidence of expert is only advisory. Accused cannot be convicted on basis of expert opinion without any corroboration.
Hearsay evidence can be used to corroborate substantive evidence.
Return of Wealth tax paid in excess does not certify lawfulness of the wealth in respect of which tax was paid.
In case of trial of PC Act offences along with non-Act offences if sole public servant dies after commencement of proceedings, the proceedings will not vitiate. Special Judge will still have jurisdiction to convict other accised for non PC Act offences.
Interpretation of anti corruption laws has to be essentially purposive. Innovative nuances of evidential inadequacies, procedural infirmities and interpretational subtleties, artfully advanced in defence, otherwise intangible and inconsequential; ought to be conscientiously cast aside with moral maturity and singular sensitivity to uphold the statutory sanctity.
Section 120B – Essential elements – Agreement, common design, common intention, collaboration, connivance, jointness in severalty and coordination – Each conspirator playing his separate part in one integrated and united effort to achieve common purpose – Conspiracy may evelop in successive stages – Separate conspiracy may constitute a general conspiracy – Conspiracy can be proved by circumstantial evidence – Hatched in private and in secrecy – No direct evidence would be readily available – Section 10, Indian Evidence Act, 1872.
State of Karnataka Vs Selvi J. Jayalalitha & Ors.(batch) 2017 0 Supreme(SC) 160; (2017) 3 SCC (Cri) 1; (2017) 6 SCC 263.

Parole and furlough – Nature and differences stated – Both provisions providing for affording the prisoners an opportunity to solve their personal and family problems and to enable them to maintain their links with society – Tendency of the convict to commit crie or reformation is the decisive factor for granting or refusing parole or furlough. **ASFAQ Vs STATE OF RAJASTHAN AND OTHERS. 2017 0 Supreme(SC) 928;**

Comparison of signature by Hand Writing Expert—There is no bar to send disputed handwriting/signature for comparison to expert merely because time gap between admitted handwriting/signature and disputed handwriting/signature is long—Where contemporaneous signatures or writings are not available, experts opinion with respect to disputed documents where it becomes inevitable can be called for—When contemporaneous signatures are available for comparison, that would give correct picture which can be treated as best evidence.

S Dintakurthi Narayana, S/o. China Vengaiah Vs Rachuru Bhaskar Rao, S/o. Subba Rao; 2017 0 Supreme(AP) 272;

Registration of multiple FIRs—Legality—There can be only one first information and all information that flows thereafter, could only be treated as material in furtherance of investigation—Where several distinct offences/incidents have been reported, in such a case investigating agency should issue separate FIRs—No Court can issue a Mandamus directing Station House Officers of all police stations within jurisdiction of High Court not to register any further FIR, as same would also tantamount to a restriction upon victims of such a huge scam from taking recourse to lawful remedies.

Jakir Hussain Kosangi, S/o Basheer Ahmed Kosigi VS State of Andhra Pradesh; 2017 0 Supreme(AP) 268;

Andhra Pradesh Protection of Depositors of Financial Institutions Act, 1999—Section 7—National Legal Services Authority (Lok Adalats) Regulations, 2009—Regulation 17—Ad-interim order of attachment of properties—Once an order of attachment is made, same will continue till an appropriate order is passed by Special Court under Section 7 of Act—If any person is aggrieved by final order of attachment, he is entitled to file appeal under Section 11 of Act—Till final order of attachment is vacated or varied in appeal filed under Section 11 of Act, order of Special Court will remain in force—Award of Lok Adalat does not show that it has taken into consideration order of Special Court making ad-interim order of attachment absolute—Impugned Lok Adalat Award set aside.

Sai Vuma Chit Fund Co. , & Group of Companies Suffers Welfare Association, reptd by its President-Voori NagalaxmiGirija Kumari VS State of Andhra Pradesh, reptd by Principal Secretary, Home Department, Hyderabad, 2017 0 Supreme(AP) 270;

It is trite law that soon the information relating to commission of a cognizable offence is received, the police shall register the FIR and start the investigation. The reverse process of registering FIR either in the midway or after completion of investigation will deflate the credibility of FIR. The reason is not far to seek. FIR is expected to be registered at the earliest point of time so that the facts narrated therein are supposed to be true and intrinsic but not embellished or varnished. The true facts narrated in FIR will help police investigate in correct lines. On the other hand, despite receiving information, police without registering FIR, if proceed with investigation at first and later register the FIR, such FIR looses its credibility for the reason that the contents in FIR might be manipulated to suit the prosecution case and its investigation. Hence, FIR shall precede the investigation is the generally accepted rule. However, sometimes the police may receive only a cryptic or an incomplete information regarding the commission of a cognizable offence, basing on which duty minded officer may proceed to the scene of offence to ascertain the truth in that information, or if necessary to save the victims or protect the scene of offence etc. After completing the aforesaid preliminary exercise, he may register FIR on the basis of information given by somebody and embark on the full-fledged investigation thereafter. In such an event, can it be said, since he already visited the scene and performed certain acts, the late registration of FIR was hit by Sec.162 Cr.P.C? The law on this aspect is no more res integra.

> (i) In Ramsing Bavaji Jadeja vs. State of Gujarat (1994 (2) SCC Pg.685), the Apex Court observed thus: “Para 7: From time to time, controversy has been raised, as to at what stage the investigation commences. That has to be considered and examined on the facts of each case, especially, when the information of a cognizable offence has been given on telephone. If the telephonic message is cryptic in nature and the officer in charge, proceeds to the place of occurrence on basis of that information to find out the details of the nature of the offence itself,

then it cannot be said that the information, which had been received by him on telephone, shall be deemed to be first information report. The object and purpose of giving such telephonic message is not to lodge the first information report, but to request the officer in charge of the police station to reach the place of occurrence. On the other hand, if the information given on telephone is not cryptic and on the basis of that information, the officer in charge, is prima facie satisfied about the commission of a cognizable offence and he proceeds from the police station after recording such information, to investigate such offence then any statement made by any person in respect of the said offence including details about the participants, shall be deemed to be a statement made by a person to the police officer "in the course of an investigation", covered by Section 162 of the Code. That statement cannot be treated as first information report. But any telephonic information about commission of a cognizable offence irrespective of the nature and details of such information cannot be treated as first information report. This can be illustrated. In a busy market place, a murder is committed. Any person in the market, including one of the shop-owners, telephones to the nearest police station, informing the officer in charge, about the murder, without knowing the details of the murder, the accused or the victim. On the basis of that information, the officer in charge, reaches the place where the offence is alleged to have been committed. Can it be said that before leaving the police station, he has recorded the first information report? In some cases the information given may be that a person has been shot at or stabbed. It cannot be said that in such a situation, the moment the officer in charge leaves the police station, the investigation has commenced. In normal course, he has first to find out the person who can give the details of the offence, before such officer is expected to collect the evidence in respect of the said offence."

