Vol- VII
Part-1

Prosecution Replenish

An Endeavour for Learning and Excellence

JANUARY, 2018

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

The Great thing about getting older is that you don't lose all the other ages you've been.

Madeleine L'Engle

CITATIONS

Interpretation of statute – Amendment – Whether retrospective –Change of 'forum' of trial by amendment being generally procedural would be presumed to be retrospective. (Para 34, 35)
Interpretation of statute – Amendment – Change of forum – Substantive or procedural – May be procedural when remedy yet to be availed – Will be procedural where remedy already availed – In case of remedy already availed the 'forum' as under unamended provision would continue to have jurisdiction – Where no cognizance is taken, no vested right can be claimed with reference to 'forum' as per unamended provision.
2017(3) ALT (Crl) 190 ; 2017 3 Crimes(SC) 289; 2017 6 Supreme 449; 2017 0 Supreme(SC) 769; Securities and Exchange Board of India Vs Classic Credits Ltd.

The statement has to be read as a whole. Reading one sentence here and there does not give full purport of evidence.
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.
2017 0 AIR(SC) 2091; 2017 2 Crimes(SC) 417; 2017 (3) ALT (Crl) 241 (SC); Surajsinh Alias Sonu Surajsinh Collectorsinh Alias Sevaram Rajput Vs. State of Gujarat.

the grant of bail to the appellant herein shall be no consideration for grant of bail to other accused persons in the case and the prayer for bail by other accused persons (not before us) shall be considered on its own merits.
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 circumstances of each particular case. But at the same time, right to bail is not to be denied merely because of the sentiments of the community against the accused.

2017 0 AIR(SC) 3986; 2017(3) ALT (Crl) 271 (SC); 2017 0 Supreme(SC) 768; Lt. Col. Prasad Shrikant Purohit Vs State of Maharasthra.

The testimony of an injured witness enjoys highest credibility, for, not only his presence at the scene of occurrence is proved but also he is not expected to shield the real assailant and falsely implicate innocents.

As far as non-seizure of the bloodstained clothes and bloodstains from the seat of the car are concerned, it does not create a dent in the prosecution version. In this context, the authority in State of Rajasthan v. Arjun Singh (2011 (9) SCC 115) can profitably be referred to. In the said decision the Court has opined that absence of evidence regarding recovery of used pellets, bloodstained clothes etc., cannot be taken or construed as no such occurrence had taken place. It has been further observed that when there is ample unimpeachable ocular evidence and the same has received corroboration from the medical evidence, even the non-recovery of weapon does not affect the prosecution case.

2017 0 Supreme(AP) 296; 2017(3) ALT (Crl) 225 (D.B) (Hyd);2017 (2) ALD (Crl) 1026; Dasari Gottam Veeranna and another Vs. State of A.P.

Court cannot belittle the sanctity and value of Ex.P19 dying declaration merely because of the deceased's extent of burns and **as the duty Doctor was not examined** before the Sessions Court. No doubt, the lips of the deceased were burnt but P.W.16, the Judicial Magistrate, categorically stated that she was still in a position to speak loudly. There is no reason to suspect P.W.16 and no irrefutable medical evidence was produced in support of the opinion of P.W.12, who conceded that she did not attend upon the deceased. The dying declaration recorded by P.W.16 bears the endorsements of the duty Doctor before and after recording of the statement and P.W.16 independently satisfied himself as to the mental capacity of the deceased to make the statement. Therefore, **no further evidence was required on this count. 2017 0 Supreme(AP) 386; 2017(3)ALT (crl) 278(DB) (Hyd).**

Sections 302 and 304-B IPC are not mutually exclusive. While a person can be charged for both the offences under Sections 302 and 304-B IPC, if the facts prima facie attract the ingredients of both these Sections, he cannot be convicted for both the said offences falling under these provisions. The reason for this is not far to seek. Section 304-B IPC, which deals with dowry death, is attracted where the death of a

woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry. Section 113-B of the Indian Evidence Act raises a presumption as to dowry death. Under this provision, when the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman has been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death. In contrast, under Section 302 IPC, causing of death by a person is established either by direct or circumstantial evidence.

2017 0 Supreme(AP) 298; 2017(3) ALT (Crl) 301 (DB) (Hyd); 2017 (2) ALD (Crl) 1034; Shaik Jani Pasha and another Vs State of A.P.

Locus standi – Traditional view – The person aggrieved or affected has locus standi – Now, 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 – Concept not applicable to criminal jurisprudence – Anyone can set criminal law in motion.

Section 311 – Power to recall and re-examination any person as witness – Reasons should be spelt out – Delay in filing application u/s 311 is an important factor – Instantly, application filed after examination and cross examination of the witnesses and after a lapse of 14 months on ground that earlier statement was given under pressure – No reasons given for delay in filing the application – Not acceptable.

(2017) 3 SCC (Cri) 729; 2017 0 AIR(SC) 5006; 2017 3 Crimes(SC) 408; 2017 9 SCC 340; 2017 0 Supreme(SC) 936; Ratanlal Vs Prahlad Jat and others.

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.

2017 0 AIR(SC) 3588; 2017 3 Crimes(SC) 363; 2017 9 SCC 483; 2017 6 Supreme 96; 2017 0 Supreme(SC) 707; (2017) 3 SCC (Cri) 749; Rajkishore Purohit Vs State of M.P. and others.

'Same kind of offence' and 'same offence' – Distinction.

In a Substantive offence of defalcation where conspiracy is an allied offence and parties are different, issue of estoppel does not arise.

Conspiracy may be general or separate; larger and smaller conspiracy and may develop in successive stages involving different accused persons.

There cannot be contradicting decisions in two cases on same facts, same question of law ignoring binding decisions of Supreme court.

It would be premature to raise plea of issue of estoppel before evidence is recorded for different sets of accusations of different offences for different periods.

CBI ought to act with more circumspection and following its Manual.
2017 0 AIR(SC) 3389; 2017 8 SCC 1; 2017 (2) ALD (Crl) 898; 2017 4 Supreme 321; 2017 0 Supreme(SC) 441;State of Jharkhand Vs. Lalu Prasad Yadav

The evidence of the mother of the victim clearly shows that it was the respondent-accused who took away the victim. The victim and the accused were seen together by PW-2, Gajanan Marutrao Sonule on the date of commission of offence. The victim immediately after the occurrence narrated the same to her mother as to what happened as reflected in the FIR and the version of the PW-1. Rape has been confirmed by medical evidence. Identity of accused is not in dispute. In these circumstances the trial court having convicted the respondent, the High Court was not justified in setting aside the conviction.
special centres for examination of vulnerable witnesses in criminal cases in the interest of conducive environment in Court so as to encourage a vulnerable victim to make a statement. Such centres ought to be set up with all necessary safeguards.
Setting up of one centre for vulnerable witnesses may be perhaps required almost in every district in the country. All the High Courts may take appropriate steps in this direction in due course in phases. At least two such centres in the jurisdiction of each High Court may be set up within three months from today. Thereafter, more such centres may be set up as per decision of the High Courts. A copy of this order be sent to all the High Courts for necessary action.
https://indiankanoon.org/doc/96251512/; 2017 (2) ALD (Crl) 930 (SC); State of Maharasthra Vs Bandu @ Daulat

the Investigating Officer was in possession of materials pointing out circumstances which create suspicion of the commission of an offence, in particular, the one under investigation and he having exercised powers under Section 102 of the Code, **which he could, in law**, therefore, could legitimately seize the bank accounts of the appellants after following the procedure prescribed in sub-Section (2) and sub-Section (3) of the same provision. As aforementioned, the Investigating Officer after issuing instructions to seize the stated bank accounts of the appellants submitted report to the Magistrate concerned and thus complied with the requirement of sub-Section (3).
2018 0 AIR(SC) 27; 2017 0 Supreme(SC) 1199; Supreme Court in CRIMINAL APPEAL NO. 1099 OF 2017; TEESTA ATUL SETALVAD Vs. THE STATE OF GUJARAT; dt. 15th December, 2017.

In our considered opinion, the High Court had no jurisdiction to direct the Sessions Judge to "allow" the application for grant of bail. Indeed, once such direction had been issued by the High Court then what was left for the Sessions Judge to decide except to follow the directions of the High Court and grant bail to respondent Nos. 2 and 3. In other words, in compliance to the mandatory directions issued by the High Court, the Sessions Judge had no jurisdiction to reject the bail application but to allow it.
No superior Court in hierarchical jurisdiction can issue such direction/mandamus to any subordinate Court commanding them to pass a particular order on any application filed by any party. The judicial independence of every Court in passing the orders in cases is well settled. It cannot be interfered with by any Court including superior Court.

When an order is passed, it can be questioned by the aggrieved party in appeal or revision, as the case may be, to the superior Court. It is then for the Appellate/Revisionery Court to decide as to what orders need to be passed in exercise of its Appellate/Revisionery jurisdiction. Even while remanding the case to the subordinate Court, the Superior Court cannot issue a direction to the subordinate Court to either "allow" the case or "reject" it. If any such directions are issued, it would amount to usurping the powers of that Court and would amount to interfering in the discretionary powers of 9 the subordinate Court. Such order is, therefore, not legally sustainable. **Supreme Court in CRIMINAL APPEAL NO. 2178 OF 2017; 2017 0 AIR(SC) 5848; 2017 0 Supreme(SC) 1189; Madan Mohan Vs. State of Rajasthan & Ors. December 14, 2017**

Criminal Law Amendment Ordinance 1944- When properties of an accused is already provisionally attached and he dies but the properties are inherited by his son who himself is an accused facing trial in many cases there will be no fault in making the interim attachment absolute.
When the accused is already convicted and the prosecution has not represented that any property has been attached, court was not obliged to pass any order u/s 12(1).
Court has ample power to deal with attached properties after termination of criminal proceedings.
Attachment of properties is not confined to properties procured out of defalcated amount. Any other property can be attached to recover the defalcated amount.
2017(2) ALD (Crl) 932; 2017 0 AIR(SC) 5443; 2017 0 Supreme(SC) 1154; Ravi Sinha Vs State of Jharkhand.

Dying declaration—There is no rule that Police Officer cannot record dying declaration—Any person can record dying declaration provided statement recorded by said person must repose confidence.
In the cross-examination of PWs.1 and 6, it is suggested that the deceased had died by consuming pesticide poison due to unbearable stomach pain as the deceased was suffering from asthma. However, the same was denied by the witnesses, which establishes that the deceased had died due to consumption of pesticide poison being forcibly administered by the appellant.
2017 (2) ALD (Crl) 970; 2017 0 Supreme(AP) 188; Manchala Balaiah Vs State of A.P.

The Director General Police shall direct all the Subordinate Officers, particularly the Investigating Officers, to collect the samples from the dead body, i.e., hair, tissues, blood, bloodstains, etc., and send them for DNA test for authentic identification of the deceased persons. The Registry is directed to communicate the copy of judgment to the Director General Police, State of Telangana and the State of Andhra Pradesh, who in turn, shall communicate the same to all their Subordinate Officers including the Investigating Officers for compliance.
2017 (2) ALD (Crl) 1015; 2017 0 Supreme(AP) 361; Gopu Srinivas Reddy @ Parandamulu, S/o. Limbaiah Vs State of A.P.

As mentioned supra, the High Court has discharged the accused no2/respondent no.1 only on the ground that there is a discrepancy in the time of the occurrence. In the complaint it is mentioned as 11:30 a.m. whereas in the complainant's statement recorded under Section 161(3) of the Cr.P.C., it is mentioned as 5:30 p.m. In our considered opinion, only on the basis of such discrepancy, the High Court should not have discharged the accused. The High Court should have taken into consideration the other material on record to find out as to whether prima facie case is made out against the accused or not for framing of charge.
2017 0 Supreme(SC) 1225; State by the Inspector of Police, Chennai Vs S. Selvi and another

Once the two ingredients of section 149 are found fulfilled, it would neither be open to the court to see as to who actually did the offensive act nor to require the prosecution to prove which of the members did which of the two ingredients.
Factors deciding whether the assembly had common object to cause murder of the deceased are nature of weapons used, manner and sequence of attack made on the deceased and the circumstances under which the occurrence took place. It is an inference to be deduced from the facts and circumstances of each case.
By granting special leave Supreme Court does not convert itself into an appellate court to appreciate evidence for third time.
Acquittal u/s 27(2) and 27(3), Arms Act, 1959 on the sole ground of non-obtaining of prior sanction from District Magistrate to prosecute would be of no avail in conviction u/s 302 IPC.**2017 0 Supreme(SC) 1187; Joseph Vs State of Tamilnadu.**

Prima facie, on a perusal of Section 497 of the Indian Penal Code, we find that it grants relief to the wife by treating her as a victim. It is also worthy to note that when an offence is committed by both of them, one is liable for the criminal offence but the other is absolved. It seems to be based on a societal presumption. Ordinarily, the criminal law proceeds on gender neutrality but in this provision, as we perceive, the said concept is absent. That apart, it is to be seen when there is conferment of any affirmative right on women, can it go to the extent of treating them as the victim, in all circumstances, to the peril of the husband. Quite apart from that, it is perceivable from the language employed in the Section that the fulcrum of the offence is destroyed once the consent or the connivance of the husband is established. Viewed from the said scenario, the provision really creates a dent on the individual independent identity of a woman when the emphasis is laid on the connivance or the consent of the husband. This tantamounts to subordination of a woman where the Constitution confers equal status. A time has come when the society must realise that a woman is equal to a man in every field. This provision, prima facie, appears to be quite archaic. When the society progresses and the rights are conferred, the new generation of thoughts spring, and that is why, we are inclined to issue notice. **2017 0 Supreme(SC) 1216; Joseph Shine Vs UOI.**

In the absence of evidence proving intention of the appellant in committing the offence upon PW-3-Phoola Devi only because she belongs to Scheduled Caste community, the conviction of the appellant under Section 3(2)(v) of the SC/ST Prevention of Atrocities Act cannot be sustained.

2017 0 AIR(SC) 5819; 2017 0 Supreme(SC) 1170; Ashrafi Vs State of U.P.

Accused has no right to invoke section 91 CrPC
2017 0 AIR(SC) 5846; 2017 0 Supreme(SC) 1168; Nitya Dharmananda @ K. Lenin & Anr. Vs Sri Gopal Sheelum Reddy Also Known As Nithya Bhaktananda and Anr.

Interpretation of statute – Prevalence of statutes – Later enactment, if containing a non-obstante clause and being a special enactment will prevail over an earlier enactment – Earlier enactment however, if a special enactment, will prevail over subsequent general enactment even if the latter contains non-obstante clause.
2017 0 AIR(SC) 5714; 2017 0 Supreme(SC) 1159; ATMA RAM PROPERTIES PVT. LTD. Vs THE ORIENTAL INSURANCE CO. LTD..

NOSTALGIA

In Amanullah and Anr. v. State of Bihar and Ors. (2016) 6 SCC 699, this Court has held that the aggrieved party cannot be left to the mercy of the State to file an appeal. It was held as under :-
"19…… Now turning our attention towards the criminal trial, which is conducted, largely, by following the procedure laid down in CrPC. Since, offence is considered to be a wrong committed against the society, the prosecution against the accused person is launched by the State. It is the duty of the State to get the culprit booked for the offence committed by him. The focal point, here, is that if the State fails in this regard and the party having bona fide connection with the cause of action, who is aggrieved by the order of the court cannot be left at the mercy of the State and without any option to approach the appellate court for seeking justice".

NEWS

- Andhra Pradesh-Public Services–Prosecuting Officers - Retirements during the year 2018 – Notification – Orders – Issued, vide G.O.RT.No. 980 HOME (COURTS.A) DEPARTMENT Dated: 15-12-2017.

S.No.	Name and Designation	Date of Birth	Date of Retirement
(1)	S/Sri (2)	(3)	(4)
1	I.Nagamalleswara Rao, Addl.PP Gr-I/D.D. of Prosecutions/Spl.PP, Spl.Court for SC& ST(POA) Act, 1989, Srikakulam	01-08-1958	31-07-2018
2	Y.Parusuram, Addl.P.P.Gr-I/D.D. of Prosecutions, I Addl.Dist.& Sessions Court, Vizianagaram	10-07-1958	31-07-2018
3	Sri K.Prudhviraju, Addl.P.P.Gr-I/D.D. of	10-12-1958	31-12-2018

	Prosecutions, I Addl.Dist.& Sessions Court-cum Metropolitan Sessions Court, Visakhapatnam		
4	B.Rajasekhar Reddy, Addl. Public Prosecutor Grade-I / Spl.P.P., Spl.Court for SC & ST(POA) Act, 1989, Kadapa.	15-01-1958	31-01-2018

- Public Services – A.P.State Prosecution Services - Promotion to the posts of Public Prosecutors/Joint Director of Prosecutions - Panel of Additional Public Prosecutions, Grade-I / Deputy Director of Prosecutions - For the panel year 2017-2018 – Panel Approved Orders - Issued vide **G.O.MS.No. 197 HOME (COURTS.A) DEPARTMENT Dated: 26-12-2017.**

Sl.No.	Name of the Officer S/Sri/Smt.	
1	B.RAMAKOTESWAR RAO	RP-54
2	V.RAGHU RAM	RP-55
3	**CARRY FORWARD**	DA RP-56 (PH)
4	M. VIJAYA	RP-57
5	**CARRY FORWARD**	STRP(W)-58
6	AJOY PREM KUMAR LAM	RP-59
7	V. SUBBALAKSHMMA	RP-60
8	K.PRUTHVI RAJ-SC	RP-61
9	M.P. PRASUNA KUMARI-SC	RP-62
10	P.VENKATA SUBBAIAH	RP-63
11	M.V.DURGA PRASAD	RP-64

- GOVERNMENT OF TELANGANA ABSTRACT Public Services – Prosecuting Officers – Promotion and postings to certain Senior Assistant Public Prosecutors as Additional Public Prosecutors Grade-II on temporary basis - Orders – Issued. Vide G.O.Rt.No. 1677 HOME (COURTS.A1) DEPARTMENT Dated: 30-12-2017.

Sl. No.	Name and Designation of the Senior Assistant Public Prosecutors S/Sri	Name of the post on promotion and place of posting
1	R.Upender, Senior Assistant Public Prosecutor, Principal JMFC Court, Bhongir, Nalgonda District	Additional Public Prosecutor Grade-II, Assistant Sessions Court, Khammam
2	T.Venkateshwarlu, Senior Assistant Public Prosecutor, JMFC Court, Narsampet, Warangal District	Additional Public Prosecutor Grade-II, Assistant Sessions Court, Peddapalli.
3	Ayesha Rafath, Senior Assistant Public Prosecutor, JMFC Court, Tandur, Ranga Reddy District	Additional Public Prosecutor Grade-II, Assistant Sessions Court, Vikarabad.
4	N.Srinivas, Senior Assistant Public Prosecutor working on deputation as Legal Advisor-cum-	Additional Public Prosecutor Grade-II, Assistant Sessions

	Special Public Prosecutor, Office of the Director General, Anti Corruption Bureau, Hyderabad	Court, Nalgonda
5	B.Krishna Mohan Rao, Senior Assistant Public Prosecutor, IX ACMM Court, Hyderabad	Additional Public Prosecutor Grade-II, Assistant Sessions Court, Mahaboobabad, Warangal District

- Prosecution Replenish Congratulates the promoted Prosecutors of both A.P. and Telangana States.

- **GOVERNMENT OF TELANGANA** PUBLIC SERVICE – Judicial Service – High Court of Judicature at Hyderabad -Retirements of certain District & Sessions Judges and Senior Civil Judges working in both the States of Telangana and Andhra Pradesh during the year 2018 on attaining the age of superannuation at 60 years - Notified Vide **G.O.RT.No.735 LAW (LA&J - SPL.C) DEPARTMENT Date:08 -12-2017.**

SL.N	NAME AND DESIGNATION OF THE OFFICER	DATE OF BIRTH	DATE OF SUPERANNUATION ON ATTAINING THE AGE OF 60 YEARS IN PURSUANCE OF THE A.P. PUBLIC EMPLOYMENT ACT (REGULATION OF THE AGE OF SUPERANNUATION) ACT, 1984 AS AMENDED BY ACT NO.42 OF 2006
(1)	(2)	(3)	(4)
1.	**Sri D.Vasudeva Rao,** District and Sessions Judge now working as Presiding Officer, Debts Recovery Tribunal, Visakhapatnam.	05.01.1958	31.01.2018
2.	**Sri P.Sannidhi Rao,** Chairman, Cooperative Tribunal, Vijayawada, Krishna District.	09.01.1958	31.01.2018
3.	**Sri Y.Parusuram,** V Additional District and Sessions Judge, Rajamahendravaram, East Godavari District.	11.01.1958	31.01.2018.
4.	**Sri C.S.S.V.Durga Prasad,** District and Sessions Judge working on Other Duty as Registrar (Vigilance), High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh	12.01.1958	31.01.2018.

5.	**Sri C.Venkatesh,** III Addl.Chief Judge, City Civil Court, Hyderabad	02.02.1958	28.02.2018.
6.	**Smt. D.Lakshi Kameswari,** I Addl.District and Sessions Judge, Medak at Sangareddy.	17.04.1958	30.04.2018.
7.	**Sri P.Uday Kumar,** I Addl.District and Sessions Judge, Nizamabad	28.04.1958	30.04.2018.
8.	**Sri K.Sivarama Krishna,** I Addl.Special Judge for CBI Cases, Visakhapatnam.	12.05.1958	31.05.2018
9.	**Sri Ch.K.Durga Rao,** Prl.District and Sessions Judge, Chittoor.	04.06.1958	30.06.2018
10.	**Sri D.Viswanadham,** **Senior Civil Judge, Yellamanchili, Visakhapatnam District**	**30.06.1958**	**30.06.2018**
11.	**Sri K.Venkataramana Reddy,** IV Addl.District and Sessions Judge, Visakhapatnam.	01.07.1958	30.06.2018
12.	**Sri V.Srirama Chandra Murthy,** I Addl.District and Sessions Judge, Chittoor.	15.07.1958	31.07.2018
13.	**Sri S.S.S.Jaya Raj,** IX Addl.District and Sessions Judge (Fast Track Court), Machilipatnam, Krishna District.	19.07.1957	31.07.2018
14.	**Sri M.Vengaiah,** Special Judge for SPE and ACB Cases-cum-III Addl.District and Sessions Judge, Vijayawada, Krishna District.	27.08.1958	31.08.2018
15.	**Sri G.Ravinder,** VII Addl.Chief Metropolitan Magistrate, Hyderabad.	13.09.1958	30.09.2018
16.	**Smt. S.Praveena,** formerly Special Judge for Economic Offences-cum-VIII Addl.Metropolitan Sessions Judge, Hyderabad now working as Presiding Officer, Debts Recovery Officer New, Hyderabad.	10.10.1958	31.10.2018
17.	**Sri N.Jaya Raj,** I Addl.District and Sessions Judge, Warangal.	25.10.1958	31.10.2018

ON A LIGHTER VEIN

Police officer talks to a driver: Your tail light is broken, your tires must be exchanged and your bumper hangs halfway down. That will be 300 dollars.

Driver: Alright, go ahead. They want twice as much as that at the garage.

A commemorative diary to mark 5 years of Prosecution Replenish has been inaugurated by Shri Niranjan Rao Garu, the Hon'ble Principal Secretary for Law, Government of Telangana And Shri Ch.Vidyasagar Garu, Hon'ble Member of Telangana State Public Service Commission Cum Ex DOP, (for both A.P & T.S), on 26/12/2017 at Hyderabad.

Vol- VII
Part-2

Prosecution Replenish

An Endeavour for Learning and Excellence

FEBRUARY, 2018

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

Every Teacher once was a student,
Every Winner once was a loser,
Every Expert once was a beginner,
But all of them have crossed the bridge called Learning.

Always Positive.

CITATIONS

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.
2017(3) ALT (Cri) 379(SC) ; 2017 0 AIR(SC) 4904; 2017 0 Supreme(SC) 1014; Independent Thought Vs UOI & others.

Before parting with the case, we deem it appropriate to note our distress and concern as to how cases of homicide and other heinous offences are being dealt with by the police and the medical fraternity. The case on hand is a prime example to demonstrate casual and careless police investigation. The various lapses in the investigation noted above, most crucial of which was the failure of the Investigating Officer to either get the case properties subjected to chemical examination or in suppressing the report of such chemical examination, indicates the biased manner in which the investigation proceeded. The Investigating Officer did not even adhere to the basic requisite investigative processes, such as conducting a test identification parade in relation to the independent witness, P.W.6, who claimed to have seen the accused at the relevant time. Further, the statement of the Investigating Officer that he decided that the accused was the culprit after recording the Section 161 CrPC statement of P.W.4 manifests that the investigation thereafter was only tailored to arraign the accused but not to probe the evidence available and independently investigate as to who was responsible for the homicide and how it was committed.

34. Equally lackadaisical was the approach of the doctor in conducting the post-mortem examination. In most cases, we find that despite there being evidence involving blood and DNA, no steps are taken to at least identify the blood group of the deceased, so that the same can be corroborated with the blood-stained evidence. DNA analysis, even if undertaken, does not yield any palpable result in most cases, for some strange reason. The post-mortem examination report does not contain a column with regard to the blood group of the deceased and in the event the doctor conducting the post-mortem examination is incapable of ascertaining the blood group, for want of infrastructure, steps should be taken to invariably send the blood of the deceased in every case to the Forensic Science Laboratory for identification of his blood group, so

mortem examination must consistently detail as to whether any food was found in the stomach/intestines of the deceased so as to narrow down the time frame within which he would have met with his death. In this regard, the doctor conducting the post-mortem must strive to narrow the time frame using advanced forensic skills which are now available, instead of baldly putting it in a bracket of 24 hours or more.

35. Unless steps are taken by the police and the medical fraternity to tighten and improve the investigative processes utilized by them, their investigation and consequential findings would be of little assistance in pinning the guilt upon those culpable of heinous offences, such as rape and murder.

2017 (3) ALT (Cri) 317 (DB) (Hyd); 2017 0 Supreme(AP) 465; Katta Modaiah Vs State of A.P.

Whether a particular act of the accused amounts to cruelty or not depends on the appreciation done in the light of other facts and circumstances. What may be an act of cruelty in one circumstance may not be so in another circumstance. The Courts have been expanding the meaning of the word 'cruelty' under Section 498-A IPC by appreciating the instances of alleged cruelty brought before them, with the help of the whole circumstances of the case. Hence, the contention of the counsel for the petitioners that a demand for purchase of computer for starting business was held to be not an act of cruelty in VIPIN JAISWAL's case (3 supra) cannot be appreciated to hold that the acts attributed to the accused, in this case, do not amount to cruelty. The further contention of the counsel is that the dates mentioned in the statement of the complainant would show that the couple lived together for very short time, in which time, the acts alleged against the accused are not believable. But it depends on the levels of modesty on the part of the individuals. It may not be possible for every individual to contain oneself and maintain modesty for a certain period and to restrain himself from exhibiting the crookedness lodged in his mind.

2017(3) ALT (Cri) 326 (HC); Muthoju Brahmaji & 3 ors Vs State of Telangana

it is well settled that a complaint need not be an encyclopedia.

2017(3) ALT(Cri) 340)HC); Pawan Agarwal Vs State of Telangana

Even though the evidence of P.W.2 is not supported by any other witness except P.W.1, the law is well settled that the evidence of the sole eyewitness can be relied upon for convicting the accused provided the Court is satisfied that his/her evidence is natural and does not suffer from serious contradictions. In Sunil Kumar v. State (Govt. of NCT of Delhi), the Supreme Court held that there is no legal impediment in convicting a person on the sole testimony of a single witness. That is the logic of Section 134 of the Indian Evidence Act, 1872 (in short the Evidence Act). But, if there are doubts about the testimony the courts will insist on corroboration. It is for the court to act upon the testimony of witnesses. It is not the number, the quantity, but the quality that is material. The time-honoured principle is that evidence has to be weighed and not counted. On this principle stands the edifice of Section 134 of the Evidence Act. The test is whether the evidence has a ring of truth, is cogent, credible and trustworthy, or otherwise.

P.W.1 receiving phone call at 8.00 a.m., his arriving at the scene of offence within five minutes, his gathering the details as to how the appellant has killed the deceased from

P.W.2 - the eyewitness, and his informing the Police through his cell phone would not only form part of the same transaction pertaining to the offence, but they are contemporaneous with the act which constitutes the offence or at least immediately thereafter. The above mentioned aspects are clearly associated with time, place and circumstances with the offence which thereby form integral part of the same transaction. Therefore, we have no hesitation to hold that the testimony of P.W.1 satisfies the doctrine of res gestae and thereby it lends corroboration to the evidence of P.W.2

2017 (3) ALT (Cri) 350 (DB); 2017 0 Supreme(AP) 345;Kaside Rajender Vs State

According to settled law laid down by various High Courts in India following the common law principles, when a statement is made in judicial proceedings like affidavits and pleadings, no action lies for a statement made by him in the affidavit in the course of judicial proceedings, even though it be alleged to have been made falsely and maliciously, and without any reasonable or probable cause.

2017(3) ALT (Cri) 379 (HC) ; Dhulipalla Venkateshwarlu Vs State of A.P.

When properties of an accused is already provisionally attached and he dies but the properties are inherited by his son who himself is an accused facing trial in many cases there will be no fault in making the interim attachment absolute.

When the accused is already convicted and the prosecution has not represented that any property has been attached, court was not obliged to pass any order u/s 12(1).

Court has ample power to deal with attached properties after termination of criminal proceedings.

Attachment of properties is not confined to properties procured out of defalcated amount. Any other property can be attached to recover the defalcated amount.

Ravi Sinha and others Vs State of Jharkand; 2018(1) ALT (Crl) 1 (SC); 2017 0 AIR(SC) 5443; 2017 0 Supreme(SC) 1154;

In an incident prior to 2009 amendment to section 372 CrPC, an injured eye witness can be heard even if he has not challenged the decision of the court below.

Hari Shankar Shukla Vs State of U.P.; 2018(1) ALT (Crl) 53 (SC); 2017 0 AIR(SC) 1959; 2017 2 Crimes(SC) 329; 2017 3 Supreme 813; 2017 0 Supreme(SC) 319;

if there is intent and knowledge then the same would be a case of Section 304 Part I and if it is only a case of knowledge and not intention to cause murder and bodily injury then the same would fall under Section 304 Part II.

Surain Singh Vs State of Punjab; 2018 (1) ALT (Crl) 62 (SC); 2017 0 AIR(SC) 1904; 2017 2 Crimes(SC) 137; 2017 5 SCC 796; 2017 3 Supreme 674; 2017 0 Supreme(SC) 323;

In view of the law declared by the Courts in the catena of judgments referred supra, it is clear that, if the order under challenge is allowed to sustain, would terminate or culminate the entire proceedings, is a determining factor to entertain a revision under Section 397 Cr.P.C.

in view of the law declared by the Apex Court in “Sethuraman Vs. Rajamanickam” (referred supra), the order passed on an application filed under Section 45 of Evidence Act is interlocutory in nature and against such an order, no revision is maintainable.
It is the contention of the learned counsel for the petitioner that the Court may compare admitted signatures with disputed signatures by exercising power under Section 73 of the Evidence Act. Therefore, it is left open to the Court to compare the admitted signatures with disputed signatures, if any. available on the documents marked before the Court and pass appropriate order.
Repalle Krishna Murthy Vs. Uppalla Nagendramma and others. 2018(1) ALT (Crl) 97(AP).