(ii) In Satish Narayan Sawat vs. State of Goa (2009 CriLJ 4655(SC), the police on the cryptic information and without any further details about the incident, proceeded to the place of occurrence to make some survey and later registered FIR. It was held by the Apex Court that such act of Police Officer going to the scene to make survey does not amount to proceeding with investigation and therefore, recording of FIR later was not hit by Sec.162 Cr.P.C.

(iii) In State of Rajasthan vs. Maharaj Singh and another (2004) 13 SCC 165), cited by the learned Public Prosecutor, the facts were that the deceased in injured condition admitted in hospital and the duty doctor sent intimation to police station pursuant to which the SHO came to Hospital but could not record statement of deceased as he was not in a fit condition. Thereafter the police did not take action on that day but the police swung into action only when a written complaint was lodged in the police station next day at about 10:30am. Delay in registering FIR was held not fatal.

From the above, it is clear that every information more-so a cryptic information of commission of a cognizable offence though first in point of time, need not be registered as FIR and in such an event, the police may rush to the spot to ascertain the truth and if need be, to save the victims by referring them to the hospital or to safeguard the crime scene and do some other preliminary works. Doing these acts cannot be termed as investigation, for, the meaning of investigation as envisaged in Sec.2(h) of Cr.P.C is the collection of evidence and preliminary works done by police was not collection of evidence. In such an event, the registration of FIR at a later stage will not be hit by Sec.162 Cr.P.C.

NEWS

- GOVERNMENT OF ANDHRA PRADESH HOME DEPARTMENT -Sanction of (15) posts of Assistant Public Prosecutors to the newly established (15) Judicial Magistrate of the First Class Courts – Orders - Issued. G.O.MS.No. 172 Finance (HR.II) Department Dated: 22-09-2017.
- GOVERNMENT OF ANDHRA PRADESH HOME DEPARTMENT– Sanction of one (1) post of Director of Prosecutions and one (1) post of Personal Assistant to the Directorate of Prosecutions to

strengthen the Prosecution Department – Orders - Issued. G.O.MS.No. 169 Finance (HR.II) Department Dated: 21-09-2017.

- GOVERNMENT OF ANDHRA PRADESH Public services -Andhra Pradesh State Prosecution Service-Additional Public Prosecutors Grade-II- Regularization of services of certain officers—Orders-Issued. G.O.MS.No. 156 LAW (L & LA & J, HOME – COURTS-A) DEPARTMENT. Dated: 20-09-2017.
- GOVERNMENT OF TELANGANA Public Service - Prosecution Department - Direct Recruitment of Additional Public Prosecutors Grade.II - Exemption from passing the Language test in Telugu in respect of certain Additional Public Prosecutors Grade.II (Direct Recruitment) – Orders - Issued. G.O.Rt.No. 1107 HOME (COURTS.A2) DEPARTMENT Dated: 26-09-2017
- GOVERNMENT OF TELANGANA Public Service - Prosecution Department - Direct Recruitment of Additional Public Prosecutors Grade.II - Declaration of Probation of certain Additional Public Prosecutors Grade.II (Direct Recruitment) – Orders - Issued. G.O.Ms.No. 113 HOME (COURTS.A) DEPARTMENT Dated: 26-09-2017
- Government hereby order revision of the Dearness Allowance (DA) sanctioned in the Government Order fifth read above to the employees of Government of Telangana from 22.008% of the basic pay to 24.104% of basic pay from 1st of January, 2017. ALLOWANCES – Dearness Allowance – Dearness Allowance to the State Government Employees from 1st of January, 2017 – Sanctioned – Orders – Issued. G.O.Ms.No. 135 FINANCE (HRM.IV) DEPARTMENT Dated: 22-09-2017

ON A LIGHTER VEIN

Once a highly successful businessman, running a health insurance company was getting ready to go to his office. When he reached into his car and opened a door, a stray dog sleeping under his car suddenly came out and bit on his leg! The businessman got very angry and quickly picked up a few rocks and threw at the dog but none hit the dog. The dog ran away.

Upon reaching his office, the businessman calls a meeting of his managers and during the meeting he puts the anger of dog on them. The managers also get upset by the anger of their boss and they put their anger to the employees working under them. The chain of this reaction keeps going till the lower level of employees and finally, the anger reaches to the office peon.

Now, there was no one working under the peon! So, after the office time is over, he reaches his home, and wife opens the door. She asked him, “Why are you so late today?” The peon upset due to anger threw at him by the staff, gives one slap to his wife! And says, “I didn’t go to the office to play football, I went to work so don’t irritate me with your stupid questions!”

So, now the wife got upset that she got a scolding plus a slap for no reason. She puts her anger on his son who was watching tv and give him a slap, “This is all you do, you have no interest in studying! Turn off the TV now!”

The son gets upset now! He walks out of his house and sees a dog passing by looking at him. He picks up a rock and hits the dog in his anger and frustration. The dog, getting hit by a rock, runs away barking in pain.

This was the same dog that bit the businessman early morning.

Moral: This was bound to happen. Reap as one has sown. This is how the life works. While we all worry about hell and heaven based on our deeds, we should concentrate more on how we are living and behaving. Do good, Good will come, Do Wrong, Wrong will come.

Vol- VI
Part-11

Prosecution Replenish

An Endeavour for Learning and Excellence

November, 2017

Aano Bhadra Krtavo Yantu Vishwatah.(RIG VEDAM)
"Let Noble Thoughts Come To Me From All Directions"

Confident walking is more successful than confused running.
Follow no one, but learn from everyone.
.... Anonymous

CITATIONS

The High Court has further stated that there was **no proof regarding any earlier dispute** between informant and Ram Prasad. The High Court has observed that prosecution has not examined any other witness of the Panchyat and further the dispute was not such as to constitute immediate motive to kill the family members. When PW.1 and PW.2 both have stated that one week before the incident there was dispute between informant and Ram Prasad for Nabdan which was flowing in the western side near the house of Ram Prasad. The genesis of dispute laid there. Further observation of the High Court is that the dispute was not of such a nature, so as to give the accused any motive to kill the family members of the witnesses. We do not subscribe to the above view of the High Court. **On a particular incident how a human being will react is not easy to comprehend.** There was no other evidence before the High Court to come to the conclusion that there was no dispute between informant and Ram Prasad. The said observations were based on no evidence. It is, however, relevant to note that the High Court itself has observed that where prosecution has adduced **direct evidence on the point of actual occurrence, search for motive is only academic** and with a view to clear the conscience of the Court.

omissions in the inquest report are not sufficient to put the prosecution out of court.

"Irrelevant details which do not in any way corrode the credibility of a witness cannot be labelled as omissions or contradictions."

Where a witness to the occurrence has himself been injured in the incident, the testimony of such a witness is generally considered to be very reliable, as he is a witness that comes with an inbuilt guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone.

"Convincing evidence is required to discredit an injured witness."

State of U.P. vs Ram Kumar and others; 2017 0 AIR(SC) 3878; 2017 3 Crimes(SC) 247; 2017(2) ALD (Crl) 544 (SC).

the person who claims to be a **juvenile has two matriculation certificates**.

it is the first declaration of date of birth, which is contained in the matriculation certificate issued to the respondent No. 2 by the CBSE i.e. 7th October, 1990 which should hold the field, a fact fortified by the own conduct of the said respondent No.2 in making a declaration to obtain a PAN card stating that his date of birth is 12th March, 1985.

Lok Nath Pandey Vs State of Uttar Pradesh, 2017(2) ALD Crl 565 (SC)

All these persons had, immediately after suffering the aforesaid consequence of consuming liquor, made a specific and categorical statement that they had purchased the liquor from the vends of the respondents. Even those who lost lives, their immediate near relations had informed to the same effect. Such contemporary statements of those very persons who suffered loss of eye-sight immediately after the incident cannot be ignored and there is no reason to disbelieve them. Such statements also become relevant under Section 7 of the Indian Evidence Act, 1872.

State of Haryana Vs Krishan and another ,2017(2) ALD (Crl) 578(SC)

The tape recorded conversation was not secondary evidence which required certificate under Section 65B, since it was the original cassette by which ransom call was tape-recorded, there

cannot be any dispute that for admission of secondary evidence of electronic record a certificate as contemplated by Section 65B is a mandatory condition. The conversation recorded by the complainant contains ransom calls was relevant under Section 7 and was primary evidence which was relied on by the complainant.
Vikram Singh @ Vicky Walia and another Vs. State of Punjab and another 2017(2) ALD (Crl) 590 (SC); 2017 0 AIR(SC) 3227; 2017 3 Crimes(SC) 86; 2017 8 SCC 518;

As to the testimony of the related witnesses, it is clear from the record that all the four eye witnesses PW-1, PW-2, PW-3 and PW-4 are injured eye witnesses, and injuries on their person are proved on the record. They cannot be simply disbelieved for the reason that they are related to informant.
the informant who got injured in the incident, was first taken to the hospital. In the circumstances, we do not find any force in the arguments advanced on behalf of the appellant that the delay in F.I.R. is not explained.
Muttaicose @ Subramani Vs State of Tamilnadu, 2017 0 AIR(SC) 3117; 2017 3 Crimes(SC) 63; 2017 8 SCC 598; 2017(2) ALD (Crl) 607(SC)

as per Modi's Medical Jurisprudence & Toxicology there are 16 main distinctions in death caused by hanging or strangulation. According to medical evidence second ligature mark was ending towards back of the neck and it was oblique going upwards and ligature mark was shining. The hyoid bone was intact there was no fracture of larynx and trachea. There were no scratches, abrasions and bruises on face, mouth and ears. There were no abrasions and ecchymosed around about the edges of ligature mark. Subcutaneous tissues under ligature mark were white, hard and glistering. There were no injuries to muscles of neck. The saliva was dribbling. If the death would have been strangulation then fracture of larynx and trachea and hyoi bone was a must there should have scratches abrasions and fingernail marks and bruises on the face neck and other parts of the body. Saliva would not have dribbling, ligature mark would have been horizontal and not oblique it would have lower down in the neck and not upwards to the chin. There should have been abrasions and ecchymosed round about the edges of the ligature marks. Subcutaneous tissues should have ecchymosed there should have been some injuries to muscles of neck carotid arteries, internal coat should have been ruptured, **Satish Nirankari Vs State of Rajasthan; 2017 0 AIR(SC) 3051; 2017 2 Crimes(SC) 334; 2017 8 SCC 497; 2017(2) ALD (Crl) 610(SC),**

POCSO Act. 'Age' in section 2(1)(d) does not cover 'mental age'.
Ms. Eera Through Dr. Manjula Krippendorf Vs State (Government of NCT of Delhi) and another; 2017(2) ALD (Crl) 673(SC);

It is now well settled that recovery of an object is not discovery of a fact as envisaged in [Section 27 of the Evidence Act, 1872]. The decision of the Privy Council in Pulukuri Kotayya v. King Emperor is the most quoted authority for supporting the interpretation that the 'fact discovered' envisaged in the section embraces the place from which the object was produced, the knowledge of the accused as to it, but the information given must relate distinctly to that effect.
Charandas Swami Vs State of Gujarat and others; 2017(3) SCC (Cri) 343; (2017) 7 SCC 177; 2017 0 AIR(SC) 1761; 2017 2 Crimes(SC) 109; 2017 0 CrLJ 2904;

To make a person an authority legally competent to investigate, it is not necessary that he should be having authority which flows from a Statute.
Statements recorded by a person made competent by State Government by an order are legally admissible for the purpose of corroboration.

Evidence of the sole witness having no reason to depose falsely against appellant-accused should be relied upon.
Intention cannot be proved by direct evidence. It has to be inferred from attending circumstances.
Delay in lodging complaint is not fatal if duly explained.
Opinion of hand writing expert is only an opinion evidence, cannot be conclusive.
SPS Rathore Vs CBI and Another; 2017 0 CrLJ 537; 2016 0 AIR(SC) 4486; 2016 4 Crimes(SC) 40; 2016 9 Scale 125; 2017 5 SCC 817; (2017) 3 SCC (Cri) 479.

Being a sitting MP cannot be a ground for grant of bail.
Constitutional Courts can direct de novo trial in exceptional circumstances.
The situation of 105 out of 195 witnesses including 8 eye witnesses turning hostile calls for de novo trial.
The position which emerges is that in a criminal trial, on the one hand there are certain fundamental presumptions in favour of the accused, which are aimed at ensuring that innocent persons are not convicted. And, on the other hand, it has also been realised that if the criminal justice system has to be effective, crime should not go unpunished and victims of crimes are also well looked after. After all, the basic aim of any good legal system is to do justice, which is to ensure that injustice is also not meted out to any citizen. This calls for balancing the interests of accused as well as victims, which in turn depends on fair trial. For achieving this fair trial which is the solemn function of the Court, role of witnesses assumes great significance. This fair trial is possible only when the witnesses are truthful as 'they are the eyes and ears' of the Court.