By omission of procedural rule, substantive provision is not affected.
The charge against the respondent was of evasion of excise duty under Section 9(1)(b) which remains unamended. The evasion was on account of the respondent having taken credit without following the procedure under Rule 56A. By omission of the said Rule, the charge did not suffer from any legal infirmity. Alternatively, it was submitted that Section 6 of the General Clauses Act applied to omission which was also repeal. It also applies to a Rule.
CHANDPAKLAL RAMANLAL SHAH AND ANR Vs. RELIANCE INDUSTRIES LTD; 2018(1) ALD(Crl) 16(SC); 2017 0 AIR(SC) 4964; 2017 9 SCC 309; 2017 0 Supreme(SC) 925;

In our considered opinion, the High Court had no jurisdiction to direct the Sessions Judge to "allow" the application for grant of bail. Indeed, once such direction had been issued by the High Court then what was left for the Sessions Judge to decide except to follow the directions of the High Court and grant bail to respondent Nos. 2 and 3. In other words, in compliance to the mandatory directions issued by the High Court, the Sessions Judge had no jurisdiction to reject the bail application but to allow it.
No superior Court in hierarchical jurisdiction can issue such direction/mandamus to any subordinate Court commanding them to pass a particular order on any application filed by any party. The judicial independence of every Court in passing the orders in cases is well settled. It cannot be interfered with by any Court including superior Court.
Madan Mohan Vs State of Rajasthan and others; 2018(1) ALD (Crl) 19(SC); 2017 0 AIR(SC) 5848; 2017 0 Supreme(SC) 1189;

The principal submission which has been urged on behalf of the State is that there was a manifest abuse of the process by the respondent and that in consequence, he was disentitled to any relief. In particular, it was urged that the respondent had sought relief specifically for the de-freezing of accounts in the earlier criminal application. Once such a prayer was not pressed when the application was withdrawn before the Division Bench, it was urged that it was manifestly an abuse of process to seek and obtain similar relief before a learned Single Judge of the High Court.
State of Maharasthra Vs Avinash; 2018(1) ALD (Crl) 30 (SC); 2017 0 AIR(SC) 4852; 2017 0 Supreme(SC) 1026;

Administrative Law—File Notings—Notings in a departmental file do not have sanction of law to be an effective order—A noting by an officer is an expression of his viewpoint

on subject.—It is no more than an opinion by an officer for internal use and consideration of other officials of department and for benefit of final decision-making authority—Internal notings are not meant for outside exposure—Notings in file culminate into an executable order affecting rights of parties only when it reaches final decision-making authority in department, gets his approval and final order is communicated to person concerned.
Accused facing prosecution for offences under P.C. Act cannot claim any immunity on ground of want of sanction if he ceased to be a public servant on the date when court took cognizance of offences.
Buddi Chandra Mohan Vs the State of A.P.; 2018 (1) ALD (Crl) 60; 2017 1 ALT(Cri) 387; 2017 0 CrLJ 4811; 2017 0 Supreme(AP) 18;

Section 3(2)(v)(a) of the Act has no application to continue the case of the offence punishable under Section 302 I.P.C. even committed by a non S.C. person against a S.C. victim, though otherwise a S.C. accused and non-S.C. accused also can be tried before the Special Court for the reasons of A1 is an S.C. and A3 is a non-S.C. and the victim is an S.C. besides the deceased, the case is withdrawn from the file of the IV Additional Sessions Judge, Kadapa and instead of transferring it to the II Additional Sessions Judge, Proddatur, transferred to the file of the Principal Sessions Judge by directing the IV Additional Sessions Judge, Kadapa, to endorse so in its record and send the case file by virtue of this order, to the learned Principal Sessions Judge so that the learned Principal Sessions Judge on giving any fresh Sessions Case number if necessary either to try or to make over to any Additional Sessions Judge, being the head of the Sessions Unit.
Kasi Reddy Siddammagari Harinath Reddy Vs Avula Danamma and others; 2018(1) ALD (Crl) 92:2017 0 Supreme(AP) 525:

the Supreme Court has held that over insistence on witnesses having no relation with the victims often results in criminal justice going away. It is further held that merely because eye-witnesses are family members, their evidence cannot per se be discarded.
In cross-examination, PW1 deposed that it is not possible to enter into the Vagu, as such, the appellant could not get into it. The incident had taken place in the year 2004 and PWs.2 and 3, who are the eye-witnesses, were examined in the year 2010, therefore, it was obvious to have some contradictions and discrepancies in their evidence. They are illiterate and ladies and it was also obvious that being ladies, on seeing such a brutal crime, they might, out of fear, did not tell anybody including the villagers. But, only after mustering enough courage they had disclosed to PW1, the husband of the deceased, about the incident. Moreover, the weapon used in the crime was recovered at the instance of the appellant from his house.
Kale Maniyanna Vs State of A.P.;2018(1) ALD (Crl) 104; 2017 0 Supreme(AP) 13;

Indian Penal Code, 1860 – Section 375, Exception 2 – Excepting intercourse with married wife of less than 18 years of age from definition of rape – Exception, held, unnecessary and artificial distinction between a married girl child and an unmarried girl child – Contrary to Articles 15(3) and 21, Constitution of India. (Para 1)
Sec 198 CrPC to be followed.

2018(1) ALD (Crl) 128(SC); 2017 0 AIR(SC) 4904; 2017 0 Supreme(SC) 1014; (2018) 1 SCC (Cri) 13; (2017) 10 SCC 800; Independent Thought Vs UOI and another.

Indian Evidence Act, 1872 – Section 106 – Accused an inmate of joint family – Not informing police about missing of deceased – Also offering no explanation as to what happened with deceased – Adverse inference can be drawn against accused.
State of H.P. Vs Rajkumar; 2018 0 Supreme(SC) 4;

Administration of justice – Judicial propriety – Coordinate Bench must respect order of an earlier Bench – Even a larger Bench should not brush aside the order passed by an earlier Bench, even a smaller Bench, unless the order is in issue before the larger Bench
Judicial order or judgment should be read as a whole. A single line or phrase cannot be read out of context. A judgment cannot be interpreted like a statute
SUSME BUILDERS PVT. LTD Vs CHIEF EXECUTIVE OFFICER, SLUM REHABILITATION AUTHORITY AND ORS. 2018 0 AIR(SC) 237; 2018 0 Supreme(SC) 1;

Caste is determined by birth. Caste of a person born in general category caste cannot be changed by marriage with a person of scheduled caste.
Sunitha Singh Vs State of U.P.; 2018 0 Supreme(SC) 33;

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 9 SCC 714; 2017 0 Supreme(SC) 1013;(2018) 1 SCC (Cri) 87; Santosh S/o Dwarkadas Fafat Vs State of Maharasthra.

Indian Penal Code, 1860 – Section 304-A – Tort law – Medical negligence – Appellant, a surgeon on call, advising opinion of physician – Physician not turning up – Appellant not waiting for physician and going home – Charged with negligence u/s 304-A – Application u/s 482 CrPC rejected by High Court opining that whether the act of appellant constituted negligence would be determined at trial – Expecting the physician to come soon may be an error of judgment but definitely not that of criminal negligence – Not a case where the appellant should face trial after 20 years of incident
2017 0 AIR(SC) 2078; 2017 2 Crimes(SC) 149; 2017 2 MPWN 1; 2017 3 Supreme 638; 2017 0 Supreme(SC) 317; (2018) 1 SCC (cri) 145; (2017) 14 SCC 571; Dr. Sou Jayshree Ujwal Ingole Vs State of Maharasthra and another.

It is not easy to comprehend as to how a human being will react on a particular incident.
Minor discrepancy in evidence of injured witness as also omissions in the inquest report are inconsequential.
The statement of the IO was not to the effect that there was no blackening on the wall. Statement was that he does not recollect as to whether there was blackening on the

wall or on the peg or not. The High Court proceeded on the premises that it was stated that there was no blackening on the wall. **The very premise of the High Court, thus, to reject the burning of the lantern is fallacious and is the result of the misreading of the statement of the IO**. The burning of lantern being fully proved, the High Court committed error in putting off the light of lantern from the case.

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."**

On the doubt expressed by the High Court regarding **writing of FIR on dictation of informant since he claimed to be unconscious,** we are of the view that this **is not of any material significance** on which evidence of PW.1 regarding preparing and lodging of FIR could have been doubted.

2017 0 AIR(SC) 3878; 2017 3 Crimes(SC) 247; 2017 5 Supreme 838; 2017 0 Supreme(SC) 681;(2018) 1 SCC (Cri) 172; (2017) 14 SCC 614; State of Uttar Pradesh Vs Ram Kumar And others.

Code of Criminal Procedure, 1973 – Section 427(1) – Sentence on a subsequent conviction while the accused is already undergoing a sentence of imprisonment – Shall commence at the expiration of previous sentence – Unless courts directs the sentences to run concurrently – Jurisdiction discretionary – Must be exercised on fair and just principles.

the substantive sentences imposed upon the appellant in the three separate prosecutions, are directed to run concurrently, except the default sentence, if the fine by way of compensation as imposed has not been paid by him.

2017 0 AIR(SC) 3238; 2017 7 Supreme 391; 2017 0 Supreme(SC) 654; (2018) 1 SCC (Cri) 194; (2017) 14 SCC 719; P.N.Mohanan Nair Vs State of Kerala.

the question as to whether there was an intention to kill or knowledge that death will be caused is a question of fact and would depend on the facts of a given case which has to be attributed on evidence by the Trial Court.

2017 0 AIR(SC) 2939; 2017 0 Supreme(SC) 864; (2018) 1 SCC (cri) 197; (2017) 14 SCC 803; Vineet Mahajan Vs State of Punjab and others.

Revision jurisdiction of high Court is discretionary.

Revision jurisdiction can be exercised in respect of a final order of acquittal or conviction as also an intermediate order but not an interlocutory order.

In view of prohibition on interference with interlocutory order in revision jurisdiction u/s 397(2), jurisdiction u/s 482 cannot be invoked to achieve the same objective.

Filing a revision petition in the High Court in respect of an interlocutory order, though prohibited, the appellants can approach Supreme Court under Article 136, Constitution of India.

Power of Supreme Court to dismiss a petition without giving reasons does not mean that the Court will not give reasons or pass equitable orders.

Power u/s 482 can be exercised in respect of interlocutory order also if it is abuse of the process of law.
Large backlog of cases in the courts is often an incentive to the litigants to misuse the courts' system by indulging in unnecessary and fraudulent litigation, thereby delaying the entire trial process. Criminal justice system's procedure guarantees and elaborateness sometimes give, create openings for abusive, dilatory tactics and confer unfair advantage on better heeled litigants to cause delay to their advantage. Longer the trial, witnesses will be unavailable, memories will fade and evidence will be stale. Taking into consideration all those aspects, this Court felt that it is in the larger public interest that the trial of 2G Scam be not hampered. Further, when larger public interest is involved, it is the bounden duty of all, including the accused persons, who are presumed to be innocent, until proven guilty, to cooperate with the progress of the trial. Early disposal of the trial is also to their advantage, so that their innocence could be proved, rather than remain enmeshed in criminal trial for years and unable to get on with their lives and business.
A court of appeal or revision is debarred from reversing a finding (or even an order of conviction and sentence) on account of any error or irregularity in the sanction for the prosecution, unless failure of justice had been occasioned on account of such error or irregularity. For determining whether want of valid sanction had in fact occasioned failure of justice the aforesaid sub-section (2)enjoins on the court a duty to consider whether the accused had raised any objection on that score at the trial stage. Even if he had raised any such objection at the early stage it is hardly sufficient to conclude that there was failure of justice. It has to be determined on the facts of each case. But an accused who did not raise it at the trial stage cannot possibly sustain such a plea made for the first time in the appellate court…...

In a case where the accused failed to raise the question of valid sanction the trial would normally proceed to its logical end by making a judicial scrutiny of the entire materials. If that case ends in conviction there is no question of failure of justice on the mere premise that no valid sanction was accorded for prosecuting the public servant because the very purpose of providing such a filtering check is to safeguard public servants from frivolous or mala fide or vindictive prosecution on the allegation that they have committed offence in the discharge of their official duties. But once the judicial filtering process is over on completion of the trial the purpose of providing for the initial sanction would bog down to a surplusage. This could be the reason for providing a bridle upon the appellate and revisional forums as envisaged in Section 465 of the Code of Criminal Procedure
2017 0 AIR(SC) 3620; 2017 3 Crimes(SC) 96; 2017 0 Supreme(SC) 651; (2018) 1 SCC (cri) 202; (2017) 14 SCC 809; Girish Kumar Suneja Vs CBI.

Expression "other public servant to whom he is administratively subordinate" in section 195(1)(b)(ii), CrPC cannot exclude the High Court. Direction by High Court for investigation into a specified offence – Cannot be rendered futile by invoking Section 195.
(2018) 1 SCC (Cri) 240; (2017) 14 SCC 855; 2017 177 AIC 48; 2017 0 AIR(SC) 3583; 2017 0 AllSCR(Cri) 1443; 2017 3 BBCJ(SC) 377; 2017 4 BomCR(Cri)(SC) 48; 2017 3 Crimes(SC) 366; 2018 0 CrLJ 80; 2017 4 JBCJ(SC) 211; 2017 7 JT 378; 2017 3

LawHerald(SC) 2421; 2017 3 MLJ(Cri)(SC) 611; 2017 3 PLJR(SC) 446; 2017 4 RCR(Cri) 719; 2017 8 Scale 398; 2017 6 Supreme 99; 2017 0 Supreme(SC) 701; CBI Vs M.Sivamani

Prosecution case cannot be thrown out on the ground that names of the accused are not stated in the FIR.
TI Parade is not necessary when accused known to witnesses.
Reasonableness of doubt must be a practical one, not an abstract theoretical hypothesis.
2018 0 Supreme(SC) 90; Latesh @ Dadu Baburao Karlekar Vs. The State of Maharashtra.

Every accused is same in eyes of law, irrespective of his nationality.
There is distinction between cancellation of bail and legal challenge to an order granting bail for non-consideration of material available on record.
Passing mandatory orders to subordinate courts to grant bail is not permissible.
2018 0 Supreme(SC) 58; LACHHMAN DASS VS RESHAM CHAND KALER AND ANR

NOSTALGIA

In Dhal Singh Dewangan v. State of Chattisgarh, the Supreme Court held as under:

The general rule of evidence is that hearsay evidence is not admissible. However, Section 6 of the Evidence Act embodies a principle, usually known as the rule of res gestae in English law, as an exception to hearsay rule. The rationale behind this section is the spontaneity and immediacy of the statement in question which rules out any time for concoction. For a statement to be admissible under Section 6, it must be contemporaneous with the acts which constitute the offence or at least immediately thereafter. The key expressions in the section are so connected as to form part of the same transaction. The statements must be almost contemporaneous as ruled in the case of Krishan Kumar Malik [Krishan Kumar Malik v. State of Haryana : (2011) 7 SCC 130] and there must be no interval between the criminal act and the recording or making of the statement in question as found in Gentela Vijayavardhan Rao case [Gentela Vijayavardhan Rao v. State of A.P., (1996) 6 SCC 241]. In the latter case, it was accepted that the words sought to be proved by hearsay, if not absolutely contemporary with the action or event, at least should be so clearly associated with it that they are part of such action or event. This requirement is apparent from the first illustration below Section 6 which states whatever was said or done at the beating, or so shortly before or after it as to form part of the transaction, is a relevant fact.

NEWS

- GOVERNMENT OF TELANGANA - Public Service – Prosecuting Officers – Notification under section 12 of Telangana State Protection of Depositors of Financial Establishment Act, 1999 - Assigning the status of Special Public Prosecutor and Special Government Pleader to the incharge Public Prosecutor of Metropolitan

Sessions Court, Hyderabad – Orders – Issued. G.O.Rt.No. 121 HOME (COURTS.A1) DEPARTMENT, Dated: 29-01-2018.

- GOVERNMENT OF ANDHRA PRADESH- Public Services – A.P. State Prosecution Services - Promotion to the posts of Public Prosecutors/Joint Director of Prosecutions – Postings – Orders – Issued.- G.O.RT.No. 27- **HOME (COURTS.A) DEPARTMENT** Dated: 09-01-2018

Name of the Officer & present place of working	**Place of posting on promotion**
1 B.RAMAKOTESWARA RAO (Dy.Director of Prosecutions, Krishna District & Jt.Director (FAC), O/o.DOP, A.P., Vijayawada)	Joint Director, Office of Director of Prosecutions, A.P., Vijayawada.
2 V.RAGHU RAM (Addl.P.P.Grade-I/Spl.PP, SC & ST Court, Vizianagaram)	Joint Director, Office of Director of Prosecutions, A.P., Vijayawada.
3 M. VIJAYA (Addl.P.P.Grade-I/Spl.PP, SC & ST Court, Nellore)	Public Prosecutor, Principal District & Sessions Judge Court, Nellore.
AJOY PREM KUMAR LAM (Addl.P.P.Grade-I/Deputy Director of Prosecutions, Eluru)	Legal Advisor, A.P. Fire Services & Disaster Management.
5 V. SUBBALAKSHUMMA (Addl.P.P.Grade-I/Deputy Director of Prosecutions, Nellore)	Public Prosecutor, Principal District & Sessions Judge Court, Kadapa.
6 K.PRUTHVI RAJ, (Addl.P.P.Grade-I/Deputy Director of Prosecutions, Visakhapatnam)	Public Prosecutor, Principal District & Sessions Judge Court, Vizianagaram.
7 M.P. PRASUNA KUMARI, (Addl.P.P.Grade-I, Krishna District, Vijayawada)	Legal Advisor, A.P. Prisons & Correctional Services
8 P.VENKATA SUBBAIAH (Addl.PP Grade-I on Deputation as Legal Advisor-cum-Spl.PP, ACB Court, Nellore)	Legal Advisor, Intelligence.
9 M.V.DURGA PRASAD (Addl.PP.Grade-I/Dy.Director of Prosecutions, Kakinada, E.G.Dist.)	Public Prosecutor, Principal District & Sessions Judge Court, Srikakulam.

Prosecution Replenish congratulates all the promoted officers.

- GOVERNMENT OF TELANGANA- Public Services – Prosecuting Officers – Retirements of certain Prosecuting Officers during the year, 2018 – Notification –

Orders - issued- G.O.Rt.No. 8- HOME (COURTS.A1) DEPARTMENT Dated: 03-01-2018

Sl. No.	Name and Designation	Date of Birth	Date of Retirement
(1)	S/Sri. (2)	(3)	(4)
1.	K.Chandra Sekhar, Public Prosecutor/Joint Director of Prosecutions, Principal Sessions Court, Ranga Reddy District	09-01-1960	31-01-2018
2.	Mohd. Sardar, Additional Public Prosecutor Grade-I/ Deputy Director of Prosecutions, I Additional Sessions Court, Warangal	05-02-1960	28-02-2018
3.	S.Ramesh, Addl. Public Prosecutor Grade-II, Assistant Sessions Court, Nizamabad	08-04-1960	30-04-2018
4.	K.Maruthi Rao, Public Prosecutor/Joint Director of Prosecutions, Principal Sessions Court, Nalgonda	14-06-1960	30-06-2018
5.	S.K.Rama Rao, Public Prosecutor/Joint Director of Prosecutions, Khammam	01-07-1960	30-06-2018
6.	D.V.Rama Murthy, Additional Public Prosecutor Grade-II, Assistant Sessions Court, Nagarkurnool, Mahaboobnagar District	01-07-1960	30-06-2018
7.	S.Ravinder, Addl. Public Prosecutor Grade-II, Assistant Sessions Court, Asifabad, Adilabad District	07-09-1960	30-09-2018

ON A LIGHTER VEIN

After hearing a sermon on Psalm 52:3-4 (lies and deceit), a man wrote the IRS, "I can't sleep knowing that I have cheated on my income tax. Enclosed is a check for $150. If I still can't sleep, I'll send the rest."

Vol- VII
Part-3

Prosecution Replenish

An Endeavour for Learning and Excellence

March, 2018

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

**In Life never forget these important things:
One, that Home is not a place , but a feeling;
Two, that time is not measured by a clock, but by moments;
And three, that heartbeats are not hears, but felt and shared.**

CITATIONS

(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. [(2002)7 SCC 334] and Vinod Kumar versus State of Punjab [(2015)3 SCC 220] .
(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 164 of the Cr.P.C. as per procedure prescribed thereunder.
2018(1) ALT (Crl) 90 (SC);Doongar Singh and others vs. State of Rajasthan.

Not only physical acts of printing or selling or offering to sell but also legal right to sell i.e. to transfer the title in the goods -the newspaper perhaps render all i.e., the owner, the printer, or the person selling or offering for sale liable for the offences under Sections 501 or 502.
Sufficiency of evidence to establish guilt of the person complained against which can only be established in trial, cannot be subject matter of a proceeding u/s 482 CrPC.
Whether owner of a newspaper cane be held vicariously liable for defamatory material carried by his newspaper requires a critical examination.
2018(1) ALT (Crl) 94(SC); 2018(1) ALD (Crl) 205 (SC); (2018) 1 SCC (Cri) 255; (2018) 1 SCC 615; 2017 0 AIR(SC) 5608; 2017 12 JT 223; 2017 14 Scale 23; 2018 1 SCC 615; 2017 0 Supreme(SC) 1139; Mohammed Abdulla Khan Vs Prakash K.

Narcotic Drugs and Psychotropic Substances Act, 1985 – Section 42 and 50 – Appellant challenging conviction on ground of non-compliance of section 42 and 50 – Recovery having been made in public place, section 42 not attracted – Section 50 complied with in so far as a Gazetted officer was called and recovery was made in his presence – Trial court and High Court concurrently convicting appellant – No error.
2018(1) ALT (Crl) 160 (SC); Jagat Singh Vs State of Uttarakhand.

Right to prefer an appeal conferred upon a victim by virtue of proviso to Section 372 Cr.P.C. is an independent statutory right and there is no need for victim to seek leave of High Court.
2018(1) ALT (Crl) 168 (SC); 2017 0 AIR(SC) 1801; 2017 2 Crimes(SC) 314; 2017 0 CrLJ 2826; 2017 4 JT 1; 2017 2 LawHerald(SC) 1214; 2017 4 Scale 468; 2017 13 SCC 612; 2017 4 SCC(Cri) 719; 2017 3 Supreme 775; 2017 0 Supreme(SC) 326; Rajendra Singh Vs State of Tripura and another

Grant of bail depends upon variety of circumstances varying from case to case.
Every law need not have universal application for all persons. State can make legitimate classification and every classification is likely to make inequalities to certain extent. Classification, however, must not be made arbitrarily and be based upon some real and substantial distinction bearing a reasonable and just relation to the object sought to be attained.
Article 14 condemns discrimination not only by substantive law but procedural law as well.
Law as interpreted in Article 21 implies a due process, both procedurally and substantively.
Section 45 Prevention of Money Laundering Act, 2002 declared unconstitutional being violative of Articles 14 and 21.
2018(1) ALD (Crl) 203 (SC); 2018 (1) ALD (Crl) 212 (SC); 2017 0 AIR(SC) 5500; 2017 0 Supreme(SC) 1116; Nikesh Tarachand Shah Vs UOI & another.

No doubt, the maxim Falsus in uno, falsus in omnibus (false in one thing, false in all) does not have application in India and it is the responsibility of the Court to sift through the evidence so as to find the truth.
Maintenance of case diaries, seizure of material objects, manner of registration of the FIR, drawing of rough sketches, etc., are important steps, no doubt, in the course of the investigation, but when the case rests on eye-witness testimony and not on circumstantial evidence, such lapses may not, in themselves, be sufficient to disbelieve the prosecutions case.
2017 0 Supreme(AP) 435; 2018(1) ALT (crl) 158 (DB)(AP); Vadde Anjanappa and others vs State.

The Court is not bound to take the counter as evidence of any fact and no adjudication, based on mere pleadings would be made by a Court. The counter is not a substantial piece of evidence. Thereby, Section 199 IPC does not attract the allegations in the complaint. No allegation that such a statement made in the counter, is used by anyone, much less the petitioner, is made. At any rate, an averment in a pleading cannot be considered as a declaration. Hence, prosecution for the offence under Section 200 IPC cannot be permitted.
2018(1) ALT (Crl) 188 (AP); 2017 0 Supreme(AP) 470; Rev. Dr. Busi Suneel Bhanu Vs State

The prosecution has neither cross-examined P.W.12-the Tahsildar with regard to the contents of the dying declaration nor did they treat P.W.12 as hostile. Therefore, the prosecution cannot now plead that they are not relying on the dying declaration. Things would have been different, had they declared the person who recorded the dying declaration hostile or cross-examined the person who recorded the dying declaration, to disprove the same as contrary to law or to show that the same was not in accordance with Rule 33 of Criminal Rules of Practice. But without making such an effort, the prosecution cannot say that they are not relying upon the dying declaration, moreso, when it was marked through their own witness.

2018(1) ALT (Crl) 191(DB)(AP); 2017 0 Supreme(AP) 449; Pallapu Veerabhadram Vs State

this Court cannot belittle the sanctity and value of Ex.P19 dying declaration merely because of the deceased's extent of burns and as the duty Doctor was not examined before the Sessions Court. No doubt, the lips of the deceased were burnt but P.W.16, the Judicial Magistrate, categorically stated that she was still in a position to speak loudly. There is no reason to suspect P.W.16 and no irrefutable medical evidence was produced in support of the opinion of P.W.12, who conceded that she did not attend upon the deceased. The dying declaration recorded by P.W.16 bears the endorsements of the duty Doctor before and after recording of the statement and P.W.16 independently satisfied himself as to the mental capacity of the deceased to make the statement. Therefore, no further evidence was required on this count.

The statement given by the deceased, as recorded by P.W.16, is clear and lucid and does not brook any doubt or suspicion. Though Sri O.Kailashnath Reddy, learned counsel, would state that the possibility of tutoring of the deceased cannot be ruled out, this Court finds no evidence to even suspect the same. All the prosecution witnesses, including the relations of the deceased, turned hostile and supported the accused. Had they gone to the trouble of tutoring the deceased to speak against the accused in her dying declaration, they would not have backtracked from their own statements made to the police under Section 161 CrPC. That apart, to the extent that they did give evidence, all the witnesses spoke of the accused and deceased living amicably. If that was so, there is no reason to suspect that the deceased would have harboured any vendetta or animosity to the extent of implicating the accused falsely, knowing fully well that she would be rendering her own children without parental support.

RAMESH V/s. STATE OF HARYANA (2017) 1 SCC 529, wherein, dealing with a dying declaration of a victim who had suffered 100% burn injuries but was certified by the doctor to be in a conscious state of mind and where the Magistrate had taken all due precautions while recording the dying declaration, the Supreme Court held that the dying declaration could not be discarded merely going by the extent of burns which the victim had suffered. The Supreme Court therefore held that the dying declaration, being a substantive piece of evidence, could be the basis of the conviction once the Court was convinced that the dying declaration was made voluntarily and was not influenced by any extraneous circumstances.

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.

2017 0 Supreme(AP) 386; 2018(1) ALD (Crl) 262; Syed Kamruddin Vs State of A.P

In a case based on direct evidence, motive plays secondary role. As regards the motive, the law is well settled that it is not possible for the prosecution to establish motive beyond reasonable doubts (See: Birendra Das v. State of Assam 2013 (12) SCC 236, Ujjar Singh v. State of Punjab, (2007) 13 SCC 90). Though human mind is complex and complicated and more often even the deceased himself may not be

knowing that the accused has developed grudge against him (See: Sunil Clifford Daniel v. State of Punjab 2012 (11) SCC 205).
Ordinarily, delay in lodging the FIR or its reaching the Magistrate Court is considered fatal where there is scope for false implications or improvements or embellishments in preparing the complaint. The facts and circumstances of the case do not suggest that there was any possibility for anybody else killing the deceased, who was lodged in a barrack in a Central Jail. Therefore, we do not find any possibility of the deceased having been falsely implicated during the time gap between 5:00 a.m and 8:00 a.m.
21. As regards the alleged delay in the FIR reaching the Magistrate Court, P.W.16 has stated that after receiving Ex. P.1-report, express FIR was issued and the same was sent to the Court of the Magistrate at around 8:30 a.m. Ex. P.12 - FIR contains the endorsement but the same was received by the Court through PC 2327 of Bukkaraya Samudram Police Station on 09.11.2008 at 12.30 p.m. Though no specific explanation is offered by the prosecution for the delay in the FIR reaching the Court, for the reasons discussed while dealing with the delay in lodging the FIR, we are of the opinion that this delay is not proved to be fatal in the absence of any scope for false implications.
2017 3 ALT(Cri) 168; 2016 0 Supreme(AP) 715; Mallela Omprakash Vs State of A.P.

Accordingly, as rightly observed by the trial Court, there is no reason to discard the evidence of PW5. Her evidence was sought to be discredited firstly on the argument that as per PW5, A3 squeezed the testicles of the deceased but however, neither in the evidence of PW4 nor in Ex.P4—port-mortem report any injuries were mentioned on the testicles of the deceased and therefore, she was speaking falsehood. It is true that PW4 admitted except two injuries mentioned in Ex.P4, he did not find any other injuries. However, we will find in Ex.P3—inquest report that the inquest witnesses found some abrasions on the testicles and they were swollen. Probably PW4 either might have missed this aspect during post-mortem or by the time he conducted autopsy the swelling might not be prominent to attract his attention. Be that it may, the testimony of PW5 cannot be held as false as it gets corroboration from Ex.P3.
It must be noted that delay in lodging FIR will not always be fatal to the case of the prosecution. If delay is properly explained and Court is satisfied that if the complainant has not purposefully delayed in lodging of FIR and prosecution has not taken undue advantage out of it, such delay can be excused. The present case was not a political murder so as to gain time by prosecution party to implicate innocents in the opposite party.
2018(1) ALD (Crl) 281; 2017 1 ALT(Cri) 356; 2017 0 Supreme(AP) 22; Meenuga Yadaiah and others vs State of A.P.

if 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 v. State of Rajasthan, 2015 SCC Online 8331 of Rajasthan High Court and Kundan Singh v. State, 2015 SCC Online 13647 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.
2018(1) ALD (Crl) 297; 2017 2 ALT(Cri) 269; 2017 0 Supreme(AP) 555; TMS Prakash Rao Vs State of A.P.

An offence can be compounded u/s 482 on basis of settlement between the accused and the victim but criminal proceeding or FIR cannot be quashed on basis of such settlement having due regard to the nature and gravity of the offence.
Economic offences involving the financial and economic well-being of the state have implications which lie beyond the domain of a mere dispute between private disputants. The High Court would be justified in declining to quash where the offender is involved in an activity akin to a financial or economic fraud or misdemeanour. The consequences of the act complained of upon the financial or economic system will weigh in the balance.
2018(1) SCC (Cri) 1; 2017 0 AIR(SC) 4843; 2017 9 SCC 641; 2017 0 Supreme(SC) 967; PARBATBHAI AAHIR @ PARBATBHAI BHIMSINHBHAI KARMUR AND ORS Vs State of Guajrat and others.

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.
2018(1) SCC (Cri) 13; (2017) 10 SCC 800; 2017 0 AIR(SC) 4904; 2017 0 Supreme(SC) 1014; Independent Thought vs UOI and another.

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.
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.
(2018) 1 SCC (Cri) 87; (2017) 9 SCC 714; 2017 9 SCC 714; 2017 0 Supreme(SC) 1013; Santosh Vs State of Maharashtra.

Even if a crime is committed in one State, the accused can be tried in another State if the detrimental effect is in that State -Christopher Strassheim v. Milton Daily(supra) followed by the Federal Court of Appeals in Rocha [Rocha v. United States 288 F.2d. 545 (1961) (p. 548), cert. denied 366 U.S. 948(1961)] and Chua Han Mow [Chua Han Mow v. United States 730 F.2D. 1308 (1984) (p. 1312) cert. denied, 470

U.S.1031(1985)]. It is also relevant to refer to the judgment of the House of Lords in Director of Public Prosecutions v. Stonehouse, [1977] 2 All ER 909). A well known politician who was in financial difficulties simulated his death by drowning to start life afresh with a new identity in Australia. He made arrangement with five British insurance companies to issue a policy in his wife's name which would be payable to her on his death. After creating the circumstance of his drowning in Miami, he fled to Australia on a false passport. He was extradited to England where he was prosecuted in respect of several offences including attempt to obtain property by deception. It was held by the House of Lords that the English Courts had jurisdiction to try the offences against the Appellant on the ground that the instant consequences of the physical acts of the accused in United States of America was in England.
(2018) 1 SCC (Cri) 117; (2017) 10 SCC 779; 2017 0 AIR(SC) 4888; 2017 0 Supreme(SC) 1005; State (NCT of Delhi) Vs Brijesh Singh alias Arun Kumar And Another.

It is not easy to comprehend as to how a human being will react on a particular incident.
Minor discrepancy in evidence of injured witness as also omissions in the inquest report are inconsequential.
there are no such reasons given by the High Court on which the evidence of injured witnesses could be disbelieved, the minor inconsistencies pointed out by the High Court were inconsequential. This Court has held in Brahm Swaroop and another v. State of Uttar Pradesh, 2011(6) SCC 288, that statement of injured witnesses is generally considered to be very reliable.
2017 0 AIR(SC) 3878; 2017 3 Crimes(SC) 247; 2017 7 JT 466; 2017 8 Scale 70; 2017 14 SCC 614; 2018 1 SCC(Cri) 172; 2017 5 Supreme 838; 2017 0 Supreme(SC) 681; State of U.P. Vs Ram Kumar and others

There are three categories of orders that a court can pass – final, intermediate and interlocutory. There is no doubt that in respect of a final order, a court can exercise its revision jurisdiction – that is in respect of a final order of acquittal or conviction. There is equally no doubt that in respect of an interlocutory order, the court cannot exercise its revision jurisdiction. As far as an intermediate order is concerned, the court can exercise its revision jurisdiction since it is not an interlocutory order.
an intermediate order is one which is interlocutory in nature but when reversed, it has the effect of terminating the proceedings and thereby resulting in a final order. Two such intermediate orders immediately come to mind – an order taking cognizance of an offence and summoning an accused and an order for framing charges.
(2018) 1 SCC (Cri) 202; 2017 0 AIR(SC) 3620; 2017 3 Crimes(SC) 96; 2017 0 CrLJ 4980; 2017 7 Scale 661; 2017 14 SCC 809; 2017 0 Supreme(SC) 651; Girish Kumar Suneja Vs CBI.

Expression "other public servant to whom he is administratively subordinate" in section 195(1)(b)(ii), CrPC cannot exclude the High Court. Direction by High Court for investigation into a specified offence – Cannot be rendered futile by invoking Section 195.

(2017) 4 SCC (Cri) 240; 2017 0 AIR(SC) 3583; 2017 3 Crimes(SC) 366; 2018 0 CrLJ 80; 2017 7 JT 378; 2017 3 LawHerald(SC) 2421; 2017 3 MLJ(Cri)(SC) 611; 2017 8 Scale 398; 2017 14 SCC 855; 2017 6 Supreme 99; 2017 0 Supreme(SC) 701; CBI Vs M.Sivamani.