35. We are conscious of the fact that while judging as to whether a particular accused is guilty of an offence or not, emotions have no role to play. Whereas, victims, or family of victims, or witnesses, may become emotive in their testimonies, in a given case, as far as the Court is concerned, it has to evaluate the evidence which comes before it dispassionately and objectively. At the same time, it is also a fact that emotion pervades the law in certain respects. Criminal trials are not allusive to the fact that many a times crimes are committed in the 'heat of passion' or even categorised as 'hate crimes'. Emotions like anger, compassion, mercy, vengeance, hatred get entries in criminal trials. However, insofar as the Judge is concerned, most of these emotions may become relevant only at the stage of punishment or sentencing, once the guilt is established by credible evidence, evaluated objectively by the Court. The aforesaid factors, then, become either mitigating/extenuating circumstances or aggravating circumstances. We make it clear that these factors have not influenced us. We also expect that the trial court will not go by such considerations insofar as first stage is concerned, namely, evaluating the evidence to decide as to whether accused persons are guilty of the offence or not. That part is to be performed in a totally objective manner.
Criticizing the sharp decline of ethical values in public life even in the developed countries much less developing one, like ours, where the ratio of decline is higher is not going to solve the problem. Time is ripe for the Courts to take some positive action. Sections 195 and 340 of the Cr. P.C. could hardly be termed as the effective measures to combat with the menace of the witnesses turning hostile. If the witnesses have been won over in one way or the other, they are bold enough to even face the prosecution under Section 340 of the Cr. P.C. However, the same ultimately does not serve any purpose because the guilty goes unpunished. In the recent times, the tendency to acquit an accused easily is galloping fast. It is very easy to pass an order of acquittal on the basis of minor points raised in the case by a sharp judgment so as to achieve the yardstick of disposal. These days when crime is looming large and humanity is suffering and society is so much affected thereby, the duties and responsibilities of the Courts have become much more. Now the maxim let hundred guilty persons be acquitted, but not a single innocent be convicted' is, in practice, changing world

over and the Courts have been compelled to accept that the 'society suffers by wrong convictions and it equally suffers by wrong acquittals'. A Judge does not preside over a criminal trial merely to see that no innocent man is punished. **A Judge also presides to see that a guilty man does not escape.** One is as important as the other. Both are public duties which the Judge has to perform. The need of the hour is 'robust judging'. The trial Judge is the linchpin in every case, and he has also its eyes and ears. He is not merely a recorder of facts, but a purveyor of all evidence, oral and circumstantial. It is said that a good trial Judge needs to have a 'third ear' i.e. hear and comprehend what is not said. When a material eyewitness, one after the other start resiling from their statements made before the police, this must obviously excite suspicion in the mind of the trial Judge to probe further and question the witness (even if the prosecutor does not do so).
Dinubhai Boghabhai Solanki Vs. State of Gujarat & Ors; 2017 0 Supreme(SC) 1046;

Exception 2 to Section 375 of the IPC should now be meaningfully read as: “Sexual intercourse or sexual acts by a man with his own wife, the wife not being under eighteen years of age, is not rape.”
Section 198(6) IPC will apply to cases of rape of “wives” below 18 years, and cognizance can be taken only in accordance with the provisions of Section 198(6) of the Code.
Independent Thought Vs. Union of India and Anr.2017 0 AIR(SC) 4904; 2017 0 Supreme(SC) 1014;

It appears, the IO was of the view that the custody of the appellant is required for recording his confessional statement in terms of what the co-accused had already stated in the Statement under Section 161 of the Code of Criminal Procedure, 1973. The IO was of the opinion that the appellant was not cooperating because he kept reiterating that he had not purchased the food-grains. The purpose of custodial interrogation is not just for the purpose of confession. The right against self-incrimination is provided for in Article 20(3) of the Constitution. It is a well settled position in view of the Constitution Bench decision in Selvi and others v. State of Karnataka, (2010) 7 SCC 263 that Article 20(3) enjoys an "exalted status". This provision is an essential safeguard in criminal procedure and is also meant to be a vital safeguard against torture and other coercive methods used by investigating authorities. Therefore, merely because the appellant did not confess, it cannot be said that the appellant was not cooperating with the investigation. However, in case, there is no cooperation on the part of the appellant for the completion of the investigation, it will certainly be open to the respondent to seek for cancellation of bail. **2017 0 Supreme(SC) 1013; Santosh S/o Dwarkadas Fafat Versus The State of Maharashtra**

Medical termination of pregnancy – 31 week’s pregnancy – Continuing pregnancy causing more mental anguish to the mother due to hazardous faetal condition – Moreover, delivery likely to be very hazardous and child not likely to survive – Petitioner allowed to terminate pregnancy. **2017 0 Supreme(SC) 1011; Poonam Chandan Yadav Vs UOI & Ors.**

Code of Criminal Procedure, 1973 – Section 319 – Appellants summoned after five years of examination of prosecution witnesses – Powers of Court to proceed u/s 319 even against persons not arraigned as accused – Cannot be disputed
Code of Criminal Procedure, 1973 – Section 319 – Evidence – Must be understood in a wider sense – Both at the stage of trial and even at the stage of inquiry.
Appellants’ plea of alibi established after Police investigation – Held, exercise of power by trial court u/s 319 not justified **Brijendra Singh and others Vs State of Rajasthan; 2017 3 Crimes(SC) 30; 2017 7 SCC 706; 2017(3) ALT (Crl) 17 (SC)**

Indian Evidence Act, 1872 – Section 32 – Head Constable recording dying declaration as narrated by deceased – Deceased also writing few words about the accused – Dying declaration recorded in presence of the doctor – Doctor appending his signature on the declaration instead of giving a certificate of fitness of deceased – Sufficient in law – Law does not require a certificate of fitness for recording dying declaration – There cannot be an absolute rule that a person suffering 80% burn injuries cannot give a dying declaration.

An accused can be convicted solely on the basis of dying declaration if reliable.

A woman has absolute right to refuse to be compelled to love.

Pawan Kumar Vs State of H.P.; 2017 0 AIR(SC) 2459; 2017 3 Crimes(SC) 15; 2017 7 SCC 780; 2017(3) ALT (Crl) 1(SC).(FB)

We are of the view that the evidence of the witnesses cannot be brushed aside merely because of some minor contradictions, if any, particularly for the reason that the evidence and testimonies of the witnesses are trustworthy.

Medical evidence is only an opinion lending support to direct evidence and is not conclusive.

Sanjay Khanderao Wadane Vs State of Maharasthra; 2017 0 AIR(SC) 3595; 2017 3 Crimes(SC) 275; 2017(3) ALT (Crl) 49(SC).

(A) Indian Penal Code, 1860 – Sections 376 and 506 – Criminal Procedure Code, 1973 – Section 378 – Rape and criminal intimidation – Acquittal appeal – Minor victim – Prosecutrix subjected to rape on various occasions by accused – Prosecution case fully corroborated by medical evidence – Reluctance on part of prosecutrix in not narrating incident to anybody for a period of three years and not sharing the same event with her mother, is clearly understandable – It is not easy to lodge a complaint of this nature exposing prosecutrix to risk of social stigma which unfortunately still prevails in our society – Decision to lodge FIR becomes more difficult and hard when accused happens to be a family member – After taking all due precautions which are necessary, when it is found that prosecution version is worth believing, case is to be dealt with all sensitivity that is needed in such cases – In such a situation one has to take stock of realities of life as well – Evidence brought on record contains positive proof, credible sequence of events and factual truth linking respondent with rape of prosecutrix and had criminally intimidated her – Respondent found to be guilty for offence under Sections 376(2)(f) and 506 of IPC – Judgment of High Court set aside and conviction recorded by trial court restored – Respondent shall undergo rigorous imprisonment for a period of twelve years for offence under Section 376(2)(f) and shall also pay a fine of Rs. 50,000, failing which he shall undergo further sentence of one year – Respondent also convicted for committing offence under Section 506 IPC for which he is sentenced to rigorous imprisonment for two years. (Paras 23, 24, 29, 30, 32, 33 and 34)

(B) Indian Penal Code, 1860 – Section 376 – Rape – Testimony of a victim in cases of sexual offences is vital and unless there are compelling reasons which necessitate looking for corroboration of a statement, court should find no difficulty to act on testimony of victim of a sexual assault alone to convict accused – Seeking corroboration to a statement before relying upon the same as a rule, in such cases, would literally amount to adding insult to injury – Deposition of prosecutrix has to be taken as a whole – Victim of rape is not an accomplice and her evidence can be acted upon without corroboration – She stands at a higher pedestal than an injured witness does – If court finds it difficult to accept her version, it may seek corroboration from some evidence which lends assurance to her version – To insist on corroboration, except in rarest of rare cases, is to equate one who is a victim of lust of another with an accomplice to a crime and thereby insult womanhood – It would be adding insult to injury to tell a woman that her claim of rape will not be believed unless it is corroborated in material particulars, as in case of an accomplice to a crime

STATE OF HIMACHAL PRADESH VS SANJAY KUMAR @ SUNNY; 2016 4 Crimes(SC) 424; 2016 12 Scale 831; 2017 2 SCC 51; 2017(3) ALT (Crl) 73(SC).

Terrorist and Disruptive Activities (Prevention) Act, 1987 – Section 20A – Provision mandatory – Prior approval of District Superintendent of Police not taken before registering FIR – Appellant suffering incarceration for more than 12 years – No likelihood of the completion of trial in the near future – Appellant held entitled to bail – Right of the accused for a speedy trial – Article 21, Constitution of India. **UMARMIA ALIAS MAMUMIA Vs State of Gujarat; 2017 1 Crimes(SC) 278; 2017 2 SCC 731; 2017(3) ALT (Crl) 88(SC).**

In NALLAPATI SIVAIAH V/s. SUB-DIVISIONAL OFFICER, GUNTUR, ANDHRA PRADESH (2007) 15 SCC 465, the Supreme Court affirmed that it is not the requirement in law that the doctor who certified the condition of the victim to make a dying declaration should be examined in every case.
35. In the light of the aforestated case law, the observation of the Division Bench of this Court in WADAPALLY VENKANNA 1991(2) APLJ 368 to the effect that the certifying doctor must invariably be examined in all cases involving a dying declaration does not constitute good law. **Syed Kamruddin Vs State of A.P.;2017 0 Supreme(AP) 386;**

Anybody not merely stranger to the case has locus standi and hence cannot be non-suited on the ground of his not having locus standi.
Article 136 does not confer a right to appeal but only to apply for special leave to appeal.
Belated application u/ 311without explaining the delay is not acceptable.
Ratanlal Vs Prahlad Jat & others; 2017 0 AIR(SC) 5006; 2017 3 Crimes(SC) 408; 2017 0 Supreme(SC) 936;

When sequence of events, and the manner in which the occurrence took place, manifests a pre-concerted plan and a prior meeting of minds; overt act or possession of weapon is not required to establish common intention.
Rajkishore Purohit Vs State of M.P.; 2017 0 AIR(SC) 3588; 2017 3 Crimes(SC) 363; 2017 6 Supreme 96; 2017 0 Supreme(SC) 707;

Criminal Procedure Code, 1973—Sections 154, 155, 156, 157, 162, 169, 170 and 173—Registration of multiple FIRs—Legality—There can be only one first information and all information that flows thereafter, could only be treated as material in furtherance of investigation—Where several distinct offences/incidents have been reported, in such a case investigating agency should issue separate FIRs—No Court can issue a Mandamus directing Station House Officers of all police stations within jurisdiction of High Court not to register any further FIR, as same would also tantamount to a restriction upon victims of such a huge scam from taking recourse to lawful remedies.
Jakir Hussain Kosangi, S/o Basheer Ahmed Kosigi and others Vs State of A.P. 2017(3) ALT (Crl) 30(DB) A.P.

In criminal jurisprudence, the testimony of an injured witness has high evidentiary value, for, ordinarily a person who suffered injuries at the hands of another would not shield the real offender and falsely implicate an innocent.
Boppana Beeraiah Vs State of A.P. 2017(3) ALD (Crl) 65(DB) (AP).