Legal heirs of complainant can prosecute Criminal Misc. Petition before High Court.
(2018) 1 SCC (Cri) 264; 2017 0 AIR(SC) 5126; 2018 1 SCC 71; 2017 8 Supreme 159; 2017 0 Supreme(SC) 1068; Chand Devi Daga and others Vs MAnju K.Humatani and others

Section 195(1)(b)(ii) CrPC applies only to documents already produced or given in evidence in any court.
(2018) 1 SCC (Cri) 271; (2018) 1 SCC 79; 2017 0 AIR(SC) 5268; 2017 13 Scale 249; 2018 1 SCC 79; 2017 8 Supreme 154; 2017 0 Supreme(SC) 1069; Senior Manager (P & D), RIICO Ltd Vs State of Rajasthan and another.

Phrase "not less than ten years" in section 167(2) means that the punishment should be 10 years or more. It cannot include offences where the maximum punishment is 10 years and it means that the minimum punishment is 10 years whatever be the maximum punishment.
Section 167(2)(a)(ii) will apply in all cases where the minimum sentence is less than 10 years but the maximum sentence is not death or life imprisonment.
(2018) 1 SCC (Cri) 401; (2017) 15 SCC 67; 2017 0 AIR(SC) 3948; 2018 0 CrLJ 155; 2017 4 MLJ(Cri)(SC) 62; 2017 9 Scale 24; 2017 0 Supreme(SC) 749; Rakesh Kumar Paul Vs State of Assam.

Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 — S. 3(2)(v) [prior to amendment by Act 1 of 2016] — Requirement of Intention of accused: There is requirement of intention of accused to belittle person belonging to SC/ST community, for punishment under S. 3(2)(v). As there was absence of any evidence proving such intention, conviction under S. 3(2)(v), set aside. [Asharfi v. State of U.P., (2018) 1 SCC 742

Criminal Procedure Code, 1973 — S. 102(1): "Any property" includes any bank account creating suspicion about commission of an offence. Investigating officer (IO) in course of investigation has power to seize or prohibit operation of bank account of any person which may be found under circumstances creating suspicion of commission of any offence. Bank account need not be only of accused but can be any account creating suspicion about commission of offence. Even if name of a body/person with which accused concerned has an association (a trust in present case), is not included as accused in FIR but during investigation IO believes that persons named as accused are actively associated with that trust, and, that circumstances emerging from transaction(s) done by them from bank accounts pertaining to that trust create suspicion of commission of offence, IO can exercise his discretion to issue directions to seize those accounts. [Teesta Atul Setalvad v. State of Gujarat, (2018) 2 SCC 372]

NOSTALGIA

the Supreme Court in SUNIL KUNDU (2013) 4 SCC 422 '....We are distressed at the way in which the investigation of this case was carried out. It is true that acquitting the accused merely on the ground of lapses or irregularities in the investigation of a case would amount to putting premium on the depreciable conduct of an incompetent investigating agency at the cost of the victims which may lead to encouraging perpetrators of crimes.....'

in SHAMNSAHEB M. MULTTANI Vs. STATE OF KARNATAKA (2001) 2 SCC 577, a Bench of three Judges of the Supreme Court dealt with the issue as to whether an accused charged under Section 302 IPC could be convicted under Section 304B IPC if the charge under Section 302 IPC is not established, without affording him an opportunity to enter his defence and disprove the presumption raised thereunder, read with Section 113B of the Act of 1872. The Supreme Court observed that where the accused is called upon only to defend against a charge under Section 302 IPC, the burden of proof never shifts onto him and it remains with the prosecution, which has to prove the charge beyond all reasonable doubt. No compulsory presumption would go to the assistance of the prosecution in such a situation. If that be so, when an accused has no notice of the charge under Section 304B IPC, as he was only defending against a charge under Section 302 IPC, it would lead to grave miscarriage of justice when he is alternatively convicted under Section 304B IPC, because he is deprived of the opportunity to disprove the burden cast on him by law. The Supreme Court therefore held that if an accused is convicted under Section 304B IPC without an opportunity being granted to him to enter on his defence in respect of the said charge and an opportunity is not afforded to him to discharge his burden, the conviction under Section 304-B IPC cannot be sustained.

NEWS

- **Govt of A.P. GORT 110 Home Courts-A,** A.P. State Prosecution Services – Posting of Smt.G.Suseela Gopal, Addl.Public Prosecutor Grade-I, in the existing vacancy of Addl.Public Prosecutor Grade-I/ Deputy Director of Prosecutions II Additional District & Sessions Judge-Cum-Metropolitan Sessions Judge Court, Vijayawada- Orders – Issued.
- **Govt of A.P. GOMS 18 Dt 2.2.2018 Home Courts-A,** Home Department– Allotment of (15) posts of Assistant Public Prosecutors to the newly established (15) Judicial Magistrate of the First Class Courts in the State of – Andhra Pradesh- Orders - Issued.
- **Govt of Telangana GORT 222 Dt 8.2.2018 Home Courts-A** Public Services – Sri D.V.Rama Murthy, Additional Public Prosecutor Grade-II, Assistant Sessions Court, Nagarkurnool, Mahaboobnagar District – Transferred and posted as Additional Public Prosecutor Grade-II at Principal Assistant Sessions Court, Warangal on health grounds in the existing vacancy in relaxation of ban on transfer orders – Orders – Issued.

ON A LIGHTER VEIN

Doctor: "I've found a great new drug that can help you with your sleeping problem."
Patient: "Great, how often do I have to take it?"
Doctor: "Every two hours."

Vol- VII
Part-4

Prosecution Replenish

An Endeavour for Learning and Excellence

April, 2018

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

The 3 C's in life
Choice, Chance, Change
You must make the CHOICE;
You take the CHANCE;
If you want anything in life to CHANGE.

CITATIONS

The applicability of procedural requirement under Section 65B(4) of the Evidence Act of furnishing certificate is to be applied only when such electronic evidence is produced by a person who is in a position to produce such certificate being in control of the said device and not of the opposite party. In a case where electronic evidence is produced by a party who is not in possession of a device, applicability of Sections 63 and 65 of the Evidence Act cannot be held to be excluded. In such case, procedure under the said Sections can certainly be invoked. If this is not so permitted, it will be denial of justice to the person who is in possession of authentic evidence/witness but on account of manner of proving, such document is kept out of consideration by the court in absence of certificate under Section 65B(4) of the Evidence Act, which party producing cannot possibly secure. Thus, requirement of certificate under Section 65B(h) is not always mandatory.

Accordingly, we clarify the legal position on the subject on the admissibility of the electronic evidence, especially by a party who is not in possession of device from which the document is produced. Such party cannot be required to produce certificate under Section 65B(4) of the Evidence Act. The applicability of requirement of certificate being procedural can be relaxed by Court wherever interest of justice so justifies.

(2018) 2 SCC 801; 2018 (1) ALT (Cri) 235 (SC); 2018 0 AIR(SC) 714; 2018 0 Supreme(SC) 183; Shafhi Mohammad Vs State of H.P.

Section 3(2)(v) of the SC/ST Prevention of Atrocities Act has now been amended by virtue of Amendment Act 1 of 2016. By way of this amendment, the words ".....on the ground that such person is a member of a Scheduled Caste or a Scheduled Tribe" have been substituted with the words ".....knowing that such person is a member of a Scheduled Caste or Scheduled Tribe". Therefore, if subsequent to 26.01.2016 (i.e. the day on which the amendment came into effect), an offence under Indian Penal Code which is punishable with imprisonment for a term of ten years or more, is committed upon a victim who belongs to SC/ST community and the accused person has knowledge that such victim belongs to SC/ST community, then the charge of Section 3(2)(v) of SC/ST Prevention of Atrocities Act is attracted. Thus, after the amendment, mere knowledge of the accused that the person upon whom the offence is committed belongs to SC/ST community suffices to bring home the charge under Section 3(2)(v) of the SC/ST Prevention of Atrocities Act.

2018(1)ALT (Cri) 239(SC); 2017 AIR(SC) 5819; 2018 CrLJ 937; 2017 12 JT 98; 2018 1 SCC742; 2018(1)SCC(Cri)489;2017 0 Supreme(SC)1170; Asharfi Vs State of U.P.

it is evident that the complainant- respondent Company in its wisdom had withdrawn the complaint against the two persons, who were the officers of the Kotak Mahindra Bank Ltd. from a common complaint made against four persons. However, we do not find any reason as to why the remaining two persons, being the present appellants, who were the officers of the State Bank of Travancore at the relevant time, are being prosecuted. Hence, the complaint against the present appellants does not survive and in the interest of justice the same is liable to quashed and is accordingly quashed.

2018(1) ALT (Cri) 244 (SC); 2017 0 AIR(SC) 1560; 2017 2 Crimes(SC) 21; 2017 5 SCC 725; 2017 3 Supreme 172; 2017 0 Supreme(SC) 258; K.Sitaram and anr Vs CFL Capital Financial Service Ltd. & Anr.

an accused person, who alleged to have committed a non-bailable offence, can approach the competent Court seeking pre arrest bail under Section 438 of Cr.P.C. A person who alleged to have committed a bailable offence is not entitled to file application under Section 438 of Cr.P.C., in view of the language deployed in it. Section 438 of Cr.P.C., can be invoked only in cases of non- bailable offences and not in cases of bailable offences, in view of the principle enunciated in Balchand Jain v. State of M.P. (1976) 4 SCC 572.

Section 41A Cr.P.C., in letter and spirit, is applicable to the offences committed under the SC/ST Act

2018(1) ALT (Cri) 247(AP); 2018(1) ALD (Crl) 393; 2017 0 Supreme(AP) 442;Rajulapati Ankababu Vs State

The next attack on PWs.1 to 3 is that they are highly interested witnesses and in the absence of corroboration by independent witnesses it is not safe to rely on their evidence. We find this argument also does not hold water.

It must be said there is a lot of difference between related witness and interest witness. Drawing this distinction the Apex Court in State of Rajasthan vs. Smt. Kalki and Another observed:

A witness may be called interested only when he or she derives some benefit from the result of a litigation; in the decree in a civil case, or in seeing an accused person punished. A witness who is a natural one and is the only possible eye witness in the circumstances of a case cannot be said to be interested.

2018(1) ALT (Cri) 285(DB)(AP); 2017 2 ALD(Cri) 187; 2017 0 CrLJ 3173; 2017 0 Supreme(AP) 30;Pitchapati Ramana Reddy Vs State of A.P.

From the above, the difference between the two provisions is that sanction under Section 197 CrPC is mandatory even to take cognizance after retirement of the public servant for the acts done in discharge of official duties for the IPC offences. Whereas under Section 19 of the PC Act, the emphasis is on the words "who is employed" in connection with the affairs of the Union or the State Government.

It is the settled law that at the stage of consideration of charge, the Court has to form a presumptive opinion about the involvement of an accused on the basis of such material which could lead to an inference of “grave suspicion” and not a “mere suspicion” in relation to the acts alleged. Such prima facie material should be capable of being converted into legally admissible evidence of such sterling quality which,

without being tested on the touchstone of cross examination, would lead to only a hypothesis of the guilt of an accused.
the Code of Criminal Procedure is an enactment designed interalia not only to ensure a fair investigation of the allegations against a person accused of criminal misconduct, but also from that and on filing final report for taking cognizance or not for any offence with application of mind judiciously from facts with reference to law only on any accusation shown with sustainability and then from the material, hearing of prosecution and accused for framing of charges if there is material to face trial and for fair trial, besides the Code of Criminal Procedure, the Evidence Act also provides safeguards on admissibility, relevancy and proof of facts during trial from real, oral and documentary-which include electronic evidence for judicial appreciation of evidence in arriving truth in the voyage of trial. For that firstly to read any penal provision of offence made out or not, it has to be read with general exceptions, as per Section 6 IPC.
It is needless to say ends of Justice are higher than the ends of mere law, though justice has got to be administered according to laws made by the legislature.
2018(1) Alt (Cri) 322 (AP) ;Lanka Venkata Subramanyam Vs State of Telangana

When accused was last seen with the deceased and does not explain as to how the deceased died, adverse inference can be drawn against him u/s 106, Evidence Act.
While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to be truthful in the given circumstances of the case. Once that impression is formed, it is necessary for the court to scrutinize the evidence more particularly keeping in view the drawbacks and infirmities pointed out in the evidence and evaluate them to find out whether it is against the general tenor of the prosecution case.
2018(1) SCC (Cri) 452; 2018 0 AIR(SC) 329; 2018 2 SCC 69; 2018 0 Supreme(SC) 4; State of H.P. Vs Raj Kumar.

It is settled law that at the stage of framing of charge, the accused cannot ordinarily invoke Section 91. However, the court being under the obligation to impart justice and to uphold the law, is not debarred from exercising its power, if the interest of justice in a given case so require, even if the accused may have no right to invoke Section 91. To exercise this power, the court is to be satisfied that the material available with the investigator, not made part of the chargesheet, has crucial bearing on the issue of framing of charge.
it is clear that while ordinarily the Court has to proceed on the basis of material produced with the charge sheet for dealing with the issue of charge but if the court is satisfied that there is material of sterling quality which has been withheld by the investigator/prosecutor, the court is not debarred from summoning or relying upon the same even if such document is not a part of the charge sheet. **It does not mean that the defence has a right to invoke Section 91 Cr.P.C. de hors the satisfaction of the court, at the stage of charge.**
2017 0 AIR(SC) 5846; 2018 0 CrLJ 905; 2017 12 JT 101; 2018 2 SCC 93; 2017 0 Supreme(SC) 1168; Nitya Dharmananda @ K. Lenin & Anr. Vs. Sri Gopal Sheelum Reddy Also Known As Nithya Bhaktananda and Anr.

neither the Standards of Weights and Measures Act, 1976 read with the enactment of 1985, or the Legal Metrology Act, 2009, would apply so as to interdict the sale of mineral water in hotels and restaurants at prices which are above the MRP.
2018(1) SCC (Cri) 461; 2018 0 AIR(SC) 73; 2018 2 SCC 97; 2017 0 Supreme(SC) 1287; Federation of Hotel and Restaurant Associations of India Vs. Union of India and Ors.

the provision (497 IPC) seems quite archaic and especially, when there is a societal progress. Thus analyzed, we think it appropriate that the earlier judgments required to be reconsidered regard being had to the social progression, perceptual shift, gender equality and gender sensitivity. That apart, there has to be a different kind of focus on the affirmative right conferred on women under Article 15 of the Constitution.
In view of the aforesaid, we think it appropriate to refer the matter to a Constitution Bench. Let the papers be placed before the learned Chief Justice of India on the administrative side for constitution of the appropriate larger Bench.
2018(1) SCC (Cri) 470; 2018 2 SCC 189; 2018 0 Supreme(SC) 6;Joseph Shine Vs Union of India.

in a judgment of this Court in Sudhir kumar (2008 0 AIR(SC) 2405; 2008 7 JT 131; 2008 12 SCC 436; 2009 1 SCC(Cri) 443; 2008 7 SCR 871; 2008 0 Supreme(SC) 787;) where it was held as follows :

> "9. If a person drives a vehicle without a licence, he commits an offence. The same, by itself, in our opinion, may not lead to a finding of negligence as regards the accident. It has been held by the courts below that it was the driver of the mini truck who was driving rashly and negligently. It is one thing to say that the appellant was not possessing any licence but no finding of fact has been arrived at that he was driving the two-wheeler rashly and negligently. If he was not driving rashly and negligently which contributed to the accident, we fail to see as to how, only because he was not having a licence, he would be held to be guilty of contributory negligence…

2017 12 JT 283; 2018 1 SCC 750; 2017 0 Supreme(SC) 1190; Dinesh Kumar J @ Dinesh.J. Vs National Insurance Company Limited and others.

It is necessary to note, in the course of hearing on a query being made and Mr. Datar very fairly stated that he does not intend to challenge that part of Section 377 which relates to carnal intercourse with animals and that apart, he confines to consenting acts between two adults. As far as the first aspect is concerned, that is absolutely beyond debate. As far as the second aspect is concerned, that needs to be debated. The consent between two adults has to be the primary pre-condition. Otherwise the children would become prey, and protection of the children in all spheres has to be guarded and protected. Taking all the aspects in a cumulative manner, we are of the view, the decision in Suresh Kumar Kaushal's case (supra) requires re-consideration. As the question relates to constitutional issues, we think it appropriate to refer the matter to a larger Bench.
2018(1) SCC (Cri) 499; 2018 1 SCC 791; 2018 0 Supreme(SC) 20; Navtej Singh Johar & Ors. Vs. Union of India Ministry of Law And Justice Secretary

Acquittal of a candidate in criminal prosecution is not conclusive of his suitability unless the acquittal is honourable.
Honourable acquittal may be defined as an acquittal after full consideration of prosecution evidence and the prosecution miserably failing to prove the charges.
Acquittal does not automatically entitle a candidate to appointment. Employer is still entitled to consider antecedents and cannot be compelled to appoint such candidate.
Court cannot substitute its views for decision of the Screening Committee.
2018(1) SCC (Cri) 504; 2018 0 AIR(SC) 376; 2018 1 SCC 797; 2018 0 Supreme(SC) 11; UNION TERRITORY, CHANDIGARH ADMINISTRATION AND ORS. Vs. PRADEEP KUMAR AND ANOTHER.

'Age' in section 2(1)(d) does not cover 'mental age'
2018(1) SCC (Cri) 588; (2017) 15 SCC 133; 2017 0 AIR(SC) 3457; 2018 0 CrLJ 186; 2017 8 Scale 112; 2017 0 Supreme(SC) 684; Ms. Eera Through Dr. Manjula Krippendorf Vs State (Govt. of NCT of Delhi) & Anr.

For the reasons that;

i) the examination of prosecution witnesses has been completed and the Sessions Case is coming up for the examination of applicants under Section 313 of the Code;

ii) 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

iii) 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.
2018(1) ALD (Cri) 359; 2017 2 Crimes(HC) 194; K.Vittala Rao and others Vs State of A.P.

Sections 25 and 26 of the Indian Evidence Act, 1872 (for brevity, 'the Act of 1872') mandate that a confession made by an accused to a police officer or while in the custody of the police, and without a Magistrate being present, shall not be proved against such accused. In effect, law prohibits the use of a confession when it is sought to be proved against the accused, i.e., in support of the prosecution, but not when it is used for the accused SARKAR on the Law of Evidence 16th Edition, Reprint 2008, Page 569 . Thus, explanation in a confession by the accused to the police, for the killing, may be relied on to prove motive or provocation, with a view to extenuate the offence or sentence. (See HASIL V/s. EMPEROR, AIR 1942 Lahore 37, LAL KHAN V/s. EMPEROR, AIR 1948 Lahore 43, In re MOTTAI THEVAR, AIR 1952 Madras 586 and RAM ASHISH V/s. STATE, 2015 SCC OnLine Delhi 11550). In KANDI VENKATA SUNEEL KUMAR REDDY V/s. STATE OF ANDHRA PRADESH, 2010 (1) ALD (Crl.) 699 (AP), a Division Bench of this Court pointed out that the law is well settled that if the accused gives a confession, admissible to a limited extent under Section 27 of the Act of 1872, the same can be admitted to the extent it is favourable to the accused for

any purpose, i.e., either for acquittal or for modifying the conviction. In effect, such a confession can be taken into account if it is beneficial to the accused.
2018(1) ALD ((Crl) 407; 2017 0 Supreme(AP) 487; Gottipati Hanumayamma Vs.The State represented by the Public Prosecutor

as the appellant/accused was never charged with an offence under Section 304B IPC and did not have an opportunity to rebut the statutory presumption that would weigh against him if the death of his wife is treated as a dowry death, it would be appropriate that the Sessions Court frame the charge at least at this stage and give him an opportunity to meet it.
2018(1) ALD (Crl) 427: 2017 0 Supreme(AP) 437; Madasu Rambabu Vs State of A.P.

there was no benefit that was gained by the Society for which the petitioner herein is a Secretary, by submitting the impugned letter given by the General Manager, which is allegedly a forged letter. The AICTE, however, had the security that is given by the Andhra Bank and hence, this case is also a case similar to the one dealt with by the Apex Court (referred supra), where no gain is achieved by the accused by submitting the said letter. A perusal of the said letter shows that it was not signed by the petitioner and he is not the applicant. Hence, from the said angle also, strength is gained to the petitioners pleas and the prosecution against the petitioner cannot be sustained
2018(1) ALD (Crl) 438; 2017 0 Supreme(AP) 702; D.B. Suresh Babu Vs. State and another.

Mere denial of a fact, which is asserted by a party in the petition filed by him, cannot be taken as a false statement unless adjudication of the said statement is made.
2018(1) ALD (Crl) 444; 2018 1 Crimes(HC) 600; Rev. Dr. Busi Suneel Bhanu Vs State of A.P.,

The statutory procedure prescribed in Section 145 Cr.P.C. explicitly requires the parties to be called upon to put forth their claims, to be given an opportunity of being heard, and to adduce evidence in support of their claims, only after an order is passed under Section 145 (1) Cr.P.C, as putting the parties to the dispute on notice, and giving them an opportunity of being heard, before passing an order under Section 145(1) Cr.P.C. may well result in a breach of peace rendering the very purpose of enacting Section 145 Cr.P.C. redundant. We must, therefore, express our inability to agree with the submission of Sri C. Ramachandra Raju, learned counsel for the petitioner, that, before an order under Section 145(1) Cr.P.C. is passed, the affected parties should be put on notice and be given an opportunity of being heard, or that the petitioner was entitled to be put on notice, and to be heard, at a stage prior to the making of an order under Section 145 (1) Cr.P.C.
The contention that it is only on receipt of a police report, can action be taken under Section 145 (1) Cr.P.C. is not tenable, as the said provision enables the Executive Magistrate to arrive at his satisfaction, of the existence of a dispute relating to land

which is likely to cause a breach of peace, either from the report of a police officer or upon such other information.
The order, passed under Section 145(1) thereof, is an executive order. It does not determine the rights of the parties in respect of the subject land for which it operates. Such an order does not also determine any rights either with respect to possession or about ownership of the parties which may be agitated by the parties before the Civil Court or any other adjudicatory forum.
2018(1) ALD (Crl) 515; 2017 0 Supreme(AP) 673; Yelugubanti Hari Babu Vs. State of Andhra Pradesh

Promotes were not entitled to promotion or seniority without suitability test.
Promotes rightly given seniority above direct recruits without following rotation principle.
2018 0 Supreme(SC) 261; Hon'ble High Court of Judicature at Allahabad – through Registrar General Vs. The State of Uttar Pradesh & Ors.

To give effect to the legislative policy and the mandate of Article 21 for speedy justice in criminal cases, if stay is granted, matter should be taken on day-to-day basis and concluded within two-three months. Where the matter remains pending for longer period, the order of stay will stand vacated on expiry of six months, unless extension is granted by a speaking order showing extraordinary situation where continuing stay was to be preferred to the final disposal of trial by the trial Court. This timeline is being fixed in view of the fact that such trials are expected to be concluded normally in one to two years.
2018 0 Supreme(SC) 266; ASIAN RESURFACING OF ROAD AGENCY PVT. LTD. & ANR. Vs. CENTRAL BUREAU OF INVESTIGATION

Pending legislative measures to check the malady of frequent uncalled for strikes obstructing access to justice, the Ministry of Law and Justice may compile information and present a quarterly report on strikes/abstaining from work, loss caused and action proposed. The matter can thereafter be considered in the contempt or inherent jurisdiction of this Court. The Court may direct having regard to a fact situation, that the office bearers of the Bar Association/Bar Council who passed the resolution for strikes or abstaining from work or took other steps in that direction are liable to be restrained from appearing before any court for a specified period or till they purge themselves of contempt to the satisfaction of the Chief Justice of the concerned High Court based on an appropriate undertaking/conditions. They may also be liable to be removed from the position of office bearers of the Bar Association forthwith until the Chief Justice of the concerned High Court so permits on an appropriate undertaking being filed by them. This may be in addition to any other action that may be taken for the said illegal acts of obstructing access to justice. The matter may also be considered by this Court on receipt of a report from the High Courts in this regard. This does not debar report/petition from any other source even before the end of a quarter, if situation so warrants.
2018 0 Supreme(SC) 269; Krishnakant Tamrakar Vs. State of Madhya Pradesh

Related' is not equivalent of 'interested'.

Evidence of witnesses cannot be discarded merely because they are family members of deceased.

2018 0 Supreme(SC) 255; GANAPATHI & ANR. Vs. THE STATE OF TAMIL NADU.

The larger question, whether any direction for investigation u/s 156(3), CrPC can be issued without prior sanction, referred to a larger bench.

2018 0 Supreme(SC) 257; MANJU SURANA Vs. SUNIL ARORA & ORS

High Court can enhance punishment after complying with section 377(3), CrPC.
Minimum sentence u/s 302 IPC being life imprisonment, award of 10 years jail term by trial court was illegal per se. High Court rightly enhanced it to life imprisonment.

2018 0 Supreme(SC) 259; Bharatkumar Rameshchandra Barot Vs. State of Gujarat.

Our conclusions are as follows:

i. Proceedings in the present case are clear abuse of process of court and are quashed.

ii. There is no absolute bar against grant of anticipatory bail in cases under the Atrocities Act if no prima facie case is made out or where on judicial scrutiny the complaint is found to be prima facie mala fide. We approve the view taken and approach of the Gujarat High Court in Pankaj D Suthar (supra) and Dr. N.T. Desai (supra) and clarify the judgments of this Court in Balothia (supra) and Manju Devi (supra);

iii. In view of acknowledged abuse of law of arrest in cases under the Atrocities Act, arrest of a public servant can only be after approval of the appointing authority and of a non-public servant after approval by the S.S.P. which may be granted in appropriate cases if considered necessary for reasons recorded. Such reasons must be scrutinized by the Magistrate for permitting further detention.

iv. To avoid false implication of an innocent, a preliminary enquiry may be conducted by the DSP concerned to find out whether the allegations make out a case under the Atrocities Act and that the allegations are not frivolous or motivated.

v. Any violation of direction (iii) and (iv) will be actionable by way of disciplinary action as well as contempt.

The above directions are prospective.

2018 0 Supreme(SC) 243; Dr. Subhash Kashinath Mahajan Vs. The State of Maharashtra & Anr.

There is no prohibition on filing second FIR relating to same incident.

2018 0 Supreme(SC) 242; P. Sreekumar Vs. State of Kerala & Ors

Investigation can be transferred only in rare and exceptional cases where necessary to do justice between the parties and instill confidence in public or where investigation by State police lacks credibility.

Demonstrations and bandhs creating public disturbances or operating as nuisances, or creating or manifestly threatening some tangible public or private mischief are not

protected under Article 19. Such demonstrations and bandh become an offence punishable under law.
2018 0 Supreme(SC) 234; BIMAL GURUNG Vs. UNION OF INDIA & ORS

prayer for exemption from personal appearance under Section 205 Cr.P.C. can only be made at the stage of first appearance of the accused and once the accused appears before the court in person without making any application for dispensing with the personal appearance under Section 205 Cr.P.C. at a subsequent stage, such an application would not be maintainable.
2018 0 Supreme(SC) 238; SRI RAMESHWAR YADAV & ORS. Vs. THE STATE OF BIHAR & ANR.

The right of a dying man to die with dignity when life is ebbing out, and in the case of a terminally ill patient or a person in PVS, where there is no hope of recovery, accelerating the process of death for reducing the period of suffering constitutes a right to live with dignity.
There is an inherent difference between active euthanasia and passive euthanasia.
In cases of terminally ill persons or PVS patients where there is no hope for revival, priority shall be given to the Advance Directive and the right of self-determination.
In the absence of Advance Directive, the procedure provided for the said category hereinbefore shall be applicable.
When passive euthanasia as a situational palliative measure becomes applicable, the best interest of the patient shall override the State interest.
2018 0 Supreme(SC) 229; Common Cause (A Regd. Society) Vs. Union of India and Another

On the culmination of a criminal case in acquittal, the investigating/prosecuting official(s) concerned responsible for such acquittal must necessarily be identified. A finding needs to be recorded in each case, whether the lapse was innocent or blameworthy. Each erring officer must suffer the consequences of his lapse, by appropriate departmental action, whenever called for. Taking into consideration the seriousness of the matter, the official concerned may be withdrawn from investigative responsibilities, permanently or temporarily, depending purely on his culpability. We also feel compelled to require the adoption of some indispensable measures, which may reduce the malady suffered by parties on both sides of criminal litigation.
2018 0 Supreme(AP) 4; Prof. Rama Shankarnarayan Melkote and three others Vs. State of A.P.

Constitution of India — Art. 51-A(a) and Preamble — Duty to show respect to national symbols i.e. National Flag and National Anthem: When National Anthem is played or sung, due respect as salutation to motherland should be shown by standing up and proper decorum should be maintained, except where a person is differently abled. It is now not mandatory to play National Anthem before starting of film but if National Anthem is played in cinema halls prior to showing of films, it is mandatory for audience to stand up in respect. However, if National Anthem is played as part of storyline of a feature film or newsreel or documentary, audience need not stand up. **Shyam Narayan Chouksey v. Union of India, (2018) 2 SCC 574.**

Criminal Procedure Code, 1973 — S. 154 — FIR: Value to be attached to FIR depends upon facts and circumstances of each case. When a person gives a statement to police officer basing on it, FIR is registered. Capacity of reproducing things differs from person to person. Some people may have ability to reproduce things as it is, some may lack the ability to do so. Sometimes in the state of shock, they may miss the important details, because people tend to react differently when they come across a violent act. Merely because names of accused are not stated and their names are not specified in FIR, that may not be a ground to doubt contents of FIR and the case of prosecution cannot be thrown out on such count. **Latesh v. State of Maharashtra, (2018) 3 SCC 66**

NOSTALGIA

Time and again, this Court has emphasized the need for assigning reasons while considering the grant or reject of the bail. It is apt to reproduce what this Court has held in Paras 11 and 12 of the decision in Kalyan Chandra Sarkar vs. Rajesh Ranjan @ Pappu Yadav & Anr., (2004) 7 SCC 528 on this issue.

> "11. 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. (See Ram Govind Upadhyay v. Sudarshan Singh, (2002) 3 SCC 598 and Puran v. Rambilas, (2001) 6 SCC 338)
>
> 12. In regard to cases where earlier bail applications have been rejected there is a further onus on the court to consider the subsequent application for grant of bail by noticing the grounds on which earlier bail applications have been rejected and after such consideration if the court is of the opinion that bail has to be granted then the said court will have to give specific reasons why in spite of such earlier rejection the subsequent application for bail should be granted. (See Ram Govind Upadhyay)"

NEWS

- Chief Minister K Chandrashekhar Rao on Monday i.e, 19/3/2018, during the Question Hour of the Legislative Assembly session made an announcement that

the state government is will be taking a decision shortly on filling up of vacancies of prosecuting officers in Telangana's criminal courts.

- GOVERNMENT OF ANDHRA PRADESH; HUMAN RIGHTS – Protection of Human Rights Act, 1993 – Specification of the Additional Public Prosecutors in the Courts of I Additional District & Sessions Judges in all the Districts and the I Additional Metropolitan Sessions Judge Court in Visakhapatnam and Vijayawada, as Special Public Prosecutors to conduct the cases to conduct the cases in Human Rights Court– Notification - Issued. G.O.MS.No. 39, HOME (COURTS.A) DEPARTMENT Dated: 29-03-2018.
- **GOVERNMENT OF TELANGANA** Home (Courts) Department – Special Court in the cadre of Sessions Judge at Hyderabad for trial of criminal cases relating to elected MPs and MLAs of the State - Creation of posts – Orders –Issued. **G.O.Ms.No.15 FINANCE (HRM-II) DEPARTMENT Dated:02.03.2018.**
- **Prosecution Replenish congratulates all the promotees of APP to SrAPP.**

Zone IV

Smt K.Maheswari	**Sr.APP, IAJMFC, Nandyala, Kurnool**
Sri C.Krishna Reddy	**Sr.APP, IVAJFCM, Chittoor.**
Sri G.S.Ram Bhagwan	**Sr.APP, PJFCM, Ananthapuram.**
Sri Y.Shyam Sundar Reddy	**Sr.APP, IAJFCM, Kurnool**
Smt K.Uma Devi	**Sr.APP, JFCM, Adoni, Kurnool**

I have tried to get the list of promotees of other zones, but was unsuccessful.

- THE PAYMENT OF GRATUITY (AMENDMENT) ACT, 2018 enclosed.
- The Circular prescribing compulsory attendance by biometric method is enclosed.

ON A LIGHTER VEIN

Two boys were arguing when the teacher entered the room.

The teacher says, "Why are you arguing?"

One boy answers, "We found a ten dollar bill and decided to give it to whoever tells the biggest lie."

"You should be ashamed of yourselves," said the teacher, "When I was your age I didn't even know what a lie was."

The boys gave the ten dollars to the teacher.

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Part-5

Prosecution Replenish

An Endeavour for Learning and Excellence

May, 2018

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

Difficulties in your life do not come to destroy you, but to help you realise your hidden potentials.
LET DIFFICULTIES KNOW THAT YOU ARE DIFFICULT.

CITATIONS

Special Judge trying PC Act cases can also try connected non-PC Act cases. There is no bar u/s 26 Cr PC.
2018(1) ALT (Crl) 311(SC); M/S. HCL INFOSYSTEM LTD. Vs. CENTRAL BUREAU OF INVESTIGATION;

It is settled law that at the stage of framing of charge, the accused cannot ordinarily invoke Section 91. However, the court being under the obligation to impart justice and to uphold the law, is not debarred from exercising its power, if the interest of justice in a given case so require, even if the accused may have no right to invoke Section 91. To exercise this power, the court is to be satisfied that the material available with the investigator, not made part of the chargesheet, has crucial bearing on the issue of framing of charge.
2018(1) ALD (Crl) 329(SC); 2017 0 AIR(SC) 5846; 2018 0 CrLJ 905; 2018 2 SCC 93; 2017 0 Supreme(SC) 1168; Nitya Dharmananda @ K. Lenin & Anr. Vs. Sri Gopal Sheelum Reddy Also Known As Nithya Bhaktananda and Anr.

Our conclusions are as follows:

I. Proceedings in the present case are clear abuse of process of court and are quashed.
II. There is no absolute bar against grant of anticipatory bail in cases under the Atrocities Act if no prima facie case is made out or where on judicial scrutiny the complaint is found to be prima facie mala fide. We approve the view taken and approach of the Gujarat High Court in Pankaj D Suthar (supra) and Dr. N.T. Desai (supra) and clarify the judgments of this Court in Balothia (supra) and Manju Devi (supra);
III. In view of acknowledged abuse of law of arrest in cases under the Atrocities Act, arrest of a public servant can only be after approval of the appointing authority and of a non-public servant after approval by the S.S.P. which may be granted in appropriate cases if considered necessary for reasons recorded. Such reasons must be scrutinized by the Magistrate for permitting further detention.
IV. To avoid false implication of an innocent, a preliminary enquiry may be conducted by the DSP concerned to find out whether the allegations make out a case under the Atrocities Act and that the allegations are not frivolous or motivated.

V. Any violation of direction (iii) and (iv) will be actionable by way of disciplinary action as well as contempt.

The above directions are prospective.

2018(1) ALD (Crl) 629(SC); 2018(1) ALT (Crl) 332 (SC); Dr. Subhash Kashinath Mahajan Vs. The State of Maharashtra & Anr.

While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to be truthful in the given circumstances of the case. Once that impression is formed, it is necessary for the court to scrutinize the evidence more particularly keeping in view the drawbacks and infrmities pointed out in the evidence and evaluate them to fnd out whether it is against the general tenor of the prosecution case.

The circumstances relied upon by the prosecution are proved by cogent and reliable evidence. The circumstances cumulatively taken form a complete chain pointing out that the murder was committed by the accused and none-else.

As pointed out by the Sessions Judge, deceased Meena Devi was last seen alive in the company of accused Raj Kumar and the accused did not satisfactorily explain the missing of deceased Meena Devi and the same is a strong militating circumstance against the accused. Meena Devi who was residing in the same house with the accused and was last seen alive with the accused, it is for him to explain how the deceased died.

2018(1) ALD (Crl) 561(SC); 2018 0 AIR(SC) 329; 2018 2 SCC 69; 2018 0 Supreme(SC) 4; 2018(1) ALD (Crl)405 (SC) State of H.P. Vs Raj Kumar.

When an order is passed, it can be questioned by the aggrieved party in appeal or revision, as the case may be, to the superior Court. It is then for the Appellate/Revisionery Court to decide as to what orders need to be passed in exercise of its Appellate/Revisionery jurisdiction. Even while remanding the case to the subordinate Court, the Superior Court cannot issue a direction to the subordinate Court to either “allow” the case or “reject” it. If any such directions are issued, it would amount to usurping the powers of that Court and would amount to interfering in the discretionary powers of the subordinate Court. Such order is, therefore, not legally sustainable.

If the order under challenge is based on an application by a party and that party is not impleaded in the revision petition, the revisional order would be vitiated.

2018(1) ALD (Crl) 411(SC); 2017 0 AIR(SC) 5848; 2018 0 CrLJ 902; Madan Mohan Vs State of Rajasthan and others

The principles which can be broadly stated are these. First, merely because a detenu is liable to be tried in a criminal court for the commission of a criminal offence or to be proceeded against for preventing him from committing offences dealt with in Chapter VIII of the Code of Criminal Procedure would not by itself debar the Government from taking action for his detention under the Act. **Second, the fact that the Police arrests a person and later on enlarges him on bail and initiates steps to prosecute him under the Code of Criminal Procedure and even lodges a first information report may be no bar against the District Magistrate issuing an order under the preventive detention.** Third, where the concerned person is actually in jail custody at

the time when an order of detention is passed against him and is not likely to be released for a fair length of time, it may be possible to contend that there could be no satisfaction on the part of the detaining authority as to the likelihood of such a person indulging in activities which would jeopardise the security of the State or the public order. Fourth, the mere circumstance that a detention order is passed during the pendency of the prosecution will not violate the order. Fifth, the order of detention is a precautionary measure. It is based on a reasonable prognosis of the future behaviour of a person based on his past conduct in the light of the surrounding circumstances.
https://indiankanoon.org/doc/26727284/; 2018(1) ALT (Crl) 413(DB)(HYD); Nerella Prabha Latha Vs State of Telangana.

In every bail application including the offences involving economic frauds and white collar crimes, the Courts encounter a crucial issue of individual liberty guaranteed by the Constitution under Article 21 on one hand and societal interest to bring the culprit to book and see that the fair trial and impartial justice are rendered. These two aspects being distinct poles, Courts are required to strike a judicious balance between the two conflicting interests. That is where, we are now.
https://indiankanoon.org/doc/150405050/; Mallampati Gandhi vs The State Of Telangana.

The allegation is that the petitioner has been dishonestly indulging in broadcasting of channels of the 3rd respondent, even after the discontinuation of signals with effect from 15.01.2018. There is no authority for the petitioner to do so. Such acts can be construed as infringement of copyrights of the 3rd respondent. It amounts to conversion of movable property belonging to respondent No.3 fraudulently with unlawful measures by the petitioner. The impugned criminal proceedings are not invoked as an instrument of harassment or for seeking private vendetta or with an ulterior motive to pressurize the accused. The continuation of proceedings is not abuse of process of law. Further, in view of the circumstances of the case, it cannot be held that there are no sufficient grounds to register the impugned crime and proceed with the investigation of the case. The report lodged by the 2nd respondent reveals prima facie commission of a cognizable offence, for which the impugned crime is registered. Continuation of the impugned proceedings is not abuse of process of law.
As per the Copyright Act, the original owner has to give a complaint to the competent authority not to the police. The police has no power or authority to register the crime at the instance of the unauthorized person. The said fact is also proved based on the report dated 30.11.2015 submitted by the Deputy Superintendent of Police, Toopran Sub Division. As per the said report and the Act, any party aggrieved by any dispute in respect of broadcasting of cable network, ought to have filed complaint before the Telecom Distributor Settlement and Appellate Tribunal, New Delhi (TDSAT). As per Section 11 of the Cable Television Networks (Regulation) Act, 1995, the competent authority is the Commissioner of Police. The de facto complainant is not the aggrieved person and the original owner of the network is Star India, so it cannot be looked into. The petitioner is running a cable network having licence granted by Star India and the licence is valid upto 30.06.2018. Ultimately, the petitioner prayed to quash the impugned proceedings.

All the contentions raised on behalf of the petitioner do fail. The petition is devoid of merit and it is liable to be dismissed.

https://indiankanoon.org/doc/186468255/; Subhodaya Digital Entertainment Private Limited Vs State of Telangana

It is unfortunate to note that the order of the High Court on the first instance clearly points out that it has virtually directed the course of action to be undertaken by the subordinate court. It is not expected from the High Court to pass such mandatory orders commanding the subordinate court to compulsorily grant bail.

Though the respondent no. 1 is not a citizen of this country (British national), yet the fact remains that he along with other persons has indulged in the criminal activity. The case of the prosecution mainly revolves around him as he is alleged to be the kingpin of the criminal conspiracy which demands his custodial interrogation. In such circumstances, it is unfortunate that the High Court did not appreciate the facts of the case with prudent legal perception. We see no reason to accord any special consideration for respondent no.1 by virtue of a simple fact that he is a citizen of different country. The law under Section 439 of Cr.P.C is very clear and in the eyes of the law every accused is the same irrespective of their nationality.

2018(1) ALD (Crl) 535(SC); 2018 0 AIR(SC) 599; 2018 1 Crimes(SC) 91; 2018 3 SCC 187; 2018 1 Supreme 486; 2018 0 Supreme(SC) 58; LACHHMAN DASS Vs. RESHAM CHAND KALER AND ANR (BATCH)

In our opinion, an ingenious mind can question anything and, on the other hand, there is nothing which it cannot convince. When you consider the facts, you have a reasonable doubt as to whether the matter is proved or whether it is not a reasonable doubt in this sense. The reasonableness of a doubt must be a practical one and not on an abstract theoretical hypothesis. Reasonableness is a virtue that forms as a mean between excessive caution and excessive indifference to a doubt.

the prosecution has the discretion to produce any witness based on its prudence.

The value to be attached to the FIR depends upon facts and circumstances of each case. When a person gives a statement to the police officer, basing on which the FIR is registered. The capacity of reproducing the things differs from person to person. Some people may have the ability to reproduce the things as it is, some may lack the ability to do so. Some times in the state of shock, they may miss the important details, because people tend to react differently when they come across a violent act. Merely because the names of the accused are not stated and their names are not specified in the FIR that may not be a ground to doubt the contents of the FIR and the case of the prosecution cannot be thrown out on this count.

The necessity of holding Test Identification Parade arises only when the accused are not previously known to each other. The Test Identification Parade is not a substantial piece of evidence, but is useful for corroboration with the other evidence. It is a rule of prudence. The Test Identification Parade, even if it is held may not be considered in all cases as trustworthy evidence on which the conviction of the accused can be sustained. In the case on hand, the absence of Test Identification Parade will not vitiate the case of the prosecution as the accused and P.W.2 were known to each other.

2018(1) ALD (Crl) 542(SC); 2018 0 AIR(SC) 659; 2018 1 Crimes(SC) 95; 2018 0 CrLJ 1812; 2018 3 SCC 66; 2018 1 Supreme 524; 2018 0 Supreme(SC) 90; Latesh @ Dadu Baburao Karlekar Vs. The State of Maharashtra.

the law is well-settled that a charge under Section 201 of the IPC can be independently laid and conviction maintained also, in case the prosecution is able to establish that an offence had been committed, the person charged with the offence had the knowledge or the reason to believe that the offence had been committed, the said person has caused disappearance of evidence and such act of disappearance has been done with the intention of screening the offender from legal punishment. Mere suspicion is not sufficient, it must be proved that the accused knew or had a reason to believe that the offence has been committed and yet he caused the evidence to disappear so as to screen the offender. The offender may be either himself or any other person.
2018 0 AIR(SC) 951; 2018 3 SCC 313; 2018 0 Supreme(SC) 132; Dinesh Kumar Kalidas Patel Vs State of Gujarat.

Conviction can be based on the evidence of Sole eye witness, if the same is credible and trustworthy. Sole eye witness having no animosity with the accused and residing in the same premises.
2018(1) ALD (Crl) 587; 2017 0 Supreme(AP) 345; Kaside Rajender Vs State

ice cannot be brought within the purview of food article in view of the specific exclusion of water from the definition of food and drinks under Section 2(v) of the Act.
2018(1) ALD (Crl) 596(HC); 2017 0 Supreme(AP) 505; Gudipudi Surya Gopala Srinivasa Rao and another Vs State of A.P.

As the delay in registration of F.I.R. gives rise to a reasonable doubt about manipulation or false implications, the burden is on the prosecution to explain the said delay. Even in the absence of any question being put by the defence to the prosecution witnesses, this burden on the prosecution, in our opinion, is absolute and the prosecution cannot be heard to say that in the absence of any question having been put by the defence in this regard, it is not liable to discharge such burden.
2018(1) ALD (Crl) 599; 2017 0 Supreme(AP) 432; Rokalla Dharmarao @ Busayya, S/o Late Dandasi Vs State of A.P.

Requirement of section 65B is not always mandatory.
The applicability of procedural requirement under Section 65B(4) of the Evidence Act of furnishing certificate is to be applied only when such electronic evidence is produced by a person who is in a position to produce such certificate being in control of the said device and not of the opposite party. In a case where electronic evidence is produced by a party who is not in possession of a device, applicability of Sections 63 and 65 of the Evidence Act cannot be held to be excluded. In such case, procedure under the said Sections can certainly be invoked. If this is not so permitted, it will be denial of justice to the person who is in possession of authentic evidence/witness but on account of manner of proving, such document is kept out of consideration by the court in absence of certificate under Section 65B(4) of the Evidence Act, which party

producing cannot possibly secure. Thus, requirement of certificate under Section 65B(h) is not always mandatory.
(2018) 1 SCC(Cri) 860; 2018(1) ALD (Crl) 606(SC); 2018 0 AIR(SC) 714; 2018 0 CrLJ 1714; 2018 2 SCC 801; 2018 0 Supreme(SC) 183;Shafhi Mohammad Vs State of H.P.

No citizen more particularly the Government employees cannot be forced to face prosecution, after lapse of 15 years, at the whims and fancies of the complainants, who having failed to get fruitful result by resorting to civil remedy. Having lost the battle on the civil side, the first respondent reverted to seek redressal by approaching the criminal court. It is needless to say that one has to assign reasons much less cogent and valid reasons for non-filing of the complaint within a reasonable time. Simply because there is no period of limitation that itself would not enable the parties to file vexatious complaints with an ulterior motive to force the accused to face the rigour of criminal trial. It is not the case of the first respondent that he is not aware of the court procedure thereby he has taken fifteen years' time to approach the criminal court. Nowhere it is mentioned that due to reasons beyond his control or due to legal disability he could not approach the court within a reasonable time in order to justify the action of the first respondent to approach the court after lapse of fifteen years. If the courts allow the complaints without scrutinizing the reasons for abnormal coupled with unexplained delay certainly it would amount to encouraging the litigant public to file the complaints using the court as a forum to settle their scores, which they failed to achieve by other legal means. The complaint is conspicuously silent as to the reasons much less cogent and valid reasons for not approaching the court within a reasonable time. This court is very much conscious of Section 468 Cr.P.C. and at the same time, the court shall not lose sight of the conduct and bona-fides of the complainants in approaching the court after long lapse of time.
2018(1) ALD (Crl) 611; 2017 1 ALT(Cri) 362; 2017 0 CrLJ 3847; 2017 0 Supreme(AP) 9; Bypu Subbarao Vs. Dasari Sudhakar Babu @ Sudhakar and The State of Andhra Pradesh.

The consistent thread of reasoning which emerges from the above decisions is that in view of the definition of the expression 'owner' in Section 2(30), it is the person in whose name the motor vehicle stands registered who, for the purposes of the Act, would be treated as the 'owner'. However, where a person is a minor, the guardian of the minor would be treated as the owner. Where a motor vehicle is subject to an agreement of hire purchase, lease or hypothecation, the person in possession of the vehicle under that agreement is treated as the owner. In a situation such as the present where the registered owner has purported to transfer the vehicle but continues to be reflected in the records of the registering authority as the owner of the vehicle, he would not stand absolved of liability.
(2018) 1 SCC (Cri) 661; 2018 0 AIR(SC) 983; 2018 3 SCC 1; 2018 0 Supreme(SC) 115; Naveen Kumar Vs Vijay Kumar and others (THREE JUDGE BENCH)

In order to examine as to whether the factual contents of the FIR disclose any prima facie cognizable offences or not, the High Court cannot act like an investigating agency and nor can exercise the powers like an appellate Court. The question, in our opinion,

was required to be examined keeping in view the contents of the FIR and prima facie material, if any, requiring no proof.
At this stage, the High Court could not appreciate the evidence nor could draw its own inferences from the contents of the FIR and the material relied on. It was more so when the material relied on was disputed by the Complainants and visa-se-versa. In such a situation, it becomes the job of the investigating authority at such stage to probe and then of the Court to examine the questions once the charge sheet is filed along with such material as to how far and to what extent reliance can be placed on such material.
(2018) 1 SCC (Cri) 683; 2018 0 AIR(SC) 314; 2017 2 Bankman 237; 2018 1 Crimes(SC) 43; 2018 3 SCC 104; 2018 0 Supreme(SC); Dineshbhai Chandubhai Patel Vs State of Gujarat.

Bank account of accused or any of his relations is “property” within the meaning of Section 102, CrPC.
When transactions in a bank account is suspected of commission of alleged offence Investigating officer will be right in issuing directions to seize the bank accounts.
There is no provision to give prior notice to account holder before the seizure of his bank account.
(2018) 1 SCC (Cri) 718; 2018 0 AIR(SC) 27; 2018 1 Crimes(SC) 109; 2018 0 CrLJ 1610; 2017 12 JT 390; 2018 2 SCC 372; 2018 1 Supreme 222; 2017 0 Supreme(SC) 1199; Teesta Atul Setalvad Vs State of Gujarat.

The issuance of the guidelines is for the purpose of ensuring and for testing the genuineness of the dying declaration of person who is in the last moment of his life. Merely because there was a defect in following the said guideline, which is of a trivial nature and if the dying declaration recorded is otherwise proved by ample evidence, both oral as well as documentary, on the ground of such trivial defects, the whole of the dying declaration cannot be thrown out.
(2018) 1 SCC (Cri) 784; Narender Kumar Vs State (NCT of Delhi).

the law on the issue emerges to the effect that conspiracy is an agreement between two or more persons to do an illegal act or an act which is not illegal by illegal means. The object behind the conspiracy is to achieve the ultimate aim of conspiracy. For a charge of conspiracy means knowledge about indulgence in either an illegal act or a legal act by illegal means is necessary. In some cases, intent of unlawful use being made of the goods or services in question may be inferred from the knowledge itself. This apart, the prosecution has not to establish that a particular unlawful use was intended, so long as the goods or service in question could not be put to any lawful use. Finally, 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.
(2018) 1 SCC (Cri) 816; State through CBI Vs Dr.Anup Kumar Srivastava.

the accused was nineteen years of age at the time of the incident. Additionally it is born out of the record that the accused and the girl had a love affair and she had left her parent’s house voluntarily without any force. Further it is pointed out that both of

them stayed together for around ten days and the nature of sexual intercourse was consensual. Moreover the appellant herein has already undergone the period awarded (two years nine months) by the trial court. In consideration of peculiar facts and circumstances herein, and as the incident relates to the date prior to the amendment of IPC which came into force on 03.02.2013, and for special reasons sentence less than seven years was imposable, we think that the trial court has rightly imposed a lesser sentence.

https://indiankanoon.org/doc/34400819/; (2018) 1 SCC (Cri) 840; (2017) 15 SCC 591; Mahendra Subhashbhai Vankhede Vs State of Gujarat and others.

The primary allegations are that Respondent No. 2 took her forcibly to his house. But it was not with intent to seduce her to illicit intercourse. Actually, as per the prosecutrix, Respondent No. 2 first expressed his love for her and afterwards he started beating her with waist belt and using his hands which fact is evident on record. The statement of being molested at the hands of Respondent No. 2 was not given at once and was given later. The very same acts of Respondent No. 2 do not show his intent to abduct her in order to marry her against her will or to force her or seduce her to illicit intercourse.

Even if it is proved that Respondent No. 2 forcibly took her to his house, but the later version that his intention was to marry her or to force or seduce her to illicit intercourse is clearly an afterthought. At the highest, the case can be put that both of them were in a relationship and due to sudden outbreak of emotions or due to sense of insecurity on the part of Respondent No. 2, the above act was done.

2018 0 Supreme(SC) 417; Kavita Chandrakant Lakhani Vs State of Maharasthra

in Sonu alias Amar v. State of Haryana, (2017) 8 SCC 570 which can be traced to the following discussion in the said judgment:

“32. 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 65-B(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. The learned Senior Counsel for the State referred to statements under Section 161 CrPC, 1973 as an example of documents falling under the said category of inherently inadmissible evidence. CDRs do not fall in the said category of documents. We are satisfied that an objection that CDRs are unreliable due to violation

of the procedure prescribed in Section 65- B(4) cannot be permitted to be raised at this stage as the objection relates to the mode or method of proof.
2018 0 Supreme(SC) 360; UNION OF INDIA & ORS Vs. CDR. RAVINDRA V. DESAI

Behaviour of witnesses would vary from person to person and situation to situation, uniformity cannot be expected. Evidence of eye witnesses cannot be faulted merely because they ran away.
Delay in lodging FIR, duly explained, is not fatal.
2018 0 AIR(SC) 1916; 2018 0 Supreme(SC) 313; Kameshwar Singh Vs State of Bihar.

NOSTALGIA

In Sunil Kumar v. State (Govt. of NCT of Delhi), the Supreme Court held that there is no legal impediment in convicting a person on the sole testimony of a single witness. That is the logic of Section 134 of the Indian Evidence Act, 1872 (in short the Evidence Act). But, if there are doubts about the testimony the courts will insist on corroboration. It is for the court to act upon the testimony of witnesses. It is not the number, the quantity, but the quality that is material. The time-honoured principle is that evidence has to be weighed and not counted. On this principle stands the edifice of Section 134 of the Evidence Act. The test is whether the evidence has a ring of truth, is cogent, credible and trustworthy, or otherwise. In Namdeo v. State of Maharashtra the Supreme Court reiterated the said view observing that it is the quality and not the quantity of evidence which is necessary for proving or disproving a fact. The legal system has laid emphasis on value, weight and quality of evidence rather than on quantity, multiplicity or plurality of witnesses. It is, therefore, open to a competent court to fully and completely rely on a solitary witness and record conviction. Conversely, it may acquit the accused in spite of testimony of several witnesses if it is not satisfied about the quality of evidence. In Kunju v. State of Tamil Nadu, this view has been reiterated by the Supreme Court placing reliance on its various earlier judgments. In the case on hand, the tenor of the evidence of P.W.2 sounds natural and we do not see any reason why her testimony can be doubted.

In Dhal Singh Dewangan v. State of Chattisgarh, the Supreme Court held as under:

The general rule of evidence is that hearsay evidence is not admissible. However, Section 6 of the Evidence Act embodies a principle, usually known as the rule of res gestae in English law, as an exception to hearsay rule. The rationale behind this section is the spontaneity and immediacy of the statement in question which rules out any time for concoction. For a statement to be admissible under Section 6, it must be contemporaneous with the acts which constitute the offence or at least immediately thereafter. The key expressions in the section are so connected as to form part of the same transaction. The statements must be almost contemporaneous as ruled in the

case of Krishan Kumar Malik [Krishan Kumar Malik v. State of Haryana : (2011) 7 SCC 130] and there must be no interval between the criminal act and the recording or making of the statement in question as found in Gentela Vijayavardhan Rao case [Gentela Vijayavardhan Rao v. State of A.P., (1996) 6 SCC 241]. In the latter case, it was accepted that the words sought to be proved by hearsay, if not absolutely contemporary with the action or event, at least should be so clearly associated with it that they are part of such action or event. This requirement is apparent from the first illustration below Section 6 which states whatever was said or done at the beating, or so shortly before or after it as to form part of the transaction, is a relevant fact.

In Sivakoti Daveedu (2005(2)ALT(Crl.)(AP) 240 DB.), the Division Bench has dealt with a similar situation, where statements of two witnesses were recorded by the Magistrate under Section-164 Cr.P.C. However, those statements were not produced and also not supplied to the appellant. The Division Bench relying upon the judgments in Kota Peda Nagesh Vs. State of A.P. 1999 (1) ALT APP 364 and Harijana Mulinti Bhushanna Vs. State of A.P. 2004 (2) ALT (Crl.) (AP) 571, held that by non-marking of Section-164 Cr.P.C. statements of the witnesses, an adverse inference can be drawn against the prosecution.

NEWS

- **Govt. of A.P.-** CHILD RIGHTS – The Commissions for Protection of Child Rights Act, 2005 – Specification of the Additional Public Prosecutors in the Courts of I Additional District & Sessions Judges in all the Districts and the I Additional Metropolitan Sessions Judge Court in Visakhapatnam and Vijayawada, as Special Public Prosecutors to conduct the cases in Children's Courts– Notification - Issued.

- **Govt. of A.P.-** Prosecutors– A.P. Protection of Depositors Financial Establishment Act, 1999- In-charge arrangements-Special Public Prosecutor-cum- Additional Public Prosecutor Gr.I, Special Court for trial of offences under A.P. Protection of Depositors Financial Establishment Act, 1999, Vijayawada – cum-Metropolitan Sessions Judge Court, Vijayawada, to conduct prosecution under A.P. Protection of Depositors Financial Establishment Act, 1999, before the Additional Special Court under A.P. Protection of Depositors Financial Establishment Act, 1999-Cum-VIII Additional District and Sessions Judge Court, Vijayawada–orders- Issued.

- **Govt. of A.P.** -Budget Estimates 2018 - 19 Comprehensive Budget Release Order for Rs. 43250000.00 /- (FOUR CRORE THIRTY TWO LAKH FIFTY THOUSAND) to Prosecutions Department (LAW03) - Orders Issued

- **Govt of T.S-** Human Rights – Protection of Human Rights Act, 1993 – Specification of the Additional Public Prosecutors in the Courts of I Additional District & Sessions Judgesin all the Districts and the I Additional Metropolitan Sessions Judge Court in Hyderabad as Special Public Prosecutors to conduct the cases in Human Rights Court – Notification – Issued. G.O.Ms.No. 36 HOME (COURTS.A) DEPARTMENT Dated: 20-04-2018

- **Govt of T.S-** Public Services – Recruitment – Home Department - Filling of thirty five (35) vacant posts of Assistant Public Prosecutors under Director of Prosecutions through Direct Recruitment – Permission to the Telangana State Level Police Recruitment Board – Orders – Issued. G.O.Ms.No.43 FINANCE (HRM-II) DEPARTMENT Dated:30.04.2018

ON A LIGHTER VEIN

After his return from Rome, Will Couldn't find his luggage in the airport baggage area. He went to the lost luggage office and told the woman there that his bags hadn't shown up on the carousel.

She smiled and told him not to worry because they were trained professionals and he was in good hands.

Then she asked Will, " has your Plane arrived yet?"

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Vol- VII
Part-6

Prosecution Replenish

An Endeavour for Learning and Excellence

June, 2018

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

Keep your head up.
God gives his hardest battles to his strongest soldiers....

CITATIONS

Order framing charge may not be held to be purely a interlocutory order. In a given situation can be interfered with u/s 397(2) or 482 or Article 227, Constitution of India.
The order granting stay must be speaking one and conditional. Once stay is granted, proceedings should not be adjourned and concluded within two-three months.
Stay should not exceed six months, unless extension is granted by a specific speaking order. In all pending matters where stay of proceedings in a pending trial is operating, stay will automatically lapse after six months from day of the order. Trial courts may, on expiry of above period, resume proceedings without waiting for any other intimation unless express order extending stay is produced.
In order to be a public servant under PC Act, one need not be appointed by Government.
'Any other ground' in Section 19(3)(c), PC Act refers to any ground other than 'sanction'.
Section 19(3)(c) PC Act is not a ban on maintainability of a petition u/s 482 CrPC.
Articles 226 and 227 are part of basic structure of Constitution.
Orders dated 28/3/2018 in ASIAN RESURFACING OF ROAD AGENCY PVT. LTD. & ANR. VS. CENTRAL BURUEAU OF INVESTIVATION; 2018(2) ALT (Crl) 1 (SC); 2018 0 AIR(SC) 2039; 2018 3 Supreme 152; 2018 0 Supreme(SC) 266;

if in future the trial court record is summoned, the trial courts may send photocopy/scanned copy of the record and retain the original so that the proceedings are not held up. In cases where specifically original record is required by holding that photocopy will not serve the purpose, the appellate/revisional court may call for the record only for perusal and the same be returned while keeping a photocopy/scanned copy of the same.
Orders dated 25/4/2018 in ASIAN RESURFACING OF ROAD AGENCY PVT. LTD. & ANR. VS. CENTRAL BURUEAU OF INVESTIVATION; 2018 0 Supreme(SC) 429;

We do not find that the contemnor Shri Mahipal Singh Rana is suffering from any mental imbalance. He is fully conscious of his actions and take responsibility of the same. He suffers from an inflated ago, and has a tremendous superiority complex and claims himself to be a champion for the cause of justice, and would not spare any effort, and would go to the extent of intimidating the judges if he feels the injustice has been done to his client. We found ourselves unable to convince him that the law is above every one, and that even if he is an able lawyer belonging to superior caste, he could still abide by the dignity of court and the decency required from an advocate appearing in any court of law.
The due administration of law is of vastly greater importance than the success or failure of any individual, and for that reason public policy as well as good morals require that every Advocate should keep attention to his conduct. An Advocate is an officer of the Court apart of machinery employed for administration of justice, for meeting out to the litigants the exact measure of their legal rights. He is guilty of a crime if he knowingly sinks his official duty, in what may seem to be his own or his clients temporary advantage.
In these circumstances, Section 24A which debars a convicted person from being enrolled applies to an advocate on the rolls of the Bar Council for a period of two years, if convicted for contempt.
Mahipal Singh Rana, Advocate Vs State of U.P.; 2018(2) ALT (Crl) 32(SC); 2016 0 AIR(SC) 3302; 2016 3 Crimes(SC) 179; 2016 0 CrLJ 3734; 2016 4 EastCrC(SC) 110; 2016 3 JLJR(SC) 198; 2016 3 PLJR(SC) 307; 2016 6 Scale 353; 2016 8 SCC 335; 2016 5 Supreme 68; 2016 0 Supreme(SC) 510;

13. 'Related' is not equivalent to 'interested'. A witness may be called 'interested' only when he or she derives some benefit from the result of a litigation; in the decree in a civil case, or in seeing an accused person punished. A witness who is a natural one and is the only possible eye witness in the circumstances of a case cannot be said to be 'interested' [See: State of Rajasthan Vs. Smt. Kalki and Anr. (1981) 2 SCC 752].
14. Merely because the eye-witnesses are family members their evidence cannot per se be discarded. When there is allegation of interestedness, the same has to be established. Mere statement that being relatives of the deceased they are likely to falsely implicate the accused cannot be a ground to discard the evidence which is otherwise cogent and credible. Relationship is not a factor to affect credibility of a witness. It is more often than not that a relation would not conceal actual culprit and make allegations against an innocent person. Foundation has to be laid if plea of false implication is made [See : Maranadu and Anr. Vs. State by Inspector of Police, Tamil Nadu (2008) 16 SCC 529].
GANAPATHI & ANR Vs State of Tamilnadu: 2018(2) ALT (Crl) 74(SC); 2018 0 AIR(SC) 1635; 2018 0 Supreme(SC) 255;

the statutory scheme under Section 195 has held that where offences has already been committed earlier and later on the document is produced or given in the evidence in Court, the same is neither covered under Clauses (a), (b)(i) or (b) (ii)
Vishnu Chandru Gaonkar Vs N.M.Dessai; 2018(2) ALT (Crl) 78(SC); 2018 2 Supreme 499; 2018 0 Supreme(SC) 220;

In every bail application including the offences involving economic frauds and white collar crimes, the Courts encounter a crucial issue of individual liberty guaranteed by the Constitution under Article 21 on one hand and societal interest to bring the culprit to book and see that the fair trial and impartial justice are rendered. These two aspects being distinct poles, Courts are required to strike a judicious balance between the two conflicting interests. That is where, we are now.
The judicial edifice is built not with bricks and cement but with belief and confidence reposed by the public on the institution. That is why absolute honesty and integrity are regarded as the minimum qualifications for a Judicial Officer to hold the mace of justice. A minutest impious deed of even a single individual will bring disrepute to the majesty of justice. In that context, the impact of the offence has to be viewed even at the stage of bail, particularly when prima facie case is found out.
Ends of justice are not satisfied only when the accused in a criminal case is acquitted. The community acting through the State and the Public Prosecutor is also entitled to justice. The cause of the community deserves equal treatment at the hands of the court in the discharge of its judicial functions. The community or the State is not a persona-non-grata whose cause may be treated with disdain. The entire community is aggrieved if the economic offenders who ruin the economy of the State are not brought to book. A murder may be committed in the heat of moment upon passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the community. A disregard for the interest of the community can be manifested only at the cost of forfeiting the trust and faith of the community in the system to administer justice in an even-handed manner without fear of criticism from the quarters which view white collar crimes with a permissive eye unmindful of the damage done to the national economy and national interest
https://indiankanoon.org/doc/150405050/; 2018 0 Supreme(AP) 131; 2018(2) ALT (Crl) 1(AP); Mallampati Gandhi vs The State Of Telangana.
Motive, in this case is well proved. Whether it is sufficient enough to drive the accused to commit such a heinous offence or not, is a question, the answer for which is lodged in the mind of the accused.
Ajjada Balakrishna Vs State of A.P.; 2018(2) ALT (Crl) 9(DB)(AP); 2018 0 Supreme(AP) 112;

Any violation in the procedure, by the people concerned, cannot be allowed to operate to the detriment of the victims, who have no role to play in the compliance and non compliance of the prescribed procedure.

The injuries are proved and they are not alleged to be self inflicted. Omission to state about beating with a stick, does not affect the testimony of P.W.1, as she stated the same in the report, which is earlier to the statement and the said omission, then, can, safely, be attributed to the erroneous recording of the statement. When something which finds place in the report, does not find place in the 161 Cr.P.C. statement, it loses significance as an omission, while appreciating the credibility of the witness.