NOSTALGIA

In RVE Venkatachala Gounder v. Arulmigu Visweswaraswami, (2003) 8 SCC 752; 2003 0 AIR(SC) 4548; this Court held as follows:

"Ordinarily an objection to the admissibility of evidence should be taken when it is tendered and not subsequently. The objections as to admissibility of documents in evidence may be classified into two classes: (i) an objection that the document which is sought to be proved is itself inadmissible in evidence; and (ii) where the objection does not dispute the admissibility of the document in evidence but is directed towards the mode of proof alleging the same to be irregular or insufficient. In the first case, merely because a document has been marked as 'an exhibit', an objection as to its admissibility is not excluded and is available to be raised even at a later stage or even in appeal or revision. In the latter case, the objection should be taken before the evidence is tendered and once the document has been admitted in evidence and marked as an exhibit, the objection that it should not have been admitted in evidence or that the mode adopted for proving the document is irregular cannot be allowed to be raised at any stage subsequent to the marking of the document as an exhibit. The later proposition is a rule of fair play. The crucial test is whether an objection, if taken at the appropriate point of time, would have enabled the party tendering the evidence to cure the defect and resort to such mode of proof as would be regular. The omission to object becomes fatal because by his failure the party entitled to object allows the party tendering the evidence to act on an assumption that the opposite party is not serious about the mode of proof. On the other hand, a prompt objection does not prejudice the party tendering the evidence, for two reasons: firstly, it enables the Court to apply its mind and pronounce its decision on the question of admissibility then and there; and secondly, in the event of finding of the Court on the mode of proof sought to be adopted going against the party tendering the evidence, the opportunity of seeking indulgence of the Court for permitting a regular mode or method of proof and thereby removing the objection raised by the opposite party, is available to the party leading the evidence. Such practice and procedure is fair to both the parties. Out of the two types of objections, referred to hereinabove, in the later case, failure to raise a prompt and timely objection amounts to waiver of the necessity for insisting on formal proof of a document, the document itself which is sought to be proved being admissible in evidence. In the first case, acquiescence would be no bar to raising the objection in superior Court."

NEWS

- Government of A.P. G.O.MS.No. 166 HOME (LEGAL.II) DEPARTMENT Dated: 26-10-2017 hereby place the Directorate of Prosecution with the Director of Prosecution as its Head in the State of Andhra Pradesh under the Administrative Control of the Head of the Home Department in the State of Andhra Pradesh.
- GOVERNMENT OF TELANGANA Home (Courts.B) Department – Law Journals – Permission for purchase of Crimes monthly Law Journal for the year 2017 to the (168) Prosecuting Officers,with the total cost of Rs.4,21,512 @ Rs.2509/- each – Sanction – Accorded -Orders – Issued. G.O.Rt.No. 631 vide LAW (LA, LA&J-HOME-COURTS-B) DEPARTMENT Dated: 26-10-2017.
-

ON A LIGHTER VEIN

For the second week in a row, my son and I were the only ones who showed up for his soccer team's practice. Frustrated, I told him, "Please tell your coach that we keep coming for practice but no one is ever here."

My son rolled his eyes and said, "He'll just tell me the same thing he did before."

"Which was?"

"That practice is now on Wednesdays, not Tuesdays."

Vol- VI
Part-12

Prosecution Replenish

An Endeavour for Learning and Excellence

December, 2017

Aano Bhadra Krtavo Yantu Vishwatah.(RIG VEDAM)
"Let Noble Thoughts Come To Me From All Directions"

When you move your focus from competition to contribution...
Life becomes a celebration...
Never defeat people, just win them..
.... Anonymous

CITATIONS

Definition of child lays stress upon the mental and physical disability of the child.
Child's medical examination is mandatory even though POSCO Act not mentioned in FIR.
Every consent involves a submission but the converse does not follow. An act of helpless resignation could not be treated as consent.
Golden Rule of grammatical and common parlance construction covers statutes, Wills and all written instruments.
Provisions of Indian Penal Code, 1860 are on different base and footing, cannot be applied to POSCO Act.
Penal statute or any penal provision in any law must be construed strictly.
Judicial "Legisputation" is not legislation but application of a given legislation Judicial "Legisputation".
'Age' in section 2(1)(d) does not cover 'mental age'.
2017 0 AIR(SC) 3457; 2017 0 Supreme(SC) 684; 2017(2) ALD (Crl) Ms. Eera Through Dr. Manjula Krippendorf Vs. State (Govt. of NCT of Delhi) & Anr.

when the ultimate offence consists of a chain of actions, it would not be necessary for the prosecution to establish, to bring home the charge of conspiracy, that each of the conspirators had the knowledge of what the collaborator would do.
Framing of charge is the first major step in a criminal trial where the court is expected to apply its mind to the entire record and documents placed therewith before the court. Taking cognizance of an offence has been stated to necessitate an application of mind by the court but framing of charge is a major event where the court considers the possibility of discharging the accused of the offence with which he is charged or requiring the accused to face trial. There are different categories of cases where the court may not proceed with the trial and may discharge the accused or pass such other orders as may be necessary keeping in view the facts of a given case. In a case where, upon considering the record of the case and documents submitted before it, the court finds that no offence is made out or there is a legal bar to such prosecution under the provisions of the Code or any other law for the time being in force and there exists no ground to proceed against the accused, the court may discharge the accused. There can be cases where such record reveals the matter to be so predominantly of a civil nature that it neither leaves any scope for an element of criminality nor does it satisfy the ingredients of a criminal offence with which the accused is charged. In such cases, the court may discharge him or quash the proceedings in exercise of its powers under the provisions.
2017 (2) ALD (Crl) 740 (SC); 2017 0 AIR(SC) 3698; 2017 3 Crimes(SC) 370; 2017 6 Supreme 313; 2017 0 Supreme(SC) 716; State through Central Bureau of Investigation Vs Dr. Anup Kumar Srivastava

I.O granted station bail by securing bail bonds of sureties on behalf of accused—This procedural order under Sec.41-A Cr.P.C cannot be equated with an order passed by a Court under Sec.438 Cr.P.C.—There is no procedural violation—Committal Court directed to submit bail bonds produced before I.O by accused and sureties to Special Sessions Judge-cum-IV Additional District Judge, Tirupati, in which case they shall be deemed to be due compliance under Sec.209(a) of Cr.P.C by Sessions Court.
the procedure contemplated under Sec.41 and 41-A Cr.P.C, squarely apply to them and those Sections have not made any express distinction between the offences punishable under IPC and other Special enactments.

The offences alleged in the instant case are under Sec.323, 506 IPC and Sec.3(1)(x) of SC, ST (POA) Act, 1989. **2017 (2) ALD (Crl) 756; 2017 0 Supreme(AP) 203; Konidhana Ananda Sharma Vs State of A.P.**

Since the conviction in that case is appealable before the Sessions Court, the complainant, who is the victim, can prefer the appeal against the acquittal before the same Sessions Court and he need not necessarily approach the High Court for leave under Sec.378(4) Cr.P.C. In similar circumstances, in Laxmilal Meariaya vs. Rajendra Kumar In S.B.Crl.Leave to Appeal No.193/2011 & batch dated 01.05.2012 of Rajasthan High Court, learned Judge of High Court of Rajasthan at Jodhpur has held that since the judgments in that case were passed by the Magistrates after the amendment of Sec.372 Cr.P.C, the complainants in those cases can prefer the appeal before the Court of Sessions under Sec.372 Cr.P.C and they need not approach the High Court under Sec.378(4) Cr.P.C.
Veena S. Rajnalkar vs. N.Bhargavi Devi and another, 2012 (1) ALD (Crl.) 562 (AP), not applicable to cases after the amendment and introduction of Sec 372 CrPC.
2017 0 Supreme(AP) 323; 2017(2) ALD (Crl) 769; Peela Lakshmi Ganapathi Vs State of A.P.