Punam Satyanarayana Dora Vs State of A.P; 2018(2) ALT (Crl) 97(AP); 2018 0 Supreme(AP) 62;

The allegation is that the petitioner has been dishonestly indulging in broadcasting of channels of the 3rd respondent, even after the discontinuation of signals with effect from 15.01.2018. There is no authority for the petitioner to do so. Such acts can be construed as infringement of copyrights of the 3rd respondent. It amounts to conversion of movable property belonging to respondent No.3 fraudulently with unlawful measures by the petitioner. The impugned criminal proceedings are not invoked as an instrument of harassment or for seeking private vendetta or with an ulterior motive to pressurize the accused. The continuation of proceedings is not abuse of process of law. Further, in view of the circumstances of the case, it cannot be held that there are no sufficient grounds to register the impugned crime and proceed with the investigation of the case. The report lodged by the 2nd respondent reveals prima facie commission of a cognizable offence, for which the impugned crime is registered. Continuation of the impugned proceedings is not abuse of process of law.

As per the Copyright Act, the original owner has to give a complaint to the competent authority not to the police. The police has no power or authority to register the crime at the instance of the unauthorized person. The said fact is also proved based on the report dated 30.11.2015 submitted by the Deputy Superintendent of Police, Toopran Sub Division. As per the said report and the Act, any party aggrieved by any dispute in respect of broadcasting of cable network, ought to have filed complaint before the Telecom Distributor Settlement and Appellate Tribunal, New Delhi (TDSAT). As per Section 11 of the Cable Television Networks (Regulation) Act, 1995, the competent authority is the Commissioner of Police. The de facto complainant is not the aggrieved person and the original owner of the network is Star India, so it cannot be looked into. The petitioner is running a cable network having licence granted by Star India and the licence is valid upto 30.06.2018. Ultimately, the petitioner prayed to quash the impugned proceedings.

All the contentions raised on behalf of the petitioner do fail. The petition is devoid of merit and it is liable to be dismissed.

https://indiankanoon.org/doc/186468255/; 2018(2) ALT (Crl) 105(AP); 2018 0 Supreme AP 134; Subhodaya Digital Entertainment Private Limited Vs State of Telangana

even if the trial Court has not framed charge under Section 306 of IPC, still, the appellant can be convicted for the aforementioned offence keeping in view the dictum of Hon'ble Supreme Court in the case of Dalbir Singh ((2004) 5 SCC 334).

Bandala Saya Goud Vs State of A.P; 2018 0 Supreme(AP) 111; 2018 (2) ALT (Crl) 107 (DB).

A comparative table was set out to appreciate the points of distinction between the two offences.

Section 299	Section 300
A person commits culpable homicide if the act by which the death is caused is done--	Subject to certain exceptions culpable homicide is murder if the act by which the death is caused is done --
INTENTION	
(a) With the intention of causing death; or	(1) With the intention of causing death; or
(b) With the intention of causing such bodily injury as is likely to cause death; or	(2) With the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused; or
	(3) With the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of

	nature to cause death; or
KNOWLEDGE	
(c) With the knowledge that the act is likely to cause death	(4) With the knowledge that the act is so imminently dangerous that it must in all probability cause death or such bodily injury as is likely to cause death, and without any excuse for incurring the risk of causing death or such injury as is mentioned above.

23. The Supreme Court concluded that when the Court is confronted with the question whether the offence is 'murder' or 'culpable homicide not amounting to murder', it would be convenient for it to approach the problem in three stages. The question to be considered at the first stage would be as to whether the accused has done an act, by doing which he caused the death of another. The second stage would be to consider whether that act of the accused amounts to 'culpable homicide' as defined in Section 299 IPC. If the answer is found to be in the affirmative, the third stage for consideration would be to determine whether the facts proved by the prosecution bring the case within the ambit of any of the four clauses of the definition of murder contained in Section 300 IPC. If the answer to this question is in the negative, the offence would be 'culpable homicide not amounting to murder' punishable under the first or the second parts of Section 304 IPC, depending on whether the second or the third clauses of Section 299 IPC is applicable. If, however, the answer to the question is found in the positive, but the case comes within any of the exceptions enumerated in Section 300 IPC, the offence would still be culpable homicide not amounting to murder, punishable under the first part of Section 304 IPC.

Gottipati Hanumayamma Vs State; 2017 0 Supreme(AP) 487; 2018(2) ALT (Crl) 112(DB)(AP).

in the eyes of the law every accused is the same irrespective of their nationality.

It is not expected from the High Court to pass such mandatory orders commanding the subordinate court to compulsorily grant bail.

2018(2) SCC (Cri) 10; 2018 0 AIR(SC) 599; 2018 1 Crimes(SC) 91; 2018 3 SCC 187; 2018 1 Supreme 486; 2018 0 Supreme(SC) 58; Lachhman dass Vs Resham Chand Kaler.

discrepancy in the prosecution case is that the First Information Report was lodged on 16.06.1994 i.e. 13 days after the incident and there is no plausible explanation coming forth from the prosecution for this inordinate delay. We also find that the statements of the witnesses were recorded on 28.06.1994 and there is no explanation of such huge delay in recording the statements.

2018(2) SCC (Cri) 18; 2018 0 AIR(SC) 747; 2018 3 SCC 196; 2018 0 Supreme(SC) 109;State of M.P. Vs. Vs Nande.

the law is well-settled that a charge under Section 201 of the IPC can be independently laid and conviction maintained also, in case the prosecution is able to establish that an offence had been committed, the person charged with the offence had the knowledge or the reason to believe that the offence had been committed, the said person has caused disappearance of evidence and such act of disappearance has been done with the intention of screening the offender from legal punishment. Mere suspicion is not sufficient, it must be proved that the accused knew or had a reason to believe that the offence has been committed and yet he caused the evidence to disappear so as to screen the offender. The offender may be either himself or any other person.

To bring home an offence under Section 201 IPC, the ingredients to be established are: (i) committal of an offence; (ii) person charged with the offence under Section 201 must have the knowledge or reason to believe that an offence has been committed; (iii) person charged with the said offence should have caused disappearance of evidence; and (iv) the act should have been done with the intention of screening the offender from legal punishment or with that intention he should have given information respecting the offence, which he knew or believed to be false. It is plain that the intent to screen the offender committing an offence must be the primary and sole aim of the accused.

notwithstanding acquittal with reference to the offence under Section 302 IPC, conviction under Section 201 is permissible, in a given case.

2018(2) SCC (Cri) 55; 2018 0 AIR(SC) 951; 2018 3 SCC 313; 2018 3 Supreme 472; 2018 0 Supreme(SC) 132; Dinesh Kumar Kalidas Patel Vs State of Gujarat.

it would be pertinent to note the law concerning the framing of charges and the standard which courts must apply while framing charges. It is well settled that a court while framing charges under Section 227 of the Code of Criminal Procedure should apply the prima facie standard. Although the application of this standard depends on facts and circumstance in each case, a prima facie case against the accused is said to be made out when the probative value of the evidence on all the essential elements in the charge taken as a whole is such that it is sufficient to induce the court to believe in the existence of the facts pertaining to such essential elements or to consider its existence so probable that a prudent man ought to act upon the supposition that those facts existed or did happen. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

2018 0 AIR(SC) 749; 2018 0 CrLJ 1717; 2018 1 JLJR(SC) 365; 2018 3 SCC 358; 2018 2 Supreme 122; 2018 0 Supreme(SC) 184; Mauvin Godinho Vs State of Goa.

The question raised by the respondent is well answered by this Court in a number of decisions rendered in a different perspective. The matter of investigation by an officer not authorised by law has been held to be irregular. Indisputably, by the order of the Magistrate investigation was conducted by the Sub-Inspector, CBI who, after completion of investigation, submitted the charge-sheet. It was only during the trial, objection was raised by the respondent that the order passed by the Magistrate permitting the Sub-Inspector, CBI to investigate is without jurisdiction. Consequently, the investigation conducted by the officer is vitiated in law. Curiously enough the respondent has not made out a case that by reason of investigation conducted by the Sub-Inspector a serious prejudice and miscarriage of justice has been caused. It is well settled that invalidity of the investigation does not vitiate the result unless a miscarriage of justice has been caused thereby.

2018(2) SCC (Cri) 110; 2017(16) SCC 126; 2017 0 AIR(SC) 5141; 2017 0 Supreme(SC) 1097; R.A.H. Siguran Vs Shankare Gowda @ Shankara & Anr

act of writing apology is concerned, maybe it was not extracted by putting any pressure. However, the very fact that the petitioners were taken to the police station and were in an atmosphere of fear that surrounded there, when this letter was written is sufficient to hold that it was not a voluntary act of the petitioners. No credence can be given to such a letter.

Police needs to be sensitised about the rights of citizens and the civilised manner in which police is required to maintain law and order in this country. From time to time, various suggestions have been given by National Crime Records Bureau, National Police Commission as well as 1 (1993) 2 SCC 746 2 (1983) 4 SCC 141 3 (1994) 4 SCC 260 4 (1997) 1 SCC 416 5 (2016) 15 SCC 525 certain NGOs like Human Rights Watch, Amnesty International, Commonwealth Human Rights Initiative, etc. to bring in reforms in terms of amendments in Indian Police Act, appointing commissions to deal with cases of police brutalities, etc. Not that efforts are lacking in bringing police reform. But we have yet to see the humane face of the police. Police officials falling in this category are far and few. It is high time that training of police in this direction is given a concrete shape so that it brings about positive results, and the usage of force on citizens is reduced and police officials become more sensitive towards them and fulfill their role as the protector of citizens. We understand that the Indira Gandhi National Open University (IGNOU) has signed a memorandum of understanding (MoU) with the National Human Rights Commission (NHRC) to develop a new online advance programme on human rights for the police personnel. It is also intended to update the contents of the basic trainers' programme for police personnel. We hope that IGNOU with NHRC would be able to develop requisite programme of high quality which would be able to sensitise the police personnel. We also hope that the training under this programme shall be administered to the stake holders in great measures. In this context, there is also a need to deal with erring police officials by taking stern measures whose actions amount to 'misconduct' or may even be 'criminal' in nature. Letting these erring officials lightly, as has been done in the instant case, by only administering a warning may not be appropriate. We hope that desired attention shall be given at the right quarters from the perspective of human

rights of innocent and hapless citizens, so that following words of Thomas Bernhard's become a reality:
"The anger and brutality against everything can readily from one hour to the next, be transformed into its opposite."
2018(2) SCC (Cri) 123; 2017 (16) SCC 169; https://indiankanoon.org/doc/107220051/; Monica Kumar vs State Of U.P.

Insofar as power of the Court under Section 319 of the Cr.P.C. to summon even those persons who are not named in the charge sheet to appear and face trial is concerned, the same is unquestionable. Section 319 of the Cr.P.C. is meant to rope in even those persons who were not implicated when the charge sheet was filed but during the trial the Court finds that sufficient evidence has come on record to summon them and face the trial. In Hardeep Singh's case, the Constitution Bench of this Court has settled the law in this behalf with authoritative pronouncement, thereby removing the cobweb which had been created while interpreting this provision earlier.
The power u/s 319 CrPC can only be exercised on 'strong and cogent' evidence recorded in the court; and not on the basis of material gathered at investigation stage already utilized at stage of sections 190 and 204 CrPC.
2018(2) SCC (Cri) 138; 2017(16) SCC 226; 2017 0 AIR(SC) 4994; 2017 4 Crimes(SC) 173; 2018 0 CrLJ 1412; 2017 10 JT 240; 2017 4 RCR(Cri) 650; 2017 12 Scale 227; 2017 7 Supreme 537; 2017 0 Supreme(SC) 976; S. Mohammed Ispahani Vs. Yogendra Chandak and Others.

Case against two accused. Case against other three accused acquitted. Same does not apply. when case against the acquitted accused was capable of being separated from the accused regarding their culpability.
The injured dying after 14 days of the incident, accused liable for offence U/sec. 304-II IPC.
2018(2) SCC (Cri) 154; 2017(16) SCC 325; 2017 0 AIR(SC) 5048; 2017 4 BBCJ(SC) 338; 2017 4 Crimes(SC) 159; 2017 0 CrLR 1128; 2017 11 JT 114; 2017 4 RCR(Cri) 714; 2017 12 Scale 811; 2017 7 Supreme 594; 2017 0 Supreme(SC) 1042; Pooranlal Vs State of M.P.

as per the procedure envisaged under Section 3 and 4 of the Act unequivocally the power to set the process into motion vests with the State Government by passing an ad-interim attachment order and thereafter act mandates appointment of competent authority under Sub-section (1) of Section 4 of the Tamil Nadu Protection of Interests of Depositors (In Financial Establishments) Act, 1997, to take further recourse as per the procedures laid down under Section 4 of the Act.
We are not able to appreciate the reasoning recorded by the High Court and the contention put forth by the learned counsel appearing for the respondents that before passing an order under section 3 of the act government has to take steps under section 4 of the act by identifying the properties. The language employed under section 3 and 4 of the act is plain, unambiguous and it does not call for any interpretation as sort to be placed by the learned counsel appearing for the respondents.
2018(2) SCC (Cri) 166; 2017(16) SCC 384; 2017 176 AIC 209; 2017 0 AIR(SC) 2590; 2017 0 AIISCR(Cri) 1012; 2018 1 EastCrC(SC) 172; 2017 3 JLJR(SC) 174; 2017 2 MLJ(Cri)(SC) 741; 2017 3 PLJR(SC) 234; 2017 3 RCR(Cri) 382; 2017 6 Scale 298; 2017 4 Supreme 385; 2017 0 Supreme(SC) 465; State Vs K.S.Palanichamy and others.

It may be mentioned that it is not every doubt but only a reasonable doubt of which benefit can be given to the accused. A doubt of a timid mind which is afraid of logical consequences, cannot be said to be reasonable doubt. The experienced, able and astute defence lawyers do raise doubts and uncertainties in respect of evidence adduced against the accused by marshalling the evidence, but what is to be borne in mind is -whether testimony of the witnesses before the court is natural, truthful in substance or not. The accused is entitled to get benefit of only reasonable doubt, i.e. the doubt which rational thinking man would reasonably, honestly and conscientiously entertain and not the doubt of a vacillating mind that has no moral courage and prefers to take shelter itself in a vain and idle scepticism. The administration of justice has to protect the society and it cannot ignore the victim altogether who has died and cannot cry before it. If the benefits of all kinds of doubts raised on behalf of the accused are accepted, it will result in deflecting the course of justice. The cherished principles

of golden thread of proof of reasonable doubt which runs through web of our law should not be stretched morbidly to embrace every hunch, hesitancy and degree of doubt.
It does not require that each and every sentence of the prosecution evidence has to be re-written and read over once again while examining the accused under Section 313 of the Code of Criminal Procedure.
On the advise of the Medical officer that the victim is recovering, the I.O. did not record the dying declaration of the victim. The FIR recorded by the Victim, be treated as Dying Declaration.
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.
Accused cannot derive any benefit from the variation in time mentioned in charge sheet unless it caused prejudice to him in defending himself.
Corroboration of dying declaration is not always required for awarding conviction.
If a negligent investigation or omissions or lapses, due to perfunctory investigation, are not effectively rectified, the faith and confidence of the people in the law enforcing agency would be shaken. Therefore the police have to demonstrate utmost diligence, seriousness and promptness.
2018(2) SCC(Cri) 187; 2017(16) SCC 466; 2017 3 Crimes(SC) 137; 2017 6 Supreme 35; 2017 0 Supreme(SC) 738; Suresh Chandra Jana Vs State of W.B. and others.

the principle that discipline demanded by a precedent or the disqualification or diminution of a decision on the application of the per incuriam rule is of great importance, since without it, certainty of law, consistency of rulings and comity of courts would become a costly casualty. A decision or judgment can be per incuriam any provision in a statute, rule or regulation, which was not brought to the notice of the court. A decision or judgment can also be per incuriam if it is not possible to reconcile its ratio with that of a previously pronounced judgment of a coequal or larger Bench. There can be no scintilla of doubt that an earlier decision of co-equal Bench binds the Bench of same strength.
Conclusions:
(i) The two-Judge Bench in Santosh Devi should have been well advised to refer the matter to a larger Bench as it was taking a different view than what has been stated in Sarla Verma, a judgment by a coordinate Bench. It is because a coordinate Bench of the same strength cannot take a contrary view than what has been held by another coordinate Bench.
'(ii) As Rajesh has not taken note of the decision in Reshma Kumari, which was delivered at earlier point of time, the decision in Rajesh is not a binding precedent.
'(iii) While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.
'(iv) In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component.
'(v) For determination of the multiplicand, the deduction for personal and living expenses, the tribunals and the courts shall be guided by paragraphs 30 to 32 of Sarla Verma which we have reproduced hereinbefore.
'(vi) The selection of multiplier shall be as indicated in the Table in Sarla Verma read with paragraph 42 of that judgment.
'(vii) The age of the deceased should be the basis for applying the multiplier.
'(viii) Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/- respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years.

2018(2) SCC (Cri) 205; 2017 (16) SCC 680; 2017 0 AIR(SC) 4973; 2017 0 AIR(SC) 5157; 2017 10 JT 450; 2017 4 LawHerald(SC) 2970; 2017 13 Scale 12; 2017 8 Supreme 107; 2017 0 Supreme(SC) 1050;National Insurance Company Limited Vs Pranay Sethi and Ors. (FIVE JUDGE BENCH)

the counsel appearing on behalf of Accused No. 1 has contended that the non-examination of Ghanshyam Pawar is fatal for the prosecution. We do not agree with such contention as the prosecution has the discretion to produce any witness based on its prudence. In the entire facts and circumstances of this case, the factum of arrest and seizure of weapon from Accused No. 1 has been cogently established by PW-11 and other evidences on record. Therefore, we are of the considered opinion that the aforesaid contention is meritless as well.

The Test Identification Parade is not a substantial piece of evidence, but is useful for corroboration with the other evidence. It is a rule of prudence. The Test Identification Parade, even if it is held may not be considered in all cases as trustworthy evidence on which the conviction of the accused can be sustained.

Merely because the names of the accused are not stated and their names are not specified in the FIR that may not be a ground to doubt the contents of the FIR and the case of the prosecution cannot be thrown out on this count.

an ingenious mind can question anything and, on the other hand, there is nothing which it cannot convince. When you consider the facts, you have a reasonable doubt as to whether the matter is proved or whether it is not a reasonable doubt in this sense. The reasonableness of a doubt must be a practical one and not on an abstract theoretical hypothesis. Reasonableness is a virtue that forms as a mean between excessive caution and excessive indifference to a doubt.

2018 0 AIR(SC) 659; 2018 1 Crimes(SC) 95; 2018 0 CrLJ 1812; 2018 1 JLJR(SC) 321; 2018 3 SCC 66; 2018 1 Supreme 524; 2018 0 Supreme(SC) 90; Latesh @ Dadu Baburao Karlekar Vs State of Maharashtra.

Sections 200, 202, 204, 238 to 243, 340 and 343(1), when juxtaposed to each other, would endorse the availability of a discretion in the Trial Magistrate to conduct a semblance of inquiry, if considered indispensable for proceeding with the complaint in accordance with law. This is more so, amongst others, as a complaint under Section 340 or Section 341 may be filed even without holding a preliminary inquiry into the facts, on which it appears to the complainant Court prima facie that an offence, as contemplated, had been committed and that it is expedient in the interests of justice that an inquiry should be made into such offence by a Magistrate. In the event of a complaint being made after a preliminary inquiry, in which sufficient materials are obtained following which a complaint is filed, to reiterate, it may not be necessary for the Trial Magistrate to embark upon any further inquiry to complement the same. However, if no such preliminary inquiry is held and a complaint is filed, in the interest of justice and to obviate unwarranted prosecution, the Trial Magistrate may, to be satisfied, feel the necessity of some inquiry, summary though, to decide the next course of action in law. In other words, if the Trial Court on receipt of a complaint is satisfied that the materials on record are adequate enough, it shall, as per the mandate contained in Section 343(1), deal with the case as if instituted on a police report. On the other hand, if the complaint has been filed without a preliminary inquiry, in our estimate, having regard to the inbuilt flexibility in the text of Section 343(1), which cannot by any means be construed to be an unnecessary appendage or surplusage, introduced by the legislature, it would be open for the Trial Magistrate to hold a summary inquiry before proceeding further with the complaint.

a Trial Magistrate, on receipt of a complaint under Section 340 and/or Section 341 of the Code, if there is a preliminary inquiry and adequate materials in support of the

considerations impelling action under the above provisions are available, would be required to treat such complaint to constitute a case, as if instituted on police report and proceed in accordance with law. However, in absence of any preliminary inquiry or adequate materials, it would be open for the Trial Magistrate, if he genuinely feels it necessary, in the interest of justice and to avoid unmerited prosecution to embark on a summary inquiry to collect further materials and then decide the future course of action as per law. In both the eventualities, the Trial Magistrate has to be cautious, circumspect, rational, objective and further informed with the overwhelming caveat that the offence alleged is one affecting the administration of justice, requiring a responsible, uncompromising and committed approach to the issue referred to him for inquiry and trial, as the case may be. In no case, however, in the teeth of Section 343(1), the procedure prescribed for cases instituted otherwise than on police report would either be relevant or applicable qua the complaints under Section 340 and/or 341 of the Cr.P.C.

The strikingly distinguishable feature in the procedures to be adopted for cases instituted on a police report and those instituted otherwise than on a police report, lies in the fact that whereas in the former, there is no scope for the prosecution to examine any witness at the stage where the Magistrate is to consider whether a charge is to be framed or not, in cases instituted otherwise than on a police report, after the accused appears or is brought before the Magistrate, the prosecution is required to adduce all such evidence in support of his case, whereupon the Magistrate may discharge the accused, if he is of the view, for reasons to be recorded on the basis of such evidence, that no case had been made out against him, which if unrebutted, would warrant his conviction. However, if the Magistrate is of the opinion, in view of such evidence, or also at any previous stage of the case, that there is ground for presuming that the accused has committed an offence triable under the Chapter and which he is competent to try and adequately punish, he shall frame a charge against the accused. Subsequent thereto, if the accused refuses to plead guilty or does not plead so or claims to be tried, vis-a-vis the charge, he would be offered an opportunity to cross-examine any of the witnesses of the prosecution, whose evidence had been taken and on which the charge is founded and if the accused elects to avail this opportunity, the witnesses named by him would be recalled and after cross-examination and re-examination, they shall be discharged. Thus, not only the prosecution, in the cases instituted otherwise than on a police report, would have an opportunity to adduce all such evidence in support of its case on which, on a consideration whereof, the accused may be charged or discharged, as the case may be, the latter can avail the opportunity of cross-examining the witnesses only after the charge is framed. As Section 246(6) would authenticate, the prosecution would thereafter have another chance of examining the remaining witnesses, who understandably, if examined, would be subjected to cross-examination and re-examination before their discharge.

2018(1) ALD (Crl) 705(SC); 2018 0 AIR(SC) 140; 2017 4 Crimes(SC) 456; 2018 0 CrLJ 1395; 2017 11 JT 311; 2017 9 Scale 527; 2017 8 Supreme 586; 2017 0 Supreme(SC) 755; State of Goa Vs Jose Maria Albert Vales alias Robert Vales.

death of Kumar(One Accused) was of no significance so far as the appellant's (Other Accused) prosecution is concerned. The reason being that this was a case of common intention of the two accused persons to eliminate Murugan and the appellant was one

of the accused persons, who was found actively participating in the crime till last along with the other accused, who died.

2018(1) ALD (Crl) 744(SC); 2018 0 AIR(SC) 2149; 2018 0 Supreme(SC) 440; Murugan Vs State of Tamil Nadu

Criminal jurisprudence and the plethora of judicial precedents leave little room for reconsideration of the basic principles for invocation of the last seen theory as a facet of circumstantial evidence. Succinctly stated, it may be a weak kind of evidence by itself to found conviction upon the same singularly. But when it is coupled with other circumstances such as the time when the deceased was last seen with the accused, and the recovery of the corpse being in very close proximity of time, the accused owes an explanation under Section 106 of the Evidence Act with regard to the circumstances under which death may have taken place. If the accused offers no explanation, or furnishes a wrong explanation, absconds, motive is established, and there is corroborative evidence available inter alia in the form of recovery or otherwise forming a chain of circumstances leading to the only inference for guilt of the accused, incompatible with any possible hypothesis of innocence, conviction can be based on the same. If there be any doubt or break in the link of chain of circumstances, the benefit of doubt must go to the accused. Each case will therefore have to be examined on its own facts for invocation of the doctrine.

2018(1) ALD (Crl) 749; 2018 0 AIR(SC) 2142; 2018 0 Supreme(SC) 436;Satpal Vs State of Haryana

The present is not a case where accused was a free agent whether to appear or not. He was already issued non-bailable warrant of arrest as well as proceeding of Sections 82 and 83 Cr.P.C. had been initiated. In this view of the matter he was not entitled to the benefit of Section 88.

Discretion given under Section 88 to the Court does not confer any right on a person, who is present in the Court rather it is the power given to the Court to facilitate his appearance, which clearly indicates that use of word ‘may’ is discretionary and it is for the Court to exercise its discretion when situation so demands. It is further relevant to note that the word used in Section 88 “any person” has to be given wide meaning, which may include persons, who are not even accused in a case and appeared as witnesses.

2018(1) ALD (Crl) 752; 2018 0 AIR(SC) 1155; 2018 0 CrLJ 1824; 2018 1 KLT 996; 2018 2 Supreme 104; 2018 0 Supreme(SC) 172;Pankaj Jain Vs UOI and another

Merely because the defence witnesses have not been contradicted by reference to their previous statements following the provisions of Section 145 of the Evidence Act would not permit the Court to accept the version as unfolded by the said witnesses to be the correct version.

Accused No. 5 and 8 who are represented by Shri M.N. Rao, learned senior counsel, has vehemently contended before us that PW-4 was not examined under Section 161 Cr.P.C., 1973 and, therefore, the evidence tendered by him should be disbelieved. That apart, injury No. 4 suffered by the deceased was found to be sutured by the Doctor (PW-17), who performed the postmortem. It is accordingly urged that the deceased had received medical treatment elsewhere which would go to establish the falsity of the prosecution case.- accused convicted.

Learned counsels appearing for the aforesaid two accused have further submitted that though the occurrence had taken place in the presence of a large number of persons who were present in the celebrations that were going in the immediate vicinity of the place of occurrence, no other witnesses have been examined.-Accused convicted.

2018(1) ALD (Crl) 766(SC); 2018 0 AIR(SC) 1153; 2018 0 Supreme(SC) 397;Balakrishnan and others Vs State of Tamilnadu.

Any punishment less than the life imprisonment, as prescribed under Section 302 IPC, if awarded by any Court is per se illegal and without authority of law. Indeed, there is no such discretion left with the Court in awarding the punishment except to award the punishment which is prescribed under Section 302 IPC as mentioned above.
The object of Section 377 of the Code is that when the State files an appeal seeking enhancement of jail sentence awarded by the Sessions Judge, the jail sentence cannot be enhanced unless the accused is given an opportunity to defend it. The accused is also entitled to pray for his acquittal or award of lesser punishment. If the accused, after service of notice fails to raise this plea then the High Court would be justified in deciding the State's appeal on merits which is confined to only for enhancement of jail sentence. We, therefore, find no ground to remand the case for rehearing of the appeal.
2018(1) ALD (Crl) 768(SC); 2018 0 AIR(SC) 1598; 2018 2 KLT(SN) 21; 2018 0 Supreme(SC) 259; BharatKumar Rameshchandra Banot Vs State of Gujarat.

Once the court finds that the ingredients of Section 149 IPC are fulfilled, every person who at the time of committing that offence was a member of the assembly has to be held guilty of that offence. After such a finding, it would not be open to the court to see as to who actually did the offensive act nor would it be open to the court to require the prosecution to prove which of the members did which of the above two ingredients. Before recording the conviction under Section 149 IPC, the essential ingredients of Section 141 IPC must be established.
Factors deciding whether the assembly had common object to cause murder of the deceased are nature of weapons used, manner and sequence of attack made on the deceased and the circumstances under which the occurrence took place. It is an inference to be deduced from the facts and circumstances of each case.
2018(1) ALD (Crl) 775(SC); 2018 0 AIR(SC) 93; 2018 1 Crimes(SC) 73; 2018 0 CrLJ 1426; 2018 1 EastCrC(SC) 279; 2017 12 JT 237; 2018 1 Supreme 197; 2017 0 Supreme(SC) 1187; Joseph Vs State of Tamil Nadu.

there is no scope for the accused to produce any evidence in support of the submissions made on his behalf at the stage of framing of charge and only such materials as are indicated in Section 227 CrP.C. can be taken into consideration by the learned Magistrate at that stage; however, in a proceeding taken therefrom under Section 227 Cr.P.C. the court is free to consider material that may be produced on behalf of the accused to arrive at a decision whether the charge as framed could be maintained. Rajiv Thapars case makes a reference to Rukmini Navekars case also.
The material furnished by the petitioner/accused passes the qualitative test of Rajiv Thapars case and crosses all the four steps delineated by the Apex Court in the said case. The morale of a Public Servant should not be dented by false prosecutions. The freedom required for an investigating officer, to conduct proper investigation, would be under constant threat, if frivolous complaints are entertained. The documents filed by the petitioner are justifiably irrefutable, if not irrefutable.
2018(1) ALD (Crl) 839; 2017 0 Supreme(AP) 483; P.Bhaskar Rao Vs Smt. Kusumanchi Surekha and Another

From the respective seizure report material and report of the Tahsildar and on contest of the respective respondents, the District Collector vide order dated 09.05.2013 observed that said contentions of the respondents are neither correct nor acceptable, as according to Clause 7(a)(1) of the A.P Procurement (Levy) Order, 1984, every miller/dealer has to transport the rice for sale along with a release certificate issued by the Collector (Civil Supplies) or District Supply Officer and one of the respondents have been transporting 182 quintals of the food grain (rice) without any valid bill and without even release certificate issued by the Competent Authority, which is clear and also from the statement of respondent No. 3 that at the time of inspection for seizure in the presence of the mediators to the Tahsildar that respondent Nos. 1 and 4 are in the habit of purchasing PDS Rice from card holders and transporting the same to other places for sale to higher rates to gain illegally and that also supports to the conclusion of the rice is a PDS Rice and clandestinely dealing with the rice

that is meant for the consumer beneficiaries, since diverted by intervention of process of smooth functioning of PDS and the same is nothing but violation of Sections 17 and 17A of the Order and they are liable for prosecution under Clause 17B of the Order, besides liable for criminal prosecution, and the seized stock is liable for confiscation in ordering confiscation. by also saying same is also in the contravention of the conditions 5, 6, and 7(i) of the licence issued under the AP Scheduled Commodities (LR & S) Order, 2008, as purchasing PDS rice and transporting the same to other places for illegal profit and that documents are suffice for confiscation of the entire stock and in ordering 100% confiscation of 182 quintals of the seized PDS rice and for levy of penalty on the owner of the vehicle of Rs. 1,25,000/- for illegal transportation of PDS Rice.

2018(1) ALD (Crl) 852; 2017 0 AIR(AP) 174; 2017 2 ALT(Cri) 1; 2017 0 Supreme(AP) 51; Miriyala Renuka Devi and others Vs State of A.P and others.

In order to sustain a conviction under Section 465, first it has to be proved that forgery was committed under Section 463, implying that ingredients under Section 464 should also be satisfied. Therefore unless and untill ingredients under Section 463 are satisfied a person cannot be convicted under Section 465 by solely relying on the ingredients of Section 464, as the offence of forgery would remain incomplete.

This case on hand is a classic example of poor prosecution and shabby investigation which resulted in the acquittal of the accused. The Investigating Officer is expected to be diligent while discharging his duties. He has to be fair, transparent and his only endeavour should be to find out the truth. The Investigating Officer has not even taken bare minimum care to find out the whereabouts of the imposter who executed the PoA. The evidence on record clearly reveals that PoA was not executed by the complainant and the beneficiary is the accused, still the accused could not be convicted. The latches in the lopsided investigation goes to the root of the matter and fatal to the case of prosecution. If this is the coordination between the prosecution and the investigating agency, every criminal case tend to end up in acquittal. In the process, the common man will lose confidence on the criminal justice delivery system, which is not a good symptom. It is the duty of the investigation, prosecution as well as the Courts to ensure that full and material facts and evidence are brought on record, so that there is no scope for miscarriage of justice.

Section 464 of the IPC makes it clear that only the one who makes a false document can be held liable under the aforesaid provision. It must be borne in mind that, where there exists no ambiguity, there lies no scope for interpretation.

2018 0 Supreme(SC) 462; Sheila Sebastian Vs R. Jawaharaj & Anr. Criminal Appeal Nos. 359-360 of 2010 Decided On : 11-05-2018

When analyzing the evidence available on record, Court should not adopt hyper technical approach but should look at the broader probabilities of the case. Basing on the minor contradictions, the Court should not reject the evidence in its entirety. Sometimes, even in the evidence of truthful witness, there may appear certain contradictions basing on their capacity to remember and reproduce the minute details. Particularly in the criminal cases, from the date of incident till the day they give evidence in the Court, there may be gap of years. Hence the Courts have to take all these aspects into consideration and weigh the evidence. The discrepancies and contradictions which do not go to the root of the matter, credence shall not be given to them. In any event, the paramount consideration of the Court must be to do substantial justice. We feel that the trial Court has adopted an hyper technical approach which resulted in the acquittal of the accused.