The appellants cannot claim relief based on negative equality, that other accused is wantonly not arrested by I.O.
2017 0 Supreme(AP) 290; 2017 (2) ALD (Crl) 772; Muzaffar Hussain Rizwan @ Rizwan @ Abulhasan and another Vs The State of Telangana.

the other contentions on the maintainability of the revision, once it affects the Rights of the parties, the revision definitely lies, though an outcome of the interlocutory order and even for that matter, apart from the power of the Court, either under Article 227 of the Constitution of India or under Section 483 and 482 of Cr.P.C, that are also available to invoke, as held by explaining MOHIT @ SONUs case and by approving DHARIVAL TOBACCO PRODUCTSs case and MADHU LIMAYEs case, while referring to several of the earlier expressions in the latest expression of the 3-Judges Bench of the Apex Court in PRABHU CHAWLA v. STATE OF RAJASTHAN.
what the material speaks is, E.D may be outcome of different causes. It no way speaks, it cannot be deciphered of specific causes as if so, the statistics on different causes not possible to give. Once such is the case, the test can be permitted for submitting to the same is not a testimonial compulsion and not within the meaning of to be a witness but for furnishing of information in its larger sense and no way affects the Right to Life for same is within the meaning of procedure established by law and within the sweep of such other tests to cover by the provisions of law.
2017 1 ALT(Cri) 422; 2017 0 CrLJ 3548; 2017 0 Supreme(AP) 53; 2017(2) ALD (Crl) 777; Naveen Krishna Bothireddy Vs State of Telangana and another.

The judgment in PV Anvar Vs PK Basheer is applicable retrospectively. In a civil case a party can, if he chooses, waive the proof, but in a criminal case strict proof ought to be given that the witness is incapable of giving evidence
It is nobody's case that CDRs which are a form of electronic record are not inherently admissible in evidence. The objection is that they were marked before the Trial Court without a certificate as required by Section 65B (4). It is clear from the judgments referred to supra that an objection relating to the mode or method of proof has to be raised at the time of marking of the document as an exhibit and not later. The crucial test, as affirmed by this Court, is whether the defect could have been cured at the stage of marking the document. Applying this test to the present case, if an objection was taken to the CDRs being marked without a certificate, the Court could have given the prosecution an opportunity to rectify the deficiency. It is also clear from the above judgments that objections regarding admissibility of documents which are per se inadmissible can be taken even at the appellate stage. Admissibility of a document which is inherently inadmissible is an issue which can be taken up at the appellate stage because it is a fundamental issue. The mode or method of proof is procedural and objections, if not taken at the trial, cannot be permitted at the appellate stage. If the objections to the mode of proof are permitted to be taken at the appellate stage by a party, the other side does not have an opportunity of rectifying the deficiencies.

2017 0 AIR(SC) 3441; 2017 3 Crimes(SC) 234; 2017 8 SCC 570; 2017 5 Supreme 816; 2017 0 Supreme(SC) 666; 2017 (2) ALD (Crl) 814 (SC); 2017 3 SCC Cri 663; Sonu @ Amar Vs State of Haryana.

Evidence of child witness can form basis of conviction if reliable and convincing.
2017 0 AIR(SC) 3437; 2017 2 Crimes(SC) 434; 2017 4 Supreme 415; 2017 0 Supreme(SC) 572; Satish and Another Vs State of Haryana.

the offence punishable under Section 324 of the IPC is non-compoundable by virtue of the Criminal Law (Amendment) Act, 2005 (Act No.25 of 2005) which came into force with effect from 23.06.2006.
The L.R's of injured can compound U/Sec. 320(4)(b) CrPC.
Compoundable offences can be compounded even at the stage of Appeal.
2017 0 AIR(SC) 3531; 2017 0 Supreme(SC) 893; 2017(2) ALD (Crl) 841(SC) ; Shankar Yadav and another Vs State of Chhattisgarh.

The law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the court granting bail to consider, among other circumstances, the following factors also before granting bail; they are:

(a) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.

(b) Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.

(c) Prima facie satisfaction of the court in support of the charge.

22. Before concluding, we must note that though an accused has a right to make successive applications for grant of bail, the court entertaining such subsequent bail applications has a duty to consider the reasons and grounds on which the earlier bail applications were rejected. In such cases, the court also has a duty to record the fresh grounds which persuade it to take a view different from the one taken in the earlier applications.

23. At the stage of granting bail, a detailed examination of evidence and elaborate documentation of the merits of the case has not to be undertaken. The grant or refusal to grant bail lies within the discretion of the court. The grant or denial is regulated, to a large extent, by the facts and circum
2017 (2) ALD (Crl) 861 (SC); 2017 0 AIR(SC) 3986; 2017 0 Supreme(SC) 768; Lt. Col. Prasad Shrikant Purohit Vs. State of Maharashtra.

the Magistrate, in both the contingencies, namely; when he takes cognizance of the offence or discharges the accused, would be committed to a course, whereafter though the investigating agency may for good reasons inform him and seek his permission to conduct further investigation, he suo motu cannot embark upon such a step or take that initiative on the request or prayer made by the complainant/informant. Not only such power to the Magistrate to direct further investigation suo motu or on the request or prayer of the complainant/informant after cognizance is taken and the accused person appears, pursuant to the process, issued or is discharged is incompatible with the statutory design and dispensation, it would even otherwise render the provisions of Sections 311 and 319 Cr.P.C., whereunder any witness can be summoned by a Court and a person can be issued notice to stand trial at any stage, in a way redundant
2017 0 AIR(SC) 4021; 2017 0 Supreme(SC) 756; 2017 (2) ALD (Crl) 877; Athul Rao Vs State of Karnataka.