If the evidence of an eyewitness, though a close relative of the victim, inspires confidence, it must be relied upon without seeking corroboration with minute material particulars. It is no doubt true that the Courts must be cautious while considering the evidence of interested witnesses.

2018 0 Supreme(SC) 479; Khurshid Ahmed Vs State of J & K.

the exercise of discretion by the High Court in the present case cannot be faulted. We must, at the outset, note that the case of the complainant is that the accused had (as she described in the complaint) “been making false promises for getting married to her”. This has been reiterated in the charge-sheet which has been submitted on 6 March 2018. At this stage, all that we need to note is that even going by the case of the complainant, there was intimate contact between the complainant

and the accused over a period of nearly six months between July 2015 and January 2016. Even according to the complainant, she visited the accused on two occasions in Hyderabad and stayed with him. The tickets for her travel from Mumbai were borne by the accused. The complaint was filed nearly a year thereafter in January 2017. This is a relevant circumstance which has been taken note of by the High Court. These circumstances do bear upon the defence that there was a consensual relationship between the complainant and the accused. Both in her complaint as well as in the charge-sheet, it has been alleged that the accused had falsely promised to marry the complainant.

The learned counsel appearing on behalf of the accused has submitted that the lodging of the second FIR, four days after the order of bail is merely an attempt to bolster a case based on a supervening event and that it suffers from vagueness and a complete absence of details. We are not inclined to make any further observations and leave the matter there. Above all, the Court must bear in mind that it is a settled principle of law that bail once granted should not be cancelled unless a cogent case, based on a supervening event has been made out.

2018 0 Supreme(SC) 489; Ms X Vs State of Telangana.

As the concept of maintaining General Diary has its origin under the Section 44 of Police Act of 1861 as applicable to States, which makes it an obligation for the concerned Police Officer to maintain a General Diary, but such nonmaintenance per se may not be rendering the whole prosecution illegal. However, on the other hand, we are aware of the fact that such non-maintenance of General Diary may have consequences on the merits of the case, which is a matter of trial. Moreover, we are also aware of the fact that the explanation of the genesis of a criminal case, in some cases, plays an important role in establishing the prosecution's case. With this background discussion we must observe that the binding conclusions reached in the paragraph 120.8 of Lalitha Kumari Case (Supra) is an obligation of best efforts for the concerned officer to record all events concerning an enquiry. If the Officer has not recorded, then it is for the trial court to weigh the effect of the same for reasons provided therein. A court under a writ jurisdiction or under the inherent jurisdiction of the High Court is ill equipped to answer such questions of facts. The treatment provided by the High Court in converting a mixed question of law and fact concerning the merits of the case, into a pure question of law may not be proper in light of settled jurisprudence.

Our conclusion herein is strengthened by the fact that CrPC itself has differentiated between irregularity and illegality. The obligation of maintenance of General Diary is part of course of conduct of the concerned officer, which may not itself have any bearing on the criminal trial unless some grave prejudice going to the root of matter is shown to exist at the time of the trial, Union of India and Ors. v. T. Nathamuni, (2014) 16 SCC 285. Conspicuous absence of any provision under CrPC concerning the omissions and errors during investigation also bolsters the conclusion reached herein, Niranjan Singh and Ors. V. State of Uttar Pradesh, AIR 1957 SC 142.

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Moreover, the requirement of the preliminary enquiry is well established by judicial precedents as a check on mushrooming false prosecution against public servants by persons who misuse the process of law for their personal vengeance. Such preliminary check would be beneficial and has been continuously approved by catena of judgments of this Court.

2018 0 Supreme(SC) 494; State by Lokayuktha Police Vs H. Srinivas.

There is undoubted need for a mechanism to take remedial steps if there is undue delay in investigation. Section 57 Cr.P.C. puts a bar on detention by a police officer beyond 24 hours excepting time necessary for the journey from the place of arrest to the Magistrate's court. Section 167(1) Cr.P.C. provides that where investigation cannot be completed within 24 hours, the accused has to be produced before the Magistrate and further detention of the accused has to be authorized

by the Magistrate. It is well established that authorization for such detention has to be given having regard to the progress in investigation. Even a Magistrate cannot authorise detention in police custody beyond 15 days. After judicial custody for more than 90 days in serious cases stipulated therein and 60 days in other cases, there is a provision for mandatory default bail requirement if there is delay in investigation beyond the said period. In summons case, if investigation is not concluded within six months, the same has to be stopped unless continuation is found necessary [167(5) Cr.P.C.]. However, there is no express outer limit for investigation in other cases but delay in investigation may affect reasonableness of procedure specially when a person is in custody and is unable to furnish bail. Hence the need to lay down timelines for completing investigation with a view to give effect to the mandate of Article 21 of the Constitution. This aspect has also been discussed in the Law Commission's Report including the 14th report (1958) and 154th Report (1996) as noticed by this Court [Rakesh Kumar Paul vs. State of Assam (2017) 15 SCC 67, paras 30 and 31.].
2018 0 AIR(SC) 2269; Dilawar Vs State of Haryana.

the accused-appellant was also injured in the same occurrence and he too was admitted in the hospital. But, prosecution did not produce his medical record, nor the Doctor was examined on the nature of injuries sustained by the accused. An alternative story is set up wherein the injuries are attributed to mob justice, such allegations without substantive evidence cannot be accepted.
2018 0 AIR(SC) 2386; 2018 0 Supreme(SC) 463; Kumar Vs State

It is submitted by Mr. Srivastava that in both the States, the cases are pending at the evidence stage beyond one year. We are absolutely conscious that Section 35(2) of the Act says "as far as possible". Be that as it may, regard being had to the spirit of the Act, we think it appropriate to issue the following directions:
(i) The High Courts shall ensure that the cases registered under the POCSO Act are tried and disposed of by the Special Courts and the presiding officers of the said courts are sensitized in the matters of child protection and psychological response.
(ii) The Special Courts, as conceived, be established, if not already done, and be assigned the responsibility to deal with the cases under the POCSO Act.
(iii) The instructions should be issued to the Special Courts to fast track the cases by not granting unnecessary adjournments and following the procedure laid down in the POCSO Act and thus complete the trial in a timebound manner or within a specific time frame under the Act.
(iv) The Chief Justices of the High Courts are requested to constitute a Committee of three Judges to regulate and monitor the progress of the trials under the POCSO Act. The High Courts where three Judges are not available the Chief Justices of the said courts shall constitute one Judge Committee.
(v) The Director General of Police or the officer of equivalent rank of the States shall constitute a Special Task Force which shall ensure that the investigation is properly conducted and witnesses are produced on the dates fixed before the trial courts.
(vi) Adequate steps shall be taken by the High Courts to provide child friendly atmosphere in the Special Courts keeping in view the provisions of the POCSO Act so that the spirit of the Act is observed.
2018 2 KLT(SN) 57; 2018 0 Supreme(SC) 442; ALAKH ALOK SRIVASTAVA Vs UOI & Anr.

This case, in our opinion, is a classic illustration of how the State failed in its primary constitutional responsibility of maintaining law and order by its ineffectiveness in the enforcement of criminal law. In our opinion, the reasons for such failure are many. Some of them are (i) inefficiency arising out of either incompetence or lack of proper training in the system of criminal investigation; (ii) corruption or political interference with the investigation of crime; (iii) less than the desirable levels of efficiency of the public prosecutors to correctly advise and guide the investigating agencies contributing to the failure of the proper enforcement of criminal law; and (iv) inadequate efficiency levels of the bar and the members of the Judiciary (an offshoot of the bar) which contributed to the overall decline in the efficiency in the dispensation of criminal justice system.

Over a period of time lot of irrelevant and unwarranted considerations have crept into the selection and appointment process of Public Prosecutors all over the country. If in a case like the one

on hand where three people were killed and more than five people were injured, if charges are not framed in accordance with the mandate of law, the blame must be squarely taken by both the bar and the bench. Another distressing feature of the record in this case is the humungous cross examination of the witnesses by the defense which mostly is uncalled for.
For mulcting liability on the members of an unlawful assembly under Section 149, it is not necessary that every member of the unlawful assembly should commit the offence in prosecution of the common object of the assembly. Mere knowledge of the likelihood of commission of such an offence by the members of the assembly is sufficient.
2018 0 Supreme(SC) 484; Vinubhai Ranchhodbhai Patel Vs Rajivbhai Dudabhai Patel & Others

Penal Code, 1860 — Ss. 467, 468 and 471 r/w S. 120-B — Bail — Grant of — Reasons for: Appellant-accused was facing trial under Ss. 467, 468 and 471 r/w S. 120-B IPC. His period of custody was more than one year. High Court rejected his bail application mainly on basis of FSL Report. Though case is pending for a long time, trial has not yet commenced. Evidently, co-accused was granted bail. In aforesaid circumstances, held, it is just and proper to release appellant on bail. Hence, appellant directed to be released on bail on certain conditions. [Vijay Kumar v. State of Rajasthan, (2018) 4 SCC 315]

Penal Code, 1860 — S. 302 or S. 304 — Parameters to be taken into consideration while deciding question as to whether a case falls under S. 302 or S. 304: The parameters which are to be taken into consideration while deciding the question as to whether a case falls under Section 302 IPC or Section 304 IPC, are as follows:(a) The circumstances in which the incident took place; (b) The nature of weapon used; (c) Whether the weapon was carried or was taken from the spot; (d) Whether the assault was aimed on vital part of body; (e) The amount of the force used; (f) Whether the deceased participated in the sudden fight; (g) Whether there was any previous enmity; (h) Whether there was any sudden provocation; (i) Whether the attack was in the heat of passion; and (j) Whether the person inflicting the injury took any undue advantage or acted in the cruel or unusual manner. [Lavghanbhai Devjibhai Vasava v. State of Gujarat, (2018) 4 SCC 329]

Constitution of India — Art. 233 — Appointment to Higher Judicial Service — Appointment to post of District Judge — Eligibility: Matter referred to larger Bench on issues: (i) whether eligibility is to be adjudged only at time of appointment or at time of application or both; and (ii) whether in computing period of 7 yrs of practice for being eligible for appointment as District Judge, period during which candidate has held judicial office to be included and interpretation of Art. 233 of the Constitution. [Dheeraj Mor v. High Court of Delhi, (2018) 4 SCC 619]

NOSTALGIA

In Jaswant Singh versus Virender Singh, 1995 Supp.(1) SCC 384 it was observed :

"36. ..... An advocate has no wider protection than a layman when he commits an act which amounts to contempt of court. It is most unbefitting for an advocate to make imputations against the Judge only because he does not get the expected result, which according to him is the fair and reasonable result available to him. Judges cannot be intimidated to seek favorable orders. Only because a lawyer appears as a party in person, he does not get a license thereby to commit contempt of the Court by intimidating the Judges or scandalising the courts. He cannot use language, either in the pleadings or during arguments, which is either intemperate or unparliamentary. These safeguards are not for the protection of any Judge individually but are essential for maintaining the dignity and decorum of the Courts and for upholding the majesty of law. Judges and courts are not unduly sensitive or touchy to fair and reasonable criticism of their judgments. Fair comments, even if, out-spoken, but made without any malice or attempting to impair the administration of justice and made in good faith in proper language do not attract any punishment for contempt of court. However, when from the criticism a deliberate, motivated and calculated attempt is discernible to bring down the image of judiciary in the estimation of the public or to impair the administration of justice or tend to bring

the administration of justice into disrepute the courts must bistre themselves to uphold their dignity and the majesty of law. The appellant, has, undoubtedly committed contempt of the Court by the use of the objectionable and intemperate language. No system of justice can tolerate such unbridled licence on the part of a person, be he a lawyer, to permit himself the liberty of scandalising a Court by casting unwarranted, uncalled for and unjustified aspersions on the integrity, ability, impartiality or fairness of a Judge in the discharge of his judicial functions as it amounts to an interference with the dues course of administration of justice."

The following prophetic words of Justice V.R. Krishna Iyer [In Shivaji Sahabrao Bobade & Anr. v. State of Maharashtra, (1973) 2 SCC 793, para 6] deserve to be etched on the walls of every criminal court in this country:

"6. … The cherished principles or golden thread of proof beyond reasonable doubt which runs through the web of our law should not be stretched morbidly to embrace every hunch, hesitancy and degree of doubt. The excessive solicitude reflected in the attitude that a thousand guilty men may go but one innocent martyr shall not suffer is a false dilemma. Only reasonable doubts belong to the accused. Otherwise any practical system of justice will then break down and lose credibility with the community. The evil of acquitting a guilty person light heartedly as a learned Author [Glanville Williams in 'Proof of Guilt'.] has sapiently observed, goes much beyond the simple fact that just one guilty person has gone unpunished. If unmerited acquittals become general, they tend to lead to a cynical disregard of the law, and this in turn leads to a public demand for harsher legal presumptions against indicted "persons" and more severe punishment of those who are found guilty. Thus, too frequent acquittals of the guilty may lead to a ferocious penal law, eventually eroding the judicial protection of the guiltless. …"

NEWS

- GOVERNMENT OF ANDHRA PRADESH- G.O.RT.No. 398 HOME (COURTS.A) DEPARTMENT Dated: 25-05-2018- Public Services – Prosecution Department – Sanction of additional charge allowance to certain Prosecuting Officers, for having held full additional charge of the posts, under the Provision of FR 49 – Orders - Issued.

- GOVERNMENT OF ANDHRA PRADESH- G.O.RT.No. 326 HOME (COURTS.A) DEPARTMENT Dated: 03-05-2018-Public Services – Prosecuting Officers - Deputation - Sri Pathipati Seshaiah, Additional Public Prosecutor Grade-I, I ADJ Court, Rajahmundry - Transfer of Sri Pathipati Seshaiah, Additional Public Prosecutor Grade-I, I ADJ Court, Rajahmundry to the Anti Corruption Bureau to work on deputation basis- Orders- Issued.

- GOVERNMENT OF TELANGANA G.O.Rt.No.701 HOME (COURTS.A1) DEPARTMENT Dated:18-05-2018- Anti-Corruption Bureau – Appointment of Sri V.Lakshmi Prasad, Assistant Public Prosecutor as Legal Advisor-cum-Special Public Prosecutor for conduct of prosecution in Anti-Corruption Bureau cases – Notification – Orders – Issued.

- GOVERNMENT OF TELANGANA- G.O.Rt.No.700 HOME (COURTS.A1) DEPARTMENT- Dated:18-05-2018- Anti-Corruption Bureau –Appointment of Smt. D.Brunda Devi,

Assistant Public Prosecutor as Legal Advisor-cum-Special Public Prosecutor for conduct of prosecution in Anti-Corruption Bureau cases – Notification – Orders – Issued.

- GOVERNMENT OF TELANGANA G.O.Ms.No. 50- HOME (COURTS.A) DEPARTMENT- Dated: 11-05-2018- Child Rights – The Commissions for Protection of Child Rights Act, 2005 - Specification of the Additional Public Prosecutors in the Courts of I Additional District & Sessions Judges in all the Districts and the I Additional Metropolitan Sessions Judge Court in Hyderabad as Special Public Prosecutors to conduct the cases in Children's Courts – Notification – Issued.

- GOVERNMENT OF TELANGANA G.O.Ms.No. 85- GENERAL ADMINISTRATION (SER.A) DEPARTMENT - Dated: 18-05-2018- Public Services – State and Subordinate services – Stipulation of minimum service for promotion or appointment by transfer to next higher category – Adhoc Rule - Issued.

- GOVERNMENT OF TELANGANA G.O.Ms.No. 60 FINANCE (HRM.V) DEPARTMENT- Dated: 23-05-2018- -PENSIONS - Contributory Pension Scheme - Extension of benefits of 'Retirement Gratuity and Death Gratuity' to the State Government employees covered by Contributory Pension Scheme (National Pension System) — Orders issued.

- Prosecution Replenish congratulates Sri T.Rajeshwar, Sri G.V.Ramakrishna,Sri P.Rajkumar and Smt Komalatha Subbaiah, on their promotion and posting as Sr.APP's.

ON A LIGHTER VEIN

The Perfect Son.

A: I have the perfect son.
B: Does he smoke?
A: No, he doesn't.
B: Does he drink whiskey?
A: No, he doesn't.
B: Does he ever come home late?
A: No, he doesn't.
B: I guess you really do have the perfect son. How old is he?
A: He will be six months old next Wednesday.

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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- VII
Part-7

Prosecution Replenish

An Endeavour for Learning and Excellence

July, 2018

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

Don't let anyone's ignorance , hate, drama or negativity stop you from being the best person you can be.

CITATIONS

Offence of fraud committed earlier than producing/filing the document in a court is neither covered under Clauses (a), (b)(i) or (b) (ii) of section 195.
2018(1) ALD(Crl) 883(SC); (2018) 5 SCC 422; 2018 2 Supreme 499; 2018 0 Supreme(SC) 220; Vishnu Chandru Gaonkar Vs N.M.Desai.

It is a well settled principle of criminal law that some minor contradiction or inconsistency in evidence cannot affect the material evidence and such contradiction or inconsistency cannot be made basis to discard the whole evidence as unreliable.
2018(1) ALD(Crl) 904(SC); 2018 0 AIR(SC) 1897; 2018 2 Supreme 765; 2018 0 Supreme(SC) 249; Gorusu Nagaraju s/o Apparao Vs State of A.P.

NDPS ACT- the other accused in this case were already enlarged on bail also cannot entitle him for bail.
it can be understood that not only Section 42(2), but also Section 42(1) is not mandatory and the non-compliance of the same would not vitiate the trial. Accused not entitled for Bail.
2018(1) ALD(Crl) 919(HC);Jajimoggala Apparao Vs Munivel Balakrishnan

Sec 500 IPC- Sending of emails to make all the people concerned, aware about the case booked against the complainants, in order to preserve their interest, does not amount to defamation.
2018(1) ALD(Crl) 922(HC); Trade Wings Ltd., rep. by its Director and others Vs. Mrs.Usha Boppanna and another

The averments in the counter taken by a party cannot by any stretch of imagination and understanding be considered as made with an intention to defame the other side. The parties are at liberty to take the pleas on the basis of their belief. Hence, even if the averment in a pleading is baseless, it cannot be presumed as a defamatory statement.
2018(1) ALD (Crl) 938(HC); DR.MIR AKBER ALI KHAN Vs PRINCESS SHAFIYA SAKINA

when the dispute touching the same subject property is already pending in Civil Court, parallel proceedings under Section 145 Cr.P.C. are not maintainable before an Executive Magistrate. Since in the instant case, the Civil Court has already seized the matter and passed an injunction order, the impugned order passed by the Executive Magistrate is not sustainable and its continuance will be nothing but abuse of process

of Court, in my considered view. The parties concerned shall vindicate their rights before the Civil Court only.
2018(1) ALD (Crl) 940(HC); 2018(2) ALT (Crl) 219(AP); Vaddu Rama Pulla Reddy Vs The State of Andhra Pradesh,

whenever it is brought to the notice of the Court during the proceedings that a false affidavit or a false document is filed before a Court, the Court on making an enquiry under Section 340 Cr.P.C. and on application of mind, whether it was expedient in the interest of justice that a complaint is to be filed against that person in exercise of powers under Section 195 Cr.P.C., after conducting such a preliminary enquiry for filing a complaint before the appropriate Court against such person in relation to the offence committed by him.
2018(2) ALT (CRL) 208(AP); 2018(1) ALD (Crl) 943(HC); K.Amulya Vs State of Telangana and others

WLP Act and AP Forest Act - when it is not an offence exclusively under the WLP Act for the Magistrate to order interim custody of the vehicle subject to any bank guarantee even, for the offence involved also under the A.P. Forest Act, there is no question of Magistrate exercising the power of ordering interim custody, but for the Forest Officials concerned under the A.P. Forest Act including from any involvement of the WLP Act offence also, but for where offence involved is exclusively under the WLP Act for Magistrate to order interim custody of the vehicle. It is also made clear that where interim custody ordered, the final order of confiscation or forfeiture or release with or without penalty, shall be after end result of criminal case trial from Judgment of Criminal Court covering findings about involvement of the vehicle in the offence and otherwise where no interim custody granted by the Forest Officials, they shall issue show cause notice to owner of vehicle or other private property to submit explanation as to why the property seized not liable for confiscation/forfeiture and from explanation to give opportunity of hearing by conducting enquiries and pass orders for disposal, which shall be as early as possible, without waiting for the trial result of the criminal case before Magistrate court concerned so that the vehicle or vessel shall not lose utility from disuse and becomes junk, leave about there is statutory right of civil appeal to the District Court against any order for final disposal of the property.
2018(1) ALD (Crl) 958(HC); https://indiankanoon.org/doc/168620865/; Arun Bacher Vs State of Telangana

On a cogent reading of Sections 463,464 & 465 IPC., the person who forged the document i.e. the sale deed allegedly executed by 'B. Dashratha', if really forged, he, alone shall be liable for any of the offences punishable under Sections 465 & 468 IPC, but not these petitioners/A-2 to A-4, being the purchaser from A-1 and attestors of the sale deed executed by A-1 in favour of A-2.
2018(1) ALD (Crl) 970(HC); DONDAPATI SRINIVASA RAO AND 2 OTHERS vs THE STATE OF TELANGANA.,REP.,PP AND ANOTHER

It is also the need of the hour for the trial Courts to exercise the power, that too when APPs or Additional PPs or PPs not sufficiently available for each one to each Court so that the trial process cannot be delayed thereby and also for one APP may not

concentrate effectively by attending regularly cases in more than one Court that too their duties are not only to conduct prosecution but also to represent in bail applications, policy custody petitions and several other pre-trial proceedings during investigation of the cases.
the scope of Section 301 Cr.P.C. is only limited when compared to scope of Section 302 and Section 24(8) proviso r/w 2(wa) of Cr.P.C. and even permitting once under Section 301 Cr.P.C. is not a bar for later permitting under Section 302 or 24(8) proviso r/w 2(wa) Cr.P.C.
the word prosecution thereby means proceeding either by way of indictment or information in criminal Courts to put the offender upon trial. The proviso to section 24(8) of the amended Act No.5 of 2009 of Cr.P.C seeks that the Court may permit the victim to engage an advocate of his or her choice to assist the prosecution. Here to assist the prosecution does not mean mere assisting the Public Prosecutor under Section 301 Cr.P.C., but for conducting the prosecution itself by the victim or defacto complainant in person or through private advocate of his or her choice either under Section 24(8) proviso or under Section 302 Cr.P.C. as the case may be,
https://indiankanoon.org/doc/106288615/; 2018(1) ALD (Crl) 984; 2017 0 Supreme(AP) 434; Mahabunnisa Begum Vs State of Telangana

Under Section 319 of the Mahomedan Law, Qula Divorce is effected by an offer from the wife to compensate the husband if he releases her from her marital rights, and acceptance by the husband of the offer. The complainant has specifically averred that there is no acceptance from his side for offer made by the 1 st petitioner-wife. Prima facie, it cannot be said that the marital life between the petitioner and the complainant came to be snapped by Qula Divorce.
2018(1) ALD (Crl) 997(HC); Smt Butoolunnisa Begum and three others. vs The State of A.P.

It would not be out of place to mention that ‘live-in relationship’ is now recognized by the Legislature itself which has found its place under the provisions of the Protection of Women from Domestic Violence Act, 2005.
it cannot be said that merely because appellant No. 1 was less than 21 years of age, marriage between the parties is null and void. Appellant No. 1 as well as Thushara are Hindus. Such a marriage is not a void marriage under the Hindu Marriage Act, 1955, and as per the provisions of section 12, which can be attracted in such a case, at the most, the marriage would be a voidable marriage.
2018 (1) ALD (Crl) 1010 (SC); https://indiankanoon.org/doc/73072176; NANDA KUMAR & ANR.Vs THE STATE OF KERALA & ORS.

the court has categorically observed that the investigation has not been conducted fairly. It is evident that the real culprits responsible for murder for petitioners' family have not been subjected to trial. It is clear that the investigating agency showed lackadaisical approach in carrying/proceeding with the investigation. We are of the view that it is necessary to have a fair, honest and complete investigation. Having examined the entire materials placed on record, we deem it proper to constitute a Special Investigating Team (SIT) to re-investigate FIR.

2018(2) SCC (Cri) 251; 2018 3 SCC 664; 2018 3 Supreme 444; 2018 0 Supreme(SC) 128;Sunita Devi and another Vs Union of India and others

the order issuing process against the appellants being purely interim in nature having been passed in exercise of its discretionary powers finding prima facie case to entertain the complaint filed by respondent No. 2, cannot be interfered with in our appellate jurisdiction under Article 136 of the Constitution. It is more so when the appellants would get full opportunity to raise all factual and legal pleas in accordance with law while contesting the complaint on merits.

2018 (2) SCC (Cri) 289; 2018 0 AIR(SC) 320; 2018 1 SCC 781; 2018 0 Supreme(SC) 8; Leena Vivek Masal Vs State of Maharasthra and another.

The learned Single Judge was evidently not apprised of the fact that the earlier application seeking virtually the same relief had not been pressed before the division bench and had been withdrawn. Consequently, we find merit in the submission urged on behalf of the State of Maharashtra. The learned single Judge ought not to have entertained the application under Section 482 in respect of the same relief which had been given up earlier before the Division Bench of the High Court on 29 June 2016.

2018(2) SCC (Cri) 291) ; 2017 0 AIR(SC) 4852; 2017 0 Supreme(SC) 1026; State of Maharashtra Vs Avinash.

Section 45(1) of the Prevention of Money Laundering Act, 2002, insofar as it imposes two further conditions for release on bail, to be unconstitutional as it violates Articles 14 and 21 of the Constitution of India. All the matters before us in which bail has been denied, because of the presence of the twin conditions contained in Section 45, will now go back to the respective Courts which denied bail. All such orders are set aside, and the cases remanded to the respective Courts to be heard on merits, without application of the twin conditions contained in Section 45 of the 2002 Act. Considering that persons are languishing in jail and that personal liberty is involved, all these matters are to be taken up at the earliest by the respective Courts for fresh decision.

It is thus clear that the question whether to grant bail or not depends for its answer upon a variety of circumstances, the cumulative effect of which must enter into the judicial verdict. Any one single circumstance cannot be treated as of universal validity or as necessarily justifying the grant or refusal of bail.

2018(2) SCC (Cri) 302; 2017 0 AIR(SC) 5500; 2017 4 Crimes(SC) 473; 2018 0 CrLJ 721; 2017 12 JT 124; 2017 13 Scale 609; 2017 8 Supreme 529; 2017 0 Supreme(SC) 1116; Nitish Tarachand Shah Vs UOI.

The fact that no limit for deposit was specified, would not extricate the appellant from explaining the source from where such huge amount has been acquired, possessed or used by him. The volume of demonetized currency recovered from the office and residential premises of the appellant, including the bank drafts in favour of fictitious persons and also the new currency notes for huge amount, leave no manner of doubt that it was the outcome of some process or activity connected with the proceeds of crime projecting the property as untainted property. No explanation has been offered

by the appellant to dispel the legal presumption of the property being proceeds of crime. Similarly, the fact that the appellant has made declaration in the Income Tax Returns and paid tax as per law does not extricate the appellant from disclosing the source of its receipt. No provision in the taxation laws has been brought to our notice which grants immunity to the appellant from prosecution for an offence of moneylaundering. In other words, the property derived or obtained by the appellant was the result of criminal activity relating to a scheduled offence. The argument of the appellant that there is no allegation in the chargesheet filed in the scheduled offence case or in the prosecution complaint that the unaccounted cash deposited by the appellant is the result of criminal activity, will not come to the aid of the appellant. That will have to be negatived in light of the materials already on record. The possession of such huge quantum of demonetized currency and new currency in the form of Rs.2000/notes, without disclosing the source from where it is received and the purpose for which it is received, the appellant has failed to dispel the legal presumption that he was involved in moneylaundering and the property was proceeds of crime.
Sec 45 of MLA will have overriding effect of Sec 439 of CrPC.
2018(2) SCC (Cri) 339; 2017 0 AIR(SC) 5309; 2017 4 Crimes(SC) 220; 2018 0 CrLJ 416; 2017 13 Scale 385; 2017 8 Supreme 249; 2017 0 Supreme(SC) 1076; Rohit Tandon Vs Enforcement Direcotrate.

when there is satisfactory explanation for non-examination of independent witnesses, conviction can be based solely on the testimony of official witnesses if evidence of such official witnesses inspires confidence.
The accused sought to place reliance on the decision in Gyan Singh and Ors. v. State of U.P., 1995 Supp (4) SCC 658, wherein this Court observed that conviction cannot be based on uncorroborated testimony of official witnesses. But this judgment has no relevance in the facts and circumstances of the case as in Gyan Singh's case (supra), this Court focused on the need to have independent witnesses in the odd hours in night as at the distance of 100 yards there was habitation but in the instant case no such material is brought on record to show that there was human habitation in the nearby place.
There is no legal proposition that evidence of police officials unless supported by independent evidence is unworthy of acceptance. Evidence of police witnesses cannot be discarded merely on the ground that they belong to police force and interested in the investigation and their desire to see the success of the case. Prudence however requires that the evidence of police officials who are interested in the outcome of the result of the case needs to be carefully scrutinized and independently appreciated. Mere fact that they are police officials does not by itself give rise to any doubt about their creditworthiness.
Once the physical possession of the contraband by the accused has been proved, Section 35 of the **NDPS Act** comes into play and the burden shifts on the appellant-accused to prove that he was not in conscious possession of the contraband.
Burden of proof cast on the accused under Section 35 of the NDPS Act can be discharged through different modes. One of such modes is that the accused can rely on the materials available in the prosecution case raising doubts about the prosecution case. The accused may also adduce other evidence when he is called upon to enter on his defence. If the circumstances appearing in the prosecution case give

reasonable assurance to the Court that the accused could not have had the knowledge of the required intention, the burden cast on him under Section 35 of the NDPS Act would stand discharged even if the accused had not adduced any other evidence of his own when he is called upon to enter on his defence.
2018(2) SCC (Cri) 365; 2015(17) SCC 554; 2016 0 CrLJ 154; 2015 12 Scale 308; 2015 0 Supreme(SC) 1042; Baldev Singh Vs State of Haryana.

when we went through the evidence of PW.2 we find that the following categoric statements made by him in the course of his cross-examination by the learned Public Prosecutor after declaring him as hostile. He stated, “I have studied up to 10+2. I never signed on any paper without going through the contents however, on good faith some times I do sign some papers. I was not terrorized by the police. It is correct that Gulsher accused is close to me as both of us are running shops at Missarwala. ... . It is correct that recovery memo Ext. PW-1/F was prepared by the police which bear my signatures at point “B”. This Ext. PW-1/F was prepared by some SHO. Ext. PW-1/F was prepared in my presence and I signed the same after ascertaining its correctness. Now, after going through the contents of Ext.PW-1/F, I can say that the same was not read over to me. ... ... The parcel of charas were prepared in my presence and I appended my signatures on the parcels. ... ... The parcel Ext. P6 bears my signatures and I identify the same. Parcel, Ext. P8 also bears my signatures and I identify them on Ext. P6 and as well as on Ext. P8.”
However, when he was cross-examined on behalf of the appellant, he made a contradictory version and thereby virtually withdrawing whatever categoric admission he made in the earlier part of his testimony. Having noted the manner in which PW.2 deposed before the Court and the subsequent expressions contained in the document having been admitted to have been made by him without any hesitation including the correctness of those contents, the documents as well as his attestation on the parcels which contain the samples, the contraband which were duly admitted by him, the contrary statements contained in the latter part of his evidence are all liable to be rejected as containing no truth in it. In fact, when the contents of the documents have been accepted to be true after ascertaining it before the Court, the said part of his evidence alone should carry weight and the latter part of his statement which are made by simply adopting the suggestions put to him at the instance of the appellant will be of no consequence.
the said mandatory requirement prescribed under Section 50 will have to be complied with only when a search is carried out on the body of a person and the same cannot have any effect when it comes to the question of effecting a search on any premises for which the compliance required to be carried out is as has been set out in Section 42 of the said Act itself. In the light of our above conclusion, we do not find any scope even to invoke Section 100 Cr.P.C.
2018(2) SCC (Cri) 397; 2015(17) SCC 682; 2017 1 Crimes(SC) 102; 2015 0 Supreme(SC) 1314; Gulsher Mohd. Vs State of H.P.

minor discrepancies, embellishments and contradictions in the evidence of the eye-witnesses do not destroy the essential fabric of the prosecution case, the core of which remains unaffected. Even if we have to assume that there are certain unnatural features in the evidence of the eye-witnesses the same can be reasonably explained

on an accepted proposition of law that different persons would react to the same situation in different manner and there can be no uniform or accepted code of conduct to judge the correctness of the conduct of the prosecution witnesses i.e. P.Ws. 1 and 2. The relation between the P.Ws. 5 and 6 and the P.Ws. 1 and 2 and the deceased, in our considered view, by itself, would not discredit the testimony of the said witnesses. There is nothing in the evidence of the P.Ws. 1 and 2 which makes their version unworthy of acceptance and their testimony remains unshaken in the elaborate cross-examination undertaken.

2018(2) SCC (Cri) 408; 2015(17) SCC 694; 2015 4 RCR(Cri) 506; 2015 9 Scale 209; 2015 0 Supreme(SC) 1148; Mukesh Kumar Vs State of Delhi.

We are also mindful of the principle that standard of proof that is required in such criminal cases is that the guilt has to be proved beyond reasonable doubt. However, at the same time, it is also necessary to ensure that trial is conducted fairly where witnesses are able to depose truthfully and fearlessly. Old adage judicial doctrine, which is the bedrock of criminal jurisprudence, still holds good, viz., the basic assumption that an accused is innocent till the guilt is proved by cogent evidence. It is also an acceptable principle that guilt of an accused is to be proved beyond reasonable doubt. Even in a case of a slight doubt about the guilt of the under trial, he is entitled to benefit of doubt. All these principles are premised on the doctrine that 'ten criminals may go unpunished but one innocent person should not be convicted". Emphasis here is on ensuring that innocent person should not be convicted. Convicting innocence leads to serious flaws in the criminal justice system. That has remained one of the fundamental reasons for loading the processual system in criminal law with various safeguards that accused persons enjoy when they suffer trials. Conventional criminology has leaned in favour of persons facing trials, with the main objective that innocent persons should not get punished.

31. At the same time, realisation is now dawning that other side of the crime, namely, victim is also an important stakeholder in the criminal justice and welfare policies. The victim has, till recently, remained forgotten actor in the crime scenario. It is for this reason that "victim justice" has become equally important, namely, to convict the person responsible for a crime. This not only ensures justice to the victim, but to the society at large as well. Therefore, traditional criminology coupled with deviance theory, which had ignored the victim and was offender focussed, has received significant dent with focus shared by the discipline by victimology as well. An interest in the victims of the crime is more than evident now7. Researchers point out at least three reasons for this trend. First, lack of evidence that different sentences had differing impact on offenders led policy-makers to consider the possibility that crime might be reduced, or at least constrained, through situational measures. This in turn led to an emphasis on the immediate circumstances surrounding the offence, of necessity incorporating the role of the victim, best illustrated in a number of studies carried out by the Home Office (Clarke and Mayhew 1980). Second, and in complete contrast, the developing impact of feminism in sociology, and latterly criminology, has encouraged a greater emphasis on women as victims, notably of rape and domestic violence, and has more widely stimulated an interest in the fear of crime. Finally, and perhaps most significantly, criticism of official statistics has resulted in a spawn of victim surveys, where sample surveys of individuals or households have enabled

considerable data to be collated on the extent of crime and the characteristics of victims, irrespective of whether or not crimes become known to the police. It is for this reason that in many recent judgments rendered by this Court , there is an emphasis on the need to streamline the issues relating to crime victims.
32. There is a discernible paradigm shift in the criminal justice system in India which keeps in mind the interests of victims as well. Victim oriented policies are introduced giving better role to the victims of crime in criminal trials. It has led to adopting two pronged strategy. On the one hand, law now recognises, with the insertion of necessary statutory provisions, expanding role of victim in the procedural justice. On the other hand, substantive justice is also done to these victims by putting an obligation on the State (and even the culprit of crime) by providing adequate compensation to the victims. The result is that private parties are now able to assert "their claim for fair trail and, thus, an effective 'say' in criminal prosecution, not merely as a 'witness' but also as one impacted".
That apart, it is in the larger interest of the society that actual perpetrator of the crime gets convicted and is suitably punished. Those persons who have committed the crime, if allowed to go unpunished, this also leads to weakening of the criminal justice system and the society starts losing faith therein. Therefore, the first part of the celebrated dictum "ten criminals may go unpunished but one innocent should not be convicted" has not to be taken routinely. No doubt, latter part of the aforesaid phrase, i.e., "innocent person should not be convicted" remains still valid. However, that does not mean that in the process "ten persons may go unpunished" and law becomes a mute spectator to this scenario, showing its helplessness. In order to ensure that criminal justice system is vibrant and effective, perp
the role of the trial court judge who is not supposed to be a mute spectator when he finds that witnesses after witnesses are turning hostile. Following general comments are made by the High Court in this behalf:
"86. 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).
2017 0 AIR(SC) 5690; 2017 4 Crimes(SC) 407; 2018 0 CrLJ 907; 2017 10 JT 523; 2017 13 Scale 205; 2017 8 Supreme 129; 2017 0 Supreme(SC) 1046; Dinubhai Boghabhai Solanki Vs State of Gujarat.

The directions of Delhi High Court and setting up of special centres for vulnerable witnesses as noted above are consistent with the decision of this Court and supplement the same. We are of the view that all High Courts can adopt such guidelines if the same have not yet been adopted with such modifications as may be deemed necessary. Setting up of one centre for vulnerable witnesses may be perhaps required almost in every district in the country. All the High Courts may take appropriate steps in this direction in due course in phases. At least two such centres in the jurisdiction of each High Court may be set up within three months from today. Thereafter, more such centres may be set up as per decision of the High Courts.
there should be special centres for examination of vulnerable witnesses in criminal cases in the interest of conducive environment in Court so as to encourage a vulnerable victim to make a statement. Such centres ought to be set up with all necessary safeguards. Our attention has been drawn to guidelines issued by the Delhi High Court for recording evidence of vulnerable witnesses in criminal matters and also the fact that four special centres have been set up at Delhi for the purpose.
2018(2) SCC (Cri) 458; 2017 0 AIR(SC) 5414; 2017 0 CrLR 1144; 2017 12 Scale 849; 2017 0 Supreme(SC) 1142; State of Maharashtra vs Bandu.

investigations remain pending for unduly long time which is not conducive to administration of criminal justice. There is, thus, clear need for timelines for completing investigation and for having in-house oversight mechanism wherein accountability for adhering to laid down timelines can be fixed at a different levels in the hierarchy.
There is undoubted need for a mechanism to take remedial steps if there is undue delay in investigation. Section 57 Cr.P.C. puts a bar on detention by a police officer beyond 24 hours excepting time necessary for the journey from the place of arrest to the Magistrate’s court. Section 167(1) Cr.P.C. provides that where investigation cannot be completed within 24 hours, the accused has to be produced before the Magistrate and further detention of the accused has to be authorized by the Magistrate. It is well established that authorization for such detention has to be given having regard to the progress in investigation. Even a Magistrate cannot authorise detention in police custody beyond 15 days. After judicial custody for more than 90 days in serious cases stipulated therein and 60 days in other cases, there is a provision for mandatory default bail requirement if there is delay in investigation beyond the said period. In summons case, if investigation is not concluded within six months, the same has to be stopped unless continuation is found necessary [167(5) Cr.P.C.]. However, there is no express outer limit for investigation in other cases but delay in investigation may affect reasonableness of procedure specially when a person is in custody and is unable to

furnish bail. Hence the need to lay down timelines for completing investigation with a view to give effect to the mandate of Article 21 of the Constitution. This aspect has also been discussed in the Law Commission's Report including the 14th report (1958) and 154th Report (1996) as noticed by this Court [Rakesh Kumar Paul vs. State of Assam (2017) 15 SCC 67, paras 30 and 31.].
We direct the Ministry of Home Affairs to have inter action on the subject with all the Central and State investigating agencies on or before May 31, 2018 either on video conferencing or in person. The points emerging from the inter action may be recorded and examined by an appropriate committee which may constituted for the purpose. The said committee may give its report latest by June 30, 2018. We direct the MHA to place on record among other data, the figures of all pending investigations beyond one year and action plan to complete them in a proposed time frame. With regard to State agencies also such information may be collected and furnished by the MHA.
2018(2) ALT (Crl) 109(SC); 2018 0 AIR(SC) 2269; Dilawar Vs State of Haryana.

where cognizance is taken under Section 319 of the 'Code', sanction either under Section 197 of the 'Code' (or under the concerned special enactment) is not a mandatory pre-requisite.
The grant of sanction under Section 197, can be assailed by the accused by taking recourse to judicial review. Likewise, the order declining sanction, can similarly be assailed by the complainant or the prosecution.
2016 0 AIR(SC) 3251; 2016 3 Crimes(SC) 126; 2016 0 CrLJ 3937; 2016 8 SCC 722; 2016 4 Supreme 737; 2016 0 Supreme(SC) 515; Surinderjit Singh Mand & Anr Vs State of Punjab and Anr.

If the deceased had several opportunities of making such dying declarations, that is to say, if there are more than one dying declaration they should be consistent. However, if some inconsistencies are noticed between one dying declaration and the other, the court has to examine the nature of the inconsistencies, namely, whether they are material or not. While scrutinizing the contents of various dying declaration, in such a situation, the court has to examine the same in the light of the various surrounding facts and circumstances. Hence, on the mere ground that there are multiple declarations, the declaration, which is reliable, shall not be discarded.
2018(2) ALT (Crl) 136(DB) (AP); 2018 0 Supreme(AP) 101; Iytha Sarangapani Vs State of A.P.

The order granting bail however, only reflects the stage of investigation and the period of detention of the accused. The nature and gravity of the accusation, however, is evident from the record. So also, the severity of the punishment in the event of conviction. With regard to the danger of absconding or fleeing after release on bail; the likelihood of the offence being repeated; the reasonable apprehension of the witnesses being influenced and the danger of justice being thwarted by grant of bail, it is for the Public Prosecution to put forth such submissions and also the material in support of such submissions.
2018(2) ALT (Crl) 179 (AP); 2018 0 Supreme(AP) 29; Janjanam Lalitha Devi Vs State of A.P.

From the admissions made by the investigating officer, it is clear that the version spoken to by PWs.1, 2, 3, 4 and 5 in the Court, were never spoken to by them in their earlier statements. As stated earlier, neither PW1, PWs.2 and 3 stated in their earlier statements about they witnessing the accused attacking the deceased nor did they say PW1 waking up PW2 and then he along with PW1 making an attempt to catch the accused. Nor did PW3 speak about hearing the cries at about 10.30 p.m. and seeing the accused cutting the throat of the deceased with a knife. Similarly, PW4 in his earlier statement recorded under Section 161 of Cr.P.C., never stated that he noticed the accused having a knife in his hand. Even PW5 did not state in his earlier statement about the earlier quarrels and also about PW1 informing him about the incident, when he was approaching the rachabanda. That being the position, their evidence cannot be made a basis to convict the accused.

If the statement of the witnesses recorded by the police during the course of investigation under Section 161 Cr.P.C., does not anywhere indicate the presence of the witnesses and they seeing the incident, as per the admission made by PW11 in his evidence before the Court, it is strange as to how the police officer (PW11) could have filed a charge sheet against the accused narrating the manner in which the incident took place. No explanation is forthcoming from any quarters. We feel that if situations of this nature are allowed to continue, the victims of the incident would be put to irreparable loss. The intentional or faulty acts of the investigating officers need to be curbed by the prosecution agency. Further, the public prosecutors, who are conducting the Sessions Cases, should be more vigilant when the crucial witnesses are in the box. Any laxity on their part will cause irreparable loss to the victims and their family members who are virtually dependant on the prosecution agency while prosecuting their case. This aspect requires to be looked into not only by the Director General of Police, but also by the Director of Prosecution or by the appropriate authority.

2018(2) ALT (Crl) 189 (DB)(AP); 2017 0 Supreme(AP) 682; Leburu Polaiah @ Poluga @ Gowdu Vs State of A.P.

The provisions of Section 313(4) explicitly provides that the answers given by the accused may be taken into consideration in such enquiry or trial and put as evidence against the accused in any other enquiry or trial for any other offence for which such answers may tempt to show he has committed. In other words, the use is permissible as per the provisions of the Code but has its own limitations. The Courts may rely on a portion of the statement of the accused and find him guilty in consideration of the other evidence against him led by the prosecution, however, such statements made under this Section should not be considered in isolation but in conjunction with evidence adduced by the prosecution. Another important caution that Courts have declared in the pronouncements is that conviction of the accused cannot be based merely on the statement made under Section 313 of the Code as it cannot be regarded as a substantive piece of evidence.

the statements of the witnesses were recorded under Section 299 Cr.P.C., and after the apprehension of the accused, the case was committed to the Court of Sessions, charges came to be framed against the accused and then the Court proceeded with the trial. During the course of trial, the statements recorded by the Magistrate under Section 299 Cr.P.C., before committal of the case, came to be used as evidence in

chief in Sessions Case, though the said witnesses were available and then the said witnesses were subjected to cross-examination.
In other words, what happened is that charge came to be framed after recording the evidence in chief of the witnesses, which amounts to following a procedure which is not contemplated under the Criminal Procedure Code. Further, what was put to accused under Section 313 Cr.P.C., is the statements on oath, recorded by the Magistrate, under Section 299 Cr.P.C., though the witnesses were available and the case is triable by a Court of Sessions, which procedure is against the spirit and purport of Sections 299 and 313 Cr.P.C.
2018 (2) ALT (Crl) 242(DB)(AP); 2017 0 Supreme(AP) 739; Dugudu China Tirupathi S/o. China Chalamaiah Vs State of A.P.

In light of the discussion above, the absence of entries in the General Diary concerning the preliminary enquiry would not be per se illegal. Our attention is not drawn to any bar under any provision of CrPC barring investigating authority to investigate into matter, which may for some justifiable ground, not found to have been entered in the General Diary right after receiving the Confidential Information. It may not be out of context to mention that nothing found in the paragraph 120.8 of the Lalitha Kumari Case (Supra), justifies the conclusion reached by the High Court by placing a skewed and literal reading of the conclusions reached by the Bench therein. It is well settled that judgments are not legislations, they have to be read in the context and background discussions [refer Smt. Kesar Devi v. Union of India & Ors., (2003) 7 SCC 427].
Our conclusion herein is strengthened by the fact that CrPC itself has differentiated between irregularity and illegality. The obligation of maintenance of General Diary is part of course of conduct of the concerned officer, which may not itself have any bearing on the criminal trial unless some grave prejudice going to the root of matter is shown to exist at the time of the trial, Union of India and Ors. v. T. Nathamuni, (2014) 16 SCC 285. Conspicuous absence of any provision under CrPC concerning the omissions and errors during investigation also bolsters the conclusion reached herein, Niranjan Singh and Ors. V. State of Uttar Pradesh, AIR 1957 SC 142.
2018 0 AIR(SC) 2701; 2018 2 KLT(SN) 75; 2018 0 Supreme(SC) 494; State by Lokayuktha Police Vs H.Srinivas.

It is obvious from the above that an erroneous or irregular or even absence of a specific charge shall not render the conviction recorded by a court invalid unless the appellate court comes to a conclusion that failure of justice has in fact been occasioned thereby.
The mere presence of an accused in such an ‘unlawful assembly’ is sufficient to render him vicariously liable under Section 149 IPC for causing the death of the victim of the attack provided that the accused are told that they have to face a charge rendering them vicariously liable under Section 149 IPC for the offence punishable under Section 302 IPC. Failure to appropriately invoke and apply Section 149 enables large number of offenders to get away with the crime.
Over a period of time lot of irrelevant and unwarranted considerations have crept into the selection and appointment process of Public Prosecutors all over the country.

2018 0 AIR(SC) 2472; 2018 0 Supreme(SC) 484; Vinubhai Ranchhodbhai Patel Vs. Rajivbhai Dudabhai Patel & Others

Whether an anticipatory bail should be for a limited period of time is the issue in this case.
In view of conflicting views of different Benches of varying strength matter needs to be authoritatively settled.
2018 0 Supreme(SC) 485; SUSHILA AGGARWAL & ORS. VS STATE (NCT OF DELHI) & ANR

Not disclosing entire sequence of events in his information cannot discredit the FIR.
When direct oral evidence available on record coupled with medical evidence, points at the guilt of the accused; not proving the motive will not be significant.
Evidence of interested witness cannot always be brushed aside.
Minor contradictions should be ignored.
Power of appellate court in hearing appeal against acquittal is the same as in appeal against conviction.
2018 0 AIR(SC) 2457; 2018 0 Supreme(SC) 479; Khursid Ahmed Vs State of J & K.

Criminal Trial — Witnesses — Interested/Partisan witness — Evidence of interested witness — Admissibility: It is settled law that there cannot be any hard-and-fast rule that evidence of interested witness cannot be taken into consideration and they cannot be termed as witnesses but, the only burden that is cast upon courts in such cases is that courts have to be cautious while evaluating evidence to exclude possibility of false implication. Relationship can never be a factor to affect credibility of witness as it is not possible always to get an independent witness. [Sudhakar v. State, (2018) 5 SCC 435]

The attester is not required to know the contents of the documents and the executant need not sign in the presence of the attester This Court in Yelakala Rangarao and others Vs. State of Andhra Pradesh and another; 2013 (1) ALD (Crl.) 269 (AP) discussed about the liability of the attesters and held that they are not liable to be prosecuted for any of the offences merely on the ground that they attested the document. Thus, in view of the law declared by this Court, the purchaser and the attesters of the document, allegedly created or fabricated, are not liable to be prosecuted.

At the stage of cognizance and summoning the Magistrate is required to apply his judicial mind only with a view to take cognizance of the offence, or, in other words, to find out whether prima facie case has been made out for summoning the accused persons. At this stage, the learned Magistrate is not required to consider the defence version or materials or arguments nor he is required to evaluate the merits of the materials or evidence of the complainant, because the Magistrate must not undertake the exercise to find out at this stage whether the materials will lead to conviction or not.
2015 Sup AIR(SC) 684; 2015 2 JCC 969; 2015 2 Scale 295; 2015 3 SCC 424; 2015 2 SCC(Cri) 265; 2015 2 Supreme 193; 2015 0 Supreme(SC) 100; Sonu Gupta Vs Deepak Gupta.

The Supreme Court in the case of Dhirendra Kumar versus State of Uttarakhand [2015)3) SCALE 30] has laid down the parameters which are to be taken into consideration while deciding the question as to whether a case falls under Section 302 IPC or 304 IPC, which are the following:

(a) The circumstances in which the incident took place;
(b) The nature of weapon used;
(c) Whether the weapon was carried or was taken from the spot;
(d) Whether the assault was aimed on vital part of body;
(e) The amount of the force used.
(f) Whether the deceased participated in the sudden fight;
(g) Whether there was any previous enmity;
(h) Whether there was any sudden provocation.
(i) Whether the attack was in the heat of passion; and
(j) Whether the person inflicting the injury took any undue advantage or acted in the cruel or unusual manner.

NEWS

- Prosecution replenish wishes a very happy and healthy retired life to
  - Sri Maruthi Rao Kulkarni Sir, PP, Nalgonda.
  - Sri S.K.Rama Rao Sir, PP, Khammam
  - Sri Rama Murthy Sir, Addl.PP, Warangal.

- Prosecution Replenish wishes Sri Rama Murthy Sir, a very happy and healthy retired life.

- HIGH COURT OF JUDICATURE AT HYDERABAD FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH Court Timings of High Court of Judicature at Hyderabad for the State of Telangana and State of Andhra Pradesh - Notification - Issued. **ROC:.NO.530/SO/2018 DATED:29.06.2018**

- General Administration (SC-F) Department – A.P. Special Courts Act, 2016 – Appointment of existing Special Public Prosecutors of the Special Courts for SPE & ACB cases at Kurnool, Visakhapatnam, Vijayawada and Nellore as Special Public Prosecutors for conducting cases before the Special Courts and Authorized Officers constituted under AP Special Courts Act –Orders – Issued- **G.O.MS.No. 85, GENERAL ADMINISTRATION (SC-F) DEPARTMENT Dated: 15-06-2018 GOVERNMENT OF ANDHRA PRADESH**

- Public Services – Prosecuting Officers - Deputation - Transfer of Smt.P.S.A.Jyothi, Additional Public Prosecutor, Grade-II, ASJ Court, Gudivada, Krishna District and Sri M.V.S.S.Prakasa Rao, Additional Public Prosecutor Grade-II, ASJ Court, Ramachandrapuram, East Godavari District, to the Anti Corruption Bureau to work on deputation basis- Orders- Issued- **GOVERNMENT OF ANDHRA PRADESH G.O.RT.No. 471, HOME (COURTS.A) DEPARTMENT, Dated: 19-06-2018.**

- Public Services – Prosecuting Officers – Sri B. Rama Koteswara Rao, Joint Director of Prosecutions, O/o.Directorate of Prosecutions, A.P., Vijayawada - Fixation of pay under FR-22-B - Orders – Issued- **GOVERNMENT OF ANDHRA PRADESH-G.O.Rt.No.465, HOME (COURTS.A) DEPARTMENT, Dated :18-06-2018.**

- Public Services – Prosecutions Department – Transfer of Smt.K.Nirmala, Asst. Public Prosecutor, Additional Judicial First Class Magistrate Court, Puttur**,**Chittoor District on medical grounds to V Additional Judicial First Class Magistrate Court,

Tirupati,Chittoor District in the existing vacancy, in relaxation of restrictions to post in native Mandal and practicing Bar-Orders – Issued- **GOVERNMENT OF ANDHRA PRADESH- G.O.RT.No. 427, HOME (COURTS.A) DEPARTMENT, Dated: 05-06-2018**

- Public Services – Prosecutions Department – Transfers – Transfer of Sri. B.Brahmaiah, Additional Public Prosecutor Gr.II, Additional Assistant Sessions Judge Court, Srikakualam to Principal Assistant Sessions Judge Court, Eluru vice Smt.K.Usha Kiran, Additional Public Prosecutor Gr.II, Principal Assistant Sessions Judge Court, Eluru to Additional Assistant Sessions Judge Court, Srikakulam, duly relaxing native district rules in respect of Smt.K.Usha Kiran, Additional Public Prosecutor Gr.II.– Orders – Issued- **GOVERNMENT OF ANDHRA PRADESH, G.O.Rt.No.424, HOME(COURTS.A) DEPARTMENT, Dated.-01-06-2018.**

- Home Department – Lifting Ban on Transfers – Constitution of committee to effect transfers to the employees of State Cadre working in the Prosecutions Department during the period of lifting of ban on transfers - Orders - Issued- GOVERNMENT OF TELANGANA, G.O.Rt.No. 820, HOME (COURTS.A) DEPARTMENT Dated: 08-06-2018

- Home Department – Lifting Ban on Transfers – Constitution of committee to effect transfers to the employees of Multi Zonal / Zonal Cadre working in the Prosecutions Department during the period of lifting of ban on transfers- orders issued- GOVERNMENT OF TELANGANA- G.O.Rt.No. 821- HOME (COURTS.A) DEPARTMENT Dated: 08-06-2018.

ON A LIGHTER VEIN

WIFE: Honey let's play a game

HUSBAND: Okay. What's the game about?

WIFE: If I mention a country, you run to the left side of the room and touch the wall & if I mention a bird, you run to the right side of the room and touch the wall. If you run to the wrong direction, you'll give me all your salary for this month

HUSBAND: Okay! And if you fail in your turn, I'll have your salary too right?

WIFE: (smiles) Yes darling!

HUSBAND: Okay (stands up ready to run in any direction)

WIFE: are you ready

HUSBAND: Yes ready

WIFE: TURKEY

Its been 4 HOURS NOW...

The husband is still standing at the spot wondering if she meant the Country or the bird

Moral lesson... After God, Fear Women!

****

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- VII
Part-8

Prosecution Replenish

An Endeavour for Learning and Excellence

August, 2018

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

Pause before judging. Pause before assuming, Pause before accusing, Pause whenever you're about to react harshly and you'll avoid doing and saying things you'll later regret.

Lori Deschene

CITATIONS

167(2) CrPC- In law, only upon rejection of the prayer for extension of time sought by the Additional Public Prosecutor, right in favour of the appellant for grant of statutory bail could have ignited. The mere fact that 90 days period from the date of initial arrest of the appellant in connection with the subject FIR had lapsed on 2nd March, 2017, could not ineluctably entail in grant of statutory bail to the appellant. Moreso, when no decision was taken by the Court on the report/application submitted by the Additional Public Prosecutor until 8th March, 2017, on which date the supplementary charge-sheet against the appellant was filed in Court. Considering the effect of filing of the supplementary charge-sheet against the appellant, coupled with the fact that his judicial custody was extended by the Court of competent jurisdiction until the pendency of consideration of the report/application for extension of time to file the charge-sheet, in law, it is unfathomable as to how the appellant could claim to have any accrued right to be released on bail on the ground of default or for that matter, such a right having become indefeasible.
(2018) 2 SCC (Cri) 498; 2018 0 AIR(SC) 688; 2018 1 Crimes(SC) 170; 2018 1 LawHerald(SC) 556; 2018 2 MLJ(Cri) 282; 2018 1 Scale 590; 2018 4 SCC 405; 2018 1 Supreme 613; 2018 0 Supreme(SC) 94; RAMBEER SHOKEEN Vs STATE OF NCT OF DELHI

Merely because the occurrence happened in front of the house of the appellants, it cannot be said that the complainant party were the aggressors. To find out as to who were the aggressors, the entire incident must be examined with due care in its proper setting.
It cannot be held as a matter of law or invariably a rule that whenever the accused sustained an injury in the same occurrence, the prosecution is obliged to explain the injury and on the failure of the prosecution to do so, the prosecution case should be disbelieved. Before holding that non-explanation of the injuries on the persons of the accused persons by the prosecution witnesses may affect the prosecution case, the court has to be satisfied of the existence of two conditions: (i) that the injury on the person of the accused was of a serious nature; and (ii) that such injuries must have been caused at the time of the occurrence in question.

(2018) 2 SCC (Cri) 518; 2018 0 AIR(SC) 1133; 2018 0 CrLJ 2229; 2018 1 RCR(Cri) 972; 2018 1 Scale 580; 2018 4 SCC 428; 2018 0 Supreme(SC) 110; Dashrath @ Jolo & Anr. Etc. Vs State of Chhattisgarh

there is no prohibition in law to file the second FIR and once it is filed, such FIR is capable of being taken note of and tried on merits in accordance with law.
firstly, the second FIR was not filed by the same person, who had filed the first FIR. Had it been so, then the situation would have been somewhat different. Such was not the case here; Second, it was filed by the appellant as a counter-complaint against respondent No.3; Third, the first FIR was against five persons based on one set of allegations whereas the second FIR was based on the allegations different from the allegations made in the first FIR;

(2018) 2 SCC (Cri) 578; 2018 0 AIR(SC) 1482; 2018 2 Crimes(SC) 164; 2018 2 ILR(Ker) 284; 2018 2 KLJ(NOC) 3; 2018 2 KLT(SN) 25; 2018 4 SCC 579; 2018 3 Supreme 25; 2018 0 Supreme(SC) 242; P.SreeKumar Vs State of Kerala

CRIMINAL LAW AMENDMENT ORDINANCE 1944- When properties of an accused is already provisionally attached and he dies but the properties are inherited by his son who himself is an accused facing trial in many cases there will be no fault in making the interim attachment absolute.
When the accused is already convicted and the prosecution has not represented that any property has been attached, court was not obliged to pass any order u/s 12(1).
Court has ample power to deal with attached properties after termination of criminal proceedings.
Attachment of properties is not confined to properties procured out of defalcated amount. Any other property can be attached to recover the defalcated amount.
(2018) 2 SCC (Cri) 633; (2018) 11 SCC 242;2017 0 AIR(SC) 5443; 2018 1 Crimes(SC) 56; 2018 0 CrLJ 1130; 2017 4 RCR(Cri) 514; 2017 12 Scale 398; 2018 1 Supreme 178; 2017 0 Supreme(SC) 1154; Ravi Sinha Vs State of Jharkhand.

PW-2 was the son of the appellant Anita. He was a school going child aged 12 years. Both, the trial Court and the High Court have found him to be reliable and convincing. We do not find anything from his evidence to make it suspicious as the result of any tutoring by PW-4. The witness has clearly mentioned that his mother was present in the room when the assault was taking place and she asked them to leave the room on the biding of one of the assailants. We do find it a little strange, according to normal human behavior, that at the dead of night, the appellant after witnessing an assault on her own husband, did not rush to the house of PW-1 for informing the same and sent her minor son for the purpose. The fact that she created no commotion by shouting and seeking help reinforces the prosecution case because of her unnatural conduct. We also cannot lose sight of the fact that the child witness was not deposing against another family member or a stranger, but his own mother. It would call for courage and conviction to name his own mother, as the child was grown up enough to understand the matter as a witness to a murder.
The witness has clearly identified the other two appellants also in the dock, having seen them during the occurrence. The number of injuries on the deceased is itself indicative that the assault lasted for some time enabling identification and did not end in a flash. We, therefore, find no reason to interfere with the conviction.
(2018) 2 SCC (Cri) 652; (2018) 11 SCC 300; 2017 0 AIR(SC) 3437; 2017 2 Crimes(SC) 434; 2017 0 CrLJ 4558; 2017 3 RCR(Cri) 880; 2017 6 Scale 573; 2017 4 Supreme 415; 2017 0 Supreme(SC) 572; Satish and Another Vs State of Haryana.

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.
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 circumstances of each particular case. But at the same time, right to bail is not to be denied merely because of the sentiments of the community against the accused.
(2018) 2 SCC (Cri) 661; (2018) 11 SCC 458; 2017 0 AIR(SC) 3986; 2017 0 AIIMR(Cri)(SC) 4412; 2017 4 Crimes(SC) 400; 2017 0 CrLR 991; 2018 1 EastCrC(SC) 49; 2017 4 MLJ(Cri)(SC) 372; 2017 4 RCR(Cri) 851; 2017 9 Scale 442; 2017 8 Supreme 353; 2017 0 Supreme(SC) 768; Lt. Col. Prasad Shrikant Purohit Vs State of Maharashtra.

notwithstanding the fact that as of now investigating agencies in India are not fully equipped and prepared for the use of videography, the time is ripe that steps are taken to introduce videography in investigation, particularly for crime scene as desirable and acceptable best practice as suggested by the Committee of the MHA to strengthen the Rule of Law

(2018) 2 SCC (Cri) 704; 2018 4 JT 219; 2018 5 Scale 384; 2018 5 SCC 311; 2018 4 Supreme 194; 2018 0 Supreme(SC) 321; Shafhi Mohammad Vs State of H.P.

the total period, starting from the day on which the petitioners were apprehended in the Crime, till the day on which the applications for grant of bail comes for consideration and has to be taken without considering the interregnum period, where the petitioners are at large during grant of bail and cancellation of bail.

Simply because there is a lapse on the part of the petitioners to mention the correct provision of law, it is not advisable to drive the petitioners to lower Court for seeking such relief, where, on the facts of the case, it is clear that the mandatory period has elapsed and investigation is not yet completed.

2018(2) ALD (Crl) 1; 2018 0 Supreme(AP) 69; Ananda Kumar Bidarkar Vs State of Telangana.

to constitute an offence under Section 366 IPC, it is necessary for the prosecution to prove that the accused induced the complainant woman or compelled by force to go from any place, that such inducement was by deceitful means, that such abduction took place with the intent that the complainant may be seduced to illicit intercourse and/or that the accused knew it to be likely that the complainant may be seduced to illicit intercourse as a result of her abduction. Mere abduction does not bring an accused under the ambit of this penal section. So far as charge under Section 366 IPC is concerned, mere finding that a woman was abducted is not enough, it must further be proved that the accused abducted the woman with the intent that she may be compelled, or knowing it to be likely that she will be compelled to marry any person or in order that she may be forced or seduced to illicit intercourse or knowing it to be likely that she will be forced or seduced to illicit intercourse. Unless the prosecution proves that the abduction is for the purposes mentioned in Section 366 IPC, the Court cannot hold the accused guilty and punish him under Section 366 IPC.

2018(2) ALD (Crl) 4(SC); 2018 0 AIR(SC) 2099; 2018 0 AIIMR(Cri)(SC) 2287; 2018 2 Crimes(SC) 504; 2018 4 JT 478; 2018 5 Supreme 1; 2018 0 Supreme(SC) 417; Kavita Chandrakant Lakhani Vs State of Maharashtra and another.

First, it is an admitted fact emerging from the record of the case that the appellant was not produced before any Magistrate or Gazetted Officer; Second, it is also an admitted fact that due to the aforementioned first reason, the search and recovery of the contraband “Charas” was not made from the appellant in the presence of any Magistrate or Gazetted Officer; Third, it is also an admitted fact that none of the police officials of the raiding party, who recovered the contraband “Charas” from him, was the Gazetted Officer and nor they could be and, therefore, they were not empowered to make search and recovery from the appellant of the contraband “Charas” as provided under Section 50 of the NDPS Act except in the presence of either a Magistrate or a Gazetted Officer; Fourth, in order to make the search and recovery of the contraband articles from the body of the suspect, the search and recovery has to be in conformity with the requirements of Section 50 of the NDPS Act. It is, therefore, mandatory for the prosecution to prove that the search and recovery was made from the appellant in the presence of a Magistrate or a Gazetted Officer.

2018(2) ALD (Crl) 10(SC); 2018 0 AIR(SC) 2123; 2018 2 Crimes(SC) 389; 2018 2 KLT(SN) 57; 2018 4 Supreme 492; 2018 0 Supreme(SC) 427; Arif Khan @ Agha Khan Vs State of Uttarakhand.