It is thus to be seen that irrespective of the applicability of clauses (a) to (g), Section 223 gives to the Magistrate a discretion to amalgamate cases. The Magistrate has to be satisfied that persons would not be prejudicially affected and that it is expedient to amalgamate cases.
2017 0 AIR(SC) 3389; 2017 8 SCC 1; 2017 4 Supreme 321; 2017 0 Supreme(SC) 441; (2017) 3 SCC (Cri) 569; State of Jharkhand Through SP, CBI Vs. Lalu Prasad @ Lalu Prasad Yadav.

Does the NDPS Act envisage that the mixture of narcotic drug and seized material/substance should be considered as a preparation in totality or on the basis of the actual drug content of the specified narcotic drug?, referred to larger bench in view of divergent views in different judgments of apex court. **2017 3 Crimes(SC) 66; 2017 8 SCC 162; 2017 0 Supreme(SC) 620; 2017 3 SCC Cri 616; Hira Singh and another Vs. UOI and Another.**

heir of the complainant can be allowed to file a petition under Section 302 of the Code to continue the prosecution. **2017 0 AIR(SC) 5126; 2017 0 Supreme(SC) 1068; Chand Devi Daga & Ors. Vs. Manju K. Humatani & Ors.**

Code of criminal procedure, 1973 – Section 195(1)(b)(ii) – Applies only to documents already produced or given in evidence in any court – Instantly, there is no case that forgery was committed after the letter was filed in the Court – Section 195(1)(b)(ii) not attracted. **2017 0 Supreme(SC) 1069; SENIOR MANAGER (P&D), RIICO LTD. Vs. THE STATE OF RAJASTHAN & ANR**

Criminal Procedure Code, 1973 — S. 311 — Discretionary power of court under, to summon any person as a witness or examine any person in attendance though not summoned as a witness or recall or re-examine any person already examined: Power under S. 311 CrPC must be exercised with caution and circumspection and only for strong and valid reasons. Recall of a witness already examined is not a matter of course and discretion given to court in this regard has to be exercised judicially to prevent failure of justice. Reasons for exercising said power should be spelt out in order. Delay in filing application for recalling a witness is one of the important factors which has to be explained in the application. [Ratanlal v. Prahlad Jat, (2017) 9 SCC 340]

Penal Code, 1860—Ss. 302/34—Common intention—Existence of — How determined: Common intention is a state of mind. It is not possible to read a person's mind. There can hardly be direct evidence of common intention. Existence or non-existence of common intention amongst accused has to be deciphered cumulatively from their conduct and behaviour in facts and circumstances of each case. Events prior to occurrence as also after, and during occurrence, are all relevant to deduce if there existed any common intention. There can be no straitjacket formula. Absence of any overt act of assault, exhortation or possession of weapon, cannot be singularly determinative of absence of common intention. [Rajkishore Purohit v. State of M.P., (2017) 9 SCC 483]

(i) The trial courts must carry out the mandate of Section 309 of the Cr.P.C. as reiterated in judgments of this Court, inter alia, in State of U.P. versus Shambhu Nath Singh and Others9, Mohd. Khalid versus State of W.B. 10 and Vinod Kumar versus State of Punjab11 .
(ii) The eye-witnesses must be examined by the prosecution as soon as possible.
(iii) Statements of eye-witnesses should invariably be recorded under Section 164of the Cr.P.C. as per procedure prescribed thereunder.
14. The High Courts may issue appropriate directions to the trial courts for compliance of the above.
15. A copy of this order be sent by the Secretary General to the Registrars of all the High Courts for being forwarded to all the presiding officers in their respective jurisdiction.
Doongar Singh vs The State Of Rajasthan; https://indiankanoon.org/doc/99075271/

NOSTALGIA

Court considered the matter in Lalu Prasad alias Lalu Prasad Yadav v. State through CBI (A.H.D.), Ranchi, Jharkhand (2003) 11 SCC 786. It was urged on behalf of Lalu Prasad Yadav, Dr. Jagannath Mishra and others that it was a case of only a single conspiracy and therefore there should be amalgamation of trials as per the provisions contained in section 223 Cr.PC. This Court opined that charges were not framed at that stage. It is for trial court to decide the prayer for joint trial. There were large number of accused persons. It was also observed that main offence was under the PC Act and conspiracy was an allied offence. This Court laid down thus :-

"11. ….Thus it has already been held, by a three-Judge Bench of this Court, that the main offences were under the Prevention of Corruption Act. It has been held that the offence of conspiracy is an allied offence to the main offence under the Prevention of Corruption Act. The cases are before the Special Judges because the main offences are under the Prevention of Corruption Act. The main offence under the Prevention of Corruption Act in each case is in respect of the alleged transaction in that case. As conspiracy is only an allied offence, it cannot be said that the alleged overt acts are in the course of the same transaction. We are bound by this decision. In any case we see no reason to take a different view. As it has already been held that the charge of conspiracy is only an allied charge and that the main charges (under the Prevention of Corruption Act) are in respect of separate and distinct acts i.e. monies siphoned out of different treasuries at different times, we fail to see as to how these cases could be amalgamated."

"14. Before we part it must be mentioned that it had been complained that the appellants would be forced to hear the same evidence 5/6 times. If the appellants or any of them feel aggrieved by this and if they so desire, they may apply to the Special Judges that evidence recorded in one case and documents marked as an exhibit in one case be used as evidence in other cases also. This would obviate their having to hear the same evidence in 5/6 different cases. We are sure that if such an application is made, the same will be considered by the Special Judge on its merit, after hearing all the other accused". (Emphasis Supplied)

This Court had noted the grievance that accused persons would be forced to hear the same evidence 5-6 times, but ordered that they may apply to the Special Judges that evidence recorded in one case and the document marked as an exhibit in one case be used as evidence in other cases also

NEWS

- GOVERNMENT OF ANDHRA PRADESH Public Services – Declaration of probation and regularization of services in the cadre of Additional Public Prosecutors Grade-II – Orders –Amendment –Issued. HOME (COURTS.A) DEPARTMENT G.O.RT.No. 898 Dated: 20-11-2017.

- GOVERNMENT OF TELANGANA Public Services – Smt. K.Menusree, Assistant Public Prosecutor, Judicial First Class Magistrate Court, Atmakur, Mahabubnagar District – Transferred and posted as Assistant Public Prosecutor, Special Judicial First Class Magistrate Court for Excise Cases, Mahabubnagar on medical grounds in the existing vacancy in relaxation of ban on transfer orders – Orders - Issued. HOME (COURTS.A) DEPARTMENT G.O.Rt.No. 1547 Dated: 29-11-2017

ON A LIGHTER VEIN

I always try to avoid giving advice during my remarks. As the little schoolgirl wrote, "Socrates was a wise, Greek philosopher who walked around giving advice to people. They poisoned him."