Framing of charge is not an interlocutory order.

situation of proceedings remaining pending for long on account of stay needs to be remedied. Remedy is required not only for corruption cases but for all civil and criminal cases where on account of stay, civil and criminal proceedings are held up. At times, proceedings are adjourned sine die on account of stay. Even after stay is vacated, intimation is not received and proceedings are not taken up. In an attempt to remedy this, situation, we consider it appropriate to direct that in all pending cases where stay against proceedings of a civil or criminal trial is operating, the same will come to an end on expiry of six months from today unless in an exceptional case by a speaking order such stay is extended. In cases where stay is granted in future, the same will end on expiry of six months from the date of such order unless similar extension is granted by a speaking order. The speaking order must show that the case was of such exceptional nature that continuing the stay was more important than having the trial finalized. The trial Court where order of stay of civil or criminal proceedings is

produced, may fix a date not beyond six months of the order of stay so that on expiry of period of stay, proceedings can commence unless order of extension of stay is produced.
2018(2) ALD (Crl) 15(SC); 2018 0 AIR(SC) 2039; 2018 2 Crimes(SC) 225; 2018 2 ILR(Ker) 79; 2018 2 KarLJ 610; 2018 2 KHC 380; 2018 2 KLT 158; 2018 2 RCR(Cri) 415; 2018 3 Supreme 152; 2018 0 Supreme(SC) 266; ASIAN RESURFACING OF ROAD AGENCY PVT. LTD. & ANR Vs CBI.

in future the trial court record is summoned, the trial courts may send photocopy/scanned copy of the record and retain the original so that the proceedings are not held up. In cases where specifically original record is required by holding that photocopy will not serve the purpose, the appellate/revisional court may call for the record only for perusal and the same be returned while keeping a photocopy/scanned copy of the same.
2018 2 CurCC(SC) 250; 2018 2 KHC 850; 2018 0 Supreme(SC) 429; ASIAN RESURFACING OF ROAD AGENCY PVT. LTD. & ANR Vs CBI.

the petitioner-accused published a book in the name and style of Hyndava Christavam and printed the photograph of Jesus Christ on the National Flag.
Printing of the photo of the Jesus Christ on the said book does not in any manner fall within the purview of Section 2 of the Prevention of Insults to National Honour Act, 1971.
Moreover it suggests religion integrity, by considering the title with two religions. The Ashok Chakra, which the petitioner now removed, only represents the Laws of Dharma (Righteousness) which everyone should be allowed to follow, irrespective of religion.
2018(2) ALD (Crl) 46; 2017 0 Supreme(AP) 723; Addanki Ranjith Ophir Vs State of A.P.

Even in a case where there are two declarations with varying versions and one of them is only acceptable and reliable; the Court may, while rejecting the other which is unreliable, base a conviction on the one which is reliable.
It is no doubt true that there are two dying declarations apart from the statement of the deceased under Section 161 CrPC under exhibit P11, which also acquired the status of a declaration on the death of the deceased in the hospital while receiving treatment for the burn injuries.
The further contention that the dying declaration (exhibit P16) was recorded by the learned Magistrate even before the crime has been registered also does not deserve any countenance in view of the fact that the dying declaration recorded even before the registration of the crime can be accepted if it is otherwise reliable in view of the decision in State of Punjab v. Amarjit Singh [1988 (Supp) SCC 704] wherein the Supreme Court, having noticed that a police officer recorded a dying declaration even before issuance of FIR and the commencement of investigation, held that in such a case where the police officer records a dying declaration, he does so, not in the capacity of an investigating officer and such a dying declaration can be accepted if otherwise it is reliable; and also in view of the settled legal position that recording of information report by the police is not a condition precedent to the setting in motion of a criminal investigation. (See: Apren Joseph alias Current Kunjukunju and others v. The State of Kerala [1973(3) SCC 114].
No-doubt, the evidence on record depicts that the statement of the deceased given to the police officer bears her right hand thumb impression, whereas the dying declaration, exhibit P16, recorded by the learned Magistrate bears her toe impression and that the learned Magistrate clarified in his cross examination that since her fingers were burnt he obtained her toe impression. In the considered view of this Court, this aspect of the matter will not militate the veracity of either of the two statements for the reason that there was no cross examination of PW12, the police officer, on this aspect and no information was elicited from him to discredit the statement recorded by him, on the mere ground that he had obtained the right hand thumb impression on the said statement of the deceased which was recorded by him, on 25.10.1998 at about 10:00 AM.
2018(2) ALD (Crl) 48; 2018 0 Supreme(AP) 101; 2018 0 Supreme(AP) 49; Iytha Sarangapani Vs State of A.P.

Undue importance should not be attached to omissions, contradictions and discrepancies which do not go to the heart of the matter and shake the basic version of the witness.

There have been various inconsistences regarding the place of arrest; the overt acts of the accused; the arrival of persons at the scene of offence etc.
Given the admitted fact that the accused was caught at the scene of the offence itself and as P.W.2s evidence as to what actually happened remained unshaken on all essential aspects, the contrary version put forth by the accused is utterly implausible and failed to withstand incisive cross-examination.
2018(2) ALD (Crl) 63; 2017 0 Supreme(AP) 667; Matta Rajesh Vs State of A.P.

before recording the statement of a witness produced by the prosecution, the court must be satisfied that accused has absconded or there is no immediate prospect of arresting him, as provided under first part of Section 299(1) of Cr.P.C. When accused is arrested and put up for trial, if any such deposition of any witness is intended to be used as evidence against the accused, in any trial, then the court must be satisfied that either the deponent is dead or incapable of giving evidence or cannot be found or his presence cannot be procured without an amount of delay, expense, or inconvenience, which would be unreasonable.
2017 0 Supreme(AP) 739; 2018(2) ALD (Crl) 111(DB); Dugudu China Tirupathi Vs State of A.P.

in order to establish the offence of rape, the presence of semen and spermatozoa either on the private parts, or on the clothes of the deceased is not required and mere penetration of a male genital organ is sufficient to conclude that the offence of rape is committed. Be that as it may, even assuming that accused No.1 could not accomplish the act of rape, the prosecution case regarding the murder cannot be thrown out applying the legal principle falsus in uno, falsus in omnibus (False in one thing is false in everything) which is not applied to the criminal jurisprudence in India. When there is credible evidence pointing to the guilt of the accused beyond all reasonable doubt, failure of the prosecution to prove its case regarding one offence will not lead to acquittal of the accused of the remaining offences, if proper evidence is available on record to prove the guilt of the accused regarding those offences.
In Modan Singh v. State of Rajasthan, (1978) 4 SCC 435 the Supreme Court observed that where the evidence of the investigating officer who recovered the material objects is convincing, the evidence as to recovery need not be rejected on the ground that seizure witnesses did not support the prosecution version. This view was reiterated in Mohd. Aslam v. State of Maharashtra, (2001) 9 SCC 362. In Anter Singh v. State of Rajasthan, (2004) 10 SCC 657 the Apex Court held that even if panch witnesses turn hostile, which happens very often in criminal cases, the evidence of the person who effected the recovery would not stand vitiated. In Rameshbhai Mohanbhai Koli v. State of Gujarat, (2011) 11 SCC 111 the Supreme Court held:
This Court has held in a large number of cases that merely because the panch witnesses have turned hostile is no ground to reject the evidence if the same is based on the testimony of the investigating officer alone. In the instant case, it is not the case of defence that the testimony of the investigating officer suffers from any infirmity or doubt. [Vide Modan Singh case (supra) and Anter Singh case (supra)]
2018 0 Supreme(AP) 104; 2018(2) ALD (Crl) 119; Shaik Ibraheem Vs State of A.P.

It is well established principles of law that the accused is entitled to have copies of all the statements of witnesses recorded by the prosecution during investigation and referred to in charge sheet even if that particular statement is not relied upon by the prosecution. The investigating agency and the prosecution both represent the State and every action of the State is legally required to be fair, just and reasonable. In case, the investigating agency and prosecution withhold any material, it is to be presumed that the same was being done, as it was favourable to the accused. Such a procedure is not fair, just and reasonable, with the accused.
Strangely, the independent witness, who was present for the recovery made, pursuant to the disclosure made by the accused, was not examined. Therefore, recovery, basing on the evidence of Investigating Officer, cannot be accepted at its face value in the absence of any witness for the said recovery. Further, the blood stains, which were found on the weapon, though mentioned as human blood, the report does not say that the blood group found on the weapon was that of the deceased.
2017 0 Supreme(AP) 738; 2018(2) ALD (Crl) 135(DB); Gogula Ramanaiah Vs State of A.P.

We are absolutely conscious that Section 35(2) of the Act says “as far as possible”. Be that as it may, regard being had to the spirit of the POCSO Act, we think it appropriate to issue the following directions:

(i) The High Courts shall ensure that the cases registered under the POCSO Act are tried and disposed of by the Special Courts and the presiding officers of the said courts are sensitized in the matters of child protection and psychological response.

(ii) The Special Courts, as conceived, be established, if not already done, and be assigned the responsibility to deal with the cases under the POCSO Act.

(iii) The instructions should be issued to the Special Courts to fast track the cases by not granting unnecessary adjournments and following the procedure laid down in the POCSO Act and thus complete the trial in a timebound manner or within a specific time frame under the Act.

(iv) The Chief Justices of the High Courts are requested to constitute a Committee of three Judges to regulate and monitor the progress of the trials under the POCSO Act. The High Courts where three Judges are not available the Chief Justices of the said courts shall constitute one Judge Committee.

(v) The Director General of Police or the officer of equivalent rank of the States shall constitute a Special Task Force which shall ensure that the investigation is properly conducted and witnesses are produced on the dates fixed before the trial courts.

(vi) Adequate steps shall be taken by the High Courts to provide child friendly atmosphere in the Special Courts keeping in view the provisions of the POCSO Act so that the spirit of the Act is observed.

24. The Registry is directed to communicate this order to the Registrar General of the High Courts so that it can be immediately implemented. With the aforesaid directions, the writ petition stands disposed of.

2018(2) ALD (Crl) 170(SC); 2018 0 AIR(SC) 2440; 2018 2 Crimes(SC) 325; 2018 3 KHC(SN) 13; 2018 2 KLT(SN) 57; 2018 5 Supreme 119; 2018 0 Supreme(SC) 442; ALAKH ALOK SRIVASTAVA Vs UOI & ANR.

the High Court was not justified in quashing the order of detention on the basis that no period of detention was provided in the order. The High Court has proceeded on the basis of the decision of this Court in Bhiryani which is no longer good law in view of the subsequent decision of a larger Bench in Devaki.

2018(2) ALT (Crl) 161(SC); 2018 4 JT 164; 2018 5 Scale 492; 2018 5 SCC 322; 2018 2 SCC(Cri) 713; 2018 4 Supreme 183; 2018 0 Supreme(SC) 334; Secretary to Government of Tamil Nadu Public (Law and Order) Revenue Department & Anr Vs Kamala & Anr.

As a superior officer, if some work was assigned by the applicant to the deceased, merely on that count it cannot be said that there was any guilty mind or criminal intent. The exigencies of work and the situation may call for certain action on part of a superior including stopping of salary of a junior officer for a month. That action simplicitor cannot be considered to be a pointer against such superior officer. The allegations in the FIR are completely inadequate and do not satisfy the requirements under Section 306 IPC.

2018(2) ALT (Crl) 169(SC); 2018 0 AIR(SC) 2659; 2018 5 Supreme 345; 2018 0 Supreme(SC) 488; Vaijnath Kondiba Khandke Vs State of Maharashtra and another.

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.

Even if we hold that the disclosure statement made by the accused-Appellants (Exts. P-15 and P-16) is not admissible Under Section 27 of the Evidence Act, still it is relevant Under Section 8.

2018(2) ALT (Crl) 172; 2017 0 AIR(SC) 1761; 2017 2 Crimes(SC) 109; 2017 0 CrLJ 2904; 2017 0 CrLR 588; 2017 5 JT 94; 2017 2 MLJ(Cri)(SC) 444; 2017 2 RCR(Cri) 802; 2017 4 Scale 403; 2017 7 SCC 177; 2017 3 SCC(Cri) 343; 2017 3 Supreme 709; 2017 0 Supreme(SC) 324; Charandas Swami Vs State of Gujarat and another.

The criminal justice must be above reproach. It is irrelevant whether the falsity lie in the statement of witnesses or the guilt of the accused. The investigative authority has a responsibility to investigate in a fair manner and elicit truth. At the cost of repetition, I must remind the concerned authorities to take up the investigation in a neutral manner, without having regards to the ultimate result. In this case at hand, we cannot close our eyes to what has happened; regardless of guilt or the asserted persuasiveness of the evidence, the aspect wherein the police has actively connived to suppress the facts, cannot be ignored or overlooked.
Injuries to the accused must be explained.
When injuries to the accused are not explained and motive is also not established, accused cannot be convicted.
2018(2) ALT (Crl) 223(SC); 2018 0 AIR(SC) 2386; 2018 2 Crimes(SC) 442; 2018 5 Supreme 231; 2018 0 Supreme(SC) 463; Kumar Vs State rep by Inspector of Police.

Law is also very clear from the expressions that so far as the default bail concerned, Court has no right to go into the merits of the meritorious entitlement or not of the bail, but for the concession to be availed, once opted of the statutory right.
it is a right which enures to and is enforceable by the accused only from the time of default till filing of the challan and it does not survive or remain enforceable on the challan being filed.
The accused, so released on bail, may be arrested and committed to custody according to the provisions of the CrPC.
the law is clear from the said expression that once an application is made by the accused, after expiry of the statutory period of remand from non-filing of the charge sheet, he is entitled to the default bail and such a right cannot even be defeated by filing of charge sheet thereafter. So, the filing of the application either orally or in writing is a prerequisite, if not the Court chosen to grant the default bail, and once such an application is there, in recognition of his indefeasible right, he is entitled to the default bail and that can no way be delayed even in its disposal
2018(2) ALT (Crl) 261(AP); Awa Venkata Rama Rao Vs State of A.P.

the statement of the deceased itself shows that the accused also tried to put off the flames. But, however, her effort to put off the flames or her admitting the deceased in the hospital does not in any manner reduce the gravity of the offence committed by her. The lower Court, by appreciating the case law, has rightly arrived at a conclusion that the act of the accused falls under Section 304 Part II IPC but not under Section 302 IPC. When the statement of the deceased is free from any doubt, the law is well settled, that it can form sole basis for the guilt of the accused.
2018(2) ALT (Crl) 270; 2018 0 Supreme(AP) 106; 2018 2 Crimes(HC) 277; Bathula Swarana Kumari Vs. State of A.P.

it is clear that in a case triable exclusively by a Court of Session, the Magistrate need not direct the complainant to examine all the list mentioned witnesses but, suffice if the complainant examines all his witnesses on whom he reposes confidence. If their statements project sufficient material, the Magistrate can commit the case. The only limitation in such an instance as per Allahabad High Court is, during trial no more witnesses would be permitted to be examined by the complainant. However, if the ends of justice require that some more witnesses have to be examined, by following the procedure under Section 311 Cr.P.C., the Court can examine any other witness, but not as witness of the complainant or prosecution rather as a court witness.
2018(2) ALT (Crl) 325 (A.P); 2018 0 Supreme(AP) 261;; Pitta Chandramma and 4 others Vs State of A.P.

the difference in the name cannot be taken as a ground to discard the evidence of PW.1
2018(2) ALT (Crl) 335(A.P); 2018 0 Supreme(AP) 264; Kovvuri Venkata Rama Reddy Vs. Mandru Ganga Raju and another.

the Principal Sessions Court (Sessions Division) may follow the following guidelines; (which are illustrative, but not exhaustive).

"a) The subsequent bail application by the same accused will be entertained only if there is change of circumstance for filing such application.
b) Subsequent bail application filed by the same accused shall be heard by the learned Judge who has considered and passed orders on the earlier bail application/applications in the same crime, subject to availability of the Officer in the same Court
c) The application filed by the co-accused may be considered and ordered by any other learned Judge and such application need not be placed before the Judge who passed orders earlier on the application filed by another accused.
d) The subsequent bail application filed by the same accused in the same crime during vacation(s) may wait for orders till the end of the vacation, in case, if the learned Judge who has passed orders on the earlier application is not available for orders during the vacation or if he/she is not designated as a Vacation Judge.".
e) In case, if the subsequent bail application is filed by the same accused during summer vacation and if the learned Judge who passed earlier order is not available for passing orders or if he/she is not a designated as a Vacation Judge, bail application shall be listed before the learned Judge nominated to hear the bail applications during the summer vacation. However, the fact that an earlier bail application in the same crime is dismissed is to be brought to the notice of that Vacation Judge. The factor of listing the matter during summer vacation or refusing to do so can be decided by the learned Vacation Judge sitting in summer vacation.
f) The counsel for the accused who is filing the subsequent application for bail in the same crime shall mention in the application seeking bail about the disposal of earlier bail application filed by this very accused. A copy of the order passed on such application earlier in respect of the same accused shall also be produced along with the second or successive bail applications.
g) It is the duty of the Public Prosecutor concerned to bring to the notice of the court, as far as possible, about the earlier bail application filed by the same accused as well as about any application filed by the co-accused in the same crime and the result thereof, either by filing the statement of objections or at least at the time of arguments on the bail application."
http://distcourts.tap.nic.in/hcorders/2017/crlp/crlp_24624_2017.pdf; 2018(2) ALT (Crl) 340(AP); Smt Kalpana Vs State of Telangana.

During the course of hearing, one of the question which has been taken up for consideration whether, on account of long cohabitation, even if the relationship is held to be consensual and the petitioner is not held liable for the offence alleged, the petitioner can be fastened the civil liability treating the relationship to be de facto marriage in view of long cohabitation. This interpretation may have to be considered so that a girl is not subjected to any exploitation and is not rendered remediless even if a criminal offence is not made out. Somewhat identical issue has been subject matter of consideration in several decisions, including Vidhyadhari versus Sukhrana Bai, (2008) 2 SCC 238; Pyla Mutyalamma Alias Satyavathi versus Pyla Suri Demudu, (2011) 12 SCC 189; Chanmuniya versus Virendra Kumar Singh Kushwaha, (2011) 1 SCC 141 and Badshah versus Urmila Badshah Godse, (2014) 1 SCC 188. The issue is also discussed in an Article published in (2012) 4 SCC J-19.
2018 0 Supreme(SC) 682; Aloka Kumar Vs State of Karnataka.

In view of the aforesaid, we proceed to issue the following guidelines:-

A. Preventive Measures

(i) The State Governments shall designate, a senior police officer, not below the rank of Superintendent of Police, as Nodal Officer in each district. Such Nodal Officer shall be assisted by one of the DSP rank officers in the district for taking measures to prevent incidents of mob violence and lynching. They shall constitute a special task force so as to procure intelligence reports about the people who are likely to commit such crimes or who are involved in spreading hate speeches, provocative statements and fake news.

(ii) The State Governments shall forthwith identify Districts, Sub-Divisions and/or Villages where instances of lynching and mob violence have been reported in the recent past, say, in the last five years. The process of identification should be done within a period of three weeks from the date of

this judgment, as such time period is sufficient to get the task done in today's fast world of data collection.

(iii) The Secretary, Home Department of the concerned States shall issue directives/advisories to the Nodal Officers of the concerned districts for ensuring that the Officer In-charge of the Police Stations of the identified areas are extra cautious if any instance of mob violence within their jurisdiction comes to their notice.

(iv) The Nodal Officer, so designated, shall hold regular meetings (at least once a month) with the local intelligence units in the district along with all Station House Officers of the district so as to identify the existence of the tendencies of vigilantism, mob violence or lynching in the district and take steps to prohibit instances of dissemination of offensive material through different social media platforms or any other means for inciting such tendencies. The Nodal Officer shall also make efforts to eradicate hostile environment against any community or caste which is targeted in such incidents.

(v) The Director General of Police/the Secretary, Home Department of the concerned States shall take regular review meetings (at least once a quarter) with all the Nodal Officers and State Police Intelligence heads. The Nodal Officers shall bring to the notice of the DGP any inter-district co-ordination issues for devising a strategy to tackle lynching and mob violence related issues at the State level.

(vi) It shall be the duty of every police officer to cause a mob to disperse, by exercising his power under Section 129 of CrPC, which, in his opinion, has a tendency to cause violence or wreak the havoc of lynching in the disguise of vigilantism or otherwise.

(vii) The Home Department of the Government of India must take initiative and work in co-ordination with the State Governments for sensitising the law enforcement agencies and by involving all the stake holders to identify the measures for prevention of mob violence and lynching against any caste or community and to implement the constitutional goal of social justice and the Rule of Law.

(viii) The Director General of Police shall issue a circular to the Superintendents of Police with regard to police patrolling in the sensitive areas keeping in view the incidents of the past and the intelligence obtained by the office of the Director General. It singularly means that there should be seriousness in patrolling so that the anti-social elements involved in such crimes are discouraged and remain within the boundaries of law thus fearing to even think of taking the law into their own hands.

(ix) The Central and the State Governments should broadcast on radio and television and other media platforms including the official websites of the Home Department and Police of the States that lynching and mob violence of any kind shall invite serious consequence under the law.

(x) It shall be the duty of the Central Government as well as the State Governments to take steps to curb and stop dissemination of irresponsible and explosive messages, videos and other material on various social media platforms which have a tendency to incite mob violence and lynching of any kind.

(xi) The police shall cause to register FIR under Section 153A of IPC and/or other relevant provisions of law against persons who disseminate irresponsible and explosive messages and videos having content which is likely to incite mob violence and lynching of any kind.

(xii) The Central Government shall also issue appropriate directions/advisories to the State Governments which would reflect the gravity and seriousness of the situation and the measures to be taken.

B. Remedial Measures

(i) Despite the preventive measures taken by the State Police, if it comes to the notice of the local police that an incident of lynching or mob violence has taken place, the jurisdictional police station shall immediately cause to lodge an FIR, without any undue delay, under the relevant provisions of IPC and/or other provisions of law.

(ii) It shall be the duty of the Station House Officer, in whose police station such FIR is registered, to forthwith intimate the Nodal Officer in the district who shall, in turn, ensure that there is no further harassment of the family members of the victim(s).

(iii) Investigation in such offences shall be personally monitored by the Nodal Officer who shall be duty bound to ensure that the investigation is carried out effectively and the charge-sheet in such cases is filed within the statutory period from the date of registration of the FIR or arrest of the accused, as the case may be.

(iv) The State Governments shall prepare a lynching/mob violence victim compensation scheme in the light of the provisions of Section 357A of CrPC within one month from the date of this judgment. In the said scheme for computation of compensation, the State Governments shall give due regard to the nature of bodily injury, psychological injury and loss of earnings including loss of opportunities of employment and education and expenses incurred on account of legal and medical expenses. The said compensation scheme must also have a provision for interim relief to be paid to the victim(s) or to the next of kin of the deceased within a period of thirty days of the incident of mob violence/lynching.

(v) The cases of lynching and mob violence shall be specifically tried by designated court/Fast Track Courts earmarked for that purpose in each district. Such courts shall hold trial of the case on a day to day basis. The trial shall preferably be concluded within six months from the date of taking cognizance. We may hasten to add that this direction shall apply to even pending cases. The District Judge shall assign those cases as far as possible to one jurisdictional court so as to ensure expeditious disposal thereof. It shall be the duty of the State Governments and the Nodal Officers in particular to see that the prosecuting agency strictly carries out its role in appropriate furtherance of the trial.

(vi) To set a stern example in cases of mob violence and lynching, upon conviction of the accused person(s), the trial court must ordinarily award maximum sentence as provided for various offences under the provisions of the IPC.

(vii) The courts trying the cases of mob violence and lynching may, on application by a witness or by the public prosecutor in relation to such witness or on its own motion, take such measures, as it deems fit, for protection and for concealing the identity and address of the witness.

(viii) The victim(s) or the next of kin of the deceased in cases of mob violence and lynching shall be given timely notice of any court proceedings and he/she shall be entitled to be heard at the trial in respect of applications such as bail, discharge, release and parole filed by the accused persons. They shall also have the right to file written submissions on conviction, acquittal or sentencing.

(ix) The victim(s) or the next of kin of the deceased in cases of mob violence and lynching shall receive free legal aid if he or she so chooses and engage any advocate of his/her choice from amongst those enrolled in the legal aid panel under the Legal Services Authorities Act, 1987.

C. Punitive Measures

(i) Wherever it is found that a police officer or an officer of the district administration has failed to comply with the aforesaid directions in order to prevent and/or investigate and/or facilitate expeditious trial of any crime of mob violence and lynching, the same shall be considered as an act of deliberate negligence and/or misconduct for which appropriate action must be taken against him/her and not limited to departmental action under the service rules. The departmental action shall be taken to its logical conclusion preferably within six months by the authority of the first instance.

(ii) In terms of the ruling of this Court in Arumugam Servai v. State of Tamil Nadu, (2011) 6 SCC 405, the States are directed to take disciplinary action against the concerned officials if it is found that (i) such official(s) did not prevent the incident, despite having prior knowledge of it, or (ii) where the incident has already occurred, such official(s) did not promptly apprehend and institute criminal proceedings against the culprits.

41. The measures that are directed to be taken have to be carried out within four weeks by the Central and the State Governments. Reports of compliance be filed within the said period before the Registry of this Court.

42. We may emphatically note that it is axiomatic that it is the duty of the State to ensure that the machinery of law and order functions efficiently and effectively in maintaining peace so as to preserve our quintessentially secular ethos and pluralistic social fabric in a democratic set-up governed by rule of law.

2018 0 Supreme(SC) 719; Tehseen S. Poonawalla Vs. Union of India and others.

Section 5 of identification of prisoners act, 1920, does not mean that Police Officers are not entitled to take fingerprints until an order is taken from Magistrate.

2018 0 AIR(SC) 3131; 2018 0 Supreme(SC) 677; Sonvir @ Somvir Vs State of NCT of Delhi.

The principle of 'Falsus in uno falsus in omnibus' has not been accepted in our country. [See Bhagwan Jagannath Markad v. State of Maharashtra, (2016) 10 SCC 537 para 19] Even if some accused are acquitted on the ground that the evidence of a witness is unreliable, the other accused can still be convicted by relying on the evidence of the same witness. [See Gangadhar Behera v. State of Orissa, (2002) 8 SCC 381 para 15] Minor contradictions and omissions in the evidence of a witness are to be ignored if there is a ring of truth in the testimony of a witness. [See State of U.P. v. Dan Singh, (1997) 3 SCC 747 para 32] The High Court was oblivious to this settled position of law. The High Court highlighted the minor inconsistencies and omissions in the evidence of PWs- 1 to 3 and PW-5 to 7 to disbelieve them. The High Court wrongly refused to believe the eye witnesses on the ground that they attempted to implicate as many persons as possible by making omnibus allegations. The High Court further erred in holding that PW-1, 6 and 7, who were the eye witnesses travelling in the jeep with the deceased, were not speaking the truth as they were close relatives and supporters of Deceased No. 1. The rejection of the evidence of PW-2, 3 and 5 by the High Court on the ground that they did not attribute specific overt acts to each accused is also erroneous.
2018 0 AIR(SC) 3277; 2018 0 Supreme(SC) 689; State of A.P. vs. Pullagummi Kasi Reddy Krishna Reddy @ Rama Krishna Reddy & Ors

FIR is not an encyclopedia of the case. A witness' testimony need not be disbelieved only because it did not find mention in the FIR.
It is not necessary to discard entire testimony because a part of it is false.
Members of unlawful assembly having common object of committing murder of deceased are liable for conviction.
Merely because blood group of the human blood stain could not be ascertained due to disintegration, conviction cannot be undone.
2018 0 AIR(SC) 3199; 2018 0 Supreme(SC) 697; Prabhu Dayal Vs State of Rajasthan.

Evidence of a witness is not to be disbelieved simply because he has not reacted in a particular manner.
Relationship with deceased cannot be the reason for doubting the testimony of a witness.
Omission of names in FIR not fatal to prosecution story.
Truthfulness of eye witness evidence corroborated by medical evidence warrants conviction.
In an appeal against acquittal the appellate court is duty bound to reappreciate the evidence.
2018 0 AIR(SC) 3245; 2018 0 Supreme(SC) 711; MOTIRAM PADU JOSHI AND OTHERS Vs. THE STATE OF MAHARASHTRA

This Court in the case of Udai Shankar Awasthy v. the State of U.P. [(2013) 2 SCC 435, para 30] has observed that "the law does not prohibit filing or entertaining of the second complaint even on the same facts provided the earlier complaint has been decided on the basis of insufficient material or the order has been passed without understanding the nature of the complaint or the complete facts could not be placed before the Court, or where the complainant came to know certain facts after disposal of the first complaint which could have tilted the balance in his favour. However, the second complaint would not be maintainable wherein the earlier complaint has been disposed on full consideration of the case of the complainant on merit".
2018 0 AIR(SC) 3242; 2018 0 Supreme(SC) 712; OM PRAKASH SINGH Vs THE STATE OF BIHAR & ORS

if the Police Officer prepares a statement completely different from what the petitioner stated, it will be open to the petitioner to speak the truth when he is in the witness box. Moreover, if the story had taken this particular route, the petitioner would not even have come to know about what was recorded, until he is confronted in the witness box, with a false statement prepared by the Police in his name under Section 161 Cr.P.C.
2018 0 Supreme(AP) 252; https://indiankanoon.org/doc/183778284/ ; Aijaz Ahmed @ Mohd. Sharfuddin Vs UOI

The overt and covert acts attributed by the petitioner against the Police Officers and the de facto complainants are that all of them are planting and fabricating evidence against the petitioner in the criminal complaints lodged against him. These allegations actually constitute the defence of the petitioner to the criminal complaints lodged against him. The defence of an accused in a criminal case cannot become the subject matter of another criminal complaint against the prosecution. If the evidence on which the prosecution relies to prove the guilt of an accused in a criminal case is fabricated, the accused should first get a finding recorded to the said effect from the Trial Court in that case. It is only thereafter that a complaint of fabrication of evidence can be made by the accused in a criminal case against the Police Officers and the de facto complainant.
What the petitioner is now attempting to do is to seek an investigation into his allegation that the evidence collected by the Investigating Officer in the criminal complaints filed against him is fabricated. This is nothing but an attempt at deflecting and derailing the course of investigation into the complaints lodged against the petitioner.
It is that trial Court in which the material allegedly recovered from the premises of the petitioner by the police, should be put to scrutiny. But what the petitioner wants is the registration of a FIR on a complaint that the said material was not recovered in the course of investigation, but planted by the police in his office premises. Ordering the registration of a FIR on the said complaint would tantamount to putting the evidence in one criminal case, to test in another criminal complaint, even before the material is marked as exhibit or material object in the case in relation to which such evidence was collected.
The judgment of Lalita Kumari cannot be applied in such cases.
2018 0 Supreme(AP) 254; B.Sailesh Saxena Vs UOI.

It is a matter of grave concern that instances of this nature are on the rise indicating failure of law and order on the part of the State. If news reports being published are any indication, people from the States such as Bihar and Uttar Pradesh have infiltrated into the States of Telangana and Andhra Pradesh and been going on a rampage by committing robberies and deaoities causing fear psychosis in the minds of the general public. Any lenient view shown by the Courts in dealing with the offences of this nature would further encourage hooligans and anti-social elements in the society making them fearless putting the life and properties of the public at large in great jeopardy. It is high-time that the States of Telangana and Andhra Pradesh review the law and order situation and take stringent measures to prevent occurrences of this nature.
2018 0 Supreme(AP) 247; Mahankali Venkanna Vs State of A.P.

The police officer not below the rank of Dy.S.P. is authorize to investigate the case as contemplated under Rule -7 of S.C./S.T. (Prevention of Atrocity) Rule. Here in this case, the entire investigation has been done by the Sub Inspector and only the charge-sheet has been submitted by the Dy.S.P. Without any investigation conducted by him.
submission of the charge-sheet is not the investigation. Investigation means collection of material during investigation which has not been done by the Dy.S.P. and as such, the entire trial vitiates because of non-compliance of Rule 7 of the S.C./S.T. (Prevention of Atrocity) Rule.

the law on the subject which governs the controversy involved in the appeal is no more res integra and settled by the decision of this Court (three-Judge Bench) in the case reported in Upkar Singh v. Ved Prakash & Ors., (2004) 13 scc 292 and also by the subsequent decisions.
Their Lordships after examining all the previous case laws on the subject laid down the following proposition of law in the following words speaking through Justice N. Santosh Hegde:
"23. Be that as it may, if the law laid down by this Court in T.T. Antony case1 is to be accepted as holding that a second complaint in regard to the same incident filed as a

counter-complaint is prohibited under the Code then, in our opinion, such conclusion would lead to serious consequences. This will be clear from the hypothetical example given hereinbelow i.e. if in regard to a crime committed by the real accused he takes the first opportunity to lodge a false complaint and the same is registered by the jurisdictional police then the aggrieved victim of such crime will be precluded from lodging a complaint giving his version of the incident in question, consequently he will be deprived of his legitimated right to bring the real accused to book. This cannot be the purport of the Code.

24. We have already noticed that in T.T. Antony case1 this Court did not consider the legal right of an aggrieved person to file counterclaim, on the contrary from the observations found in the said judgment it clearly indicates that filing a counter-complaint is permissible.

25. In the instant case, it is seen in regard to the incident which took place on 20-5-1995, the appellant and the first respondent herein have lodged separate complaints giving different versions but while the complaint of the respondent was registered by the police concerned, the complaint of the appellant was not so registered, hence on his prayer the learned Magistrate was justified in directing the police concerned to register a case and investigate the same and report back. In our opinion, both the learned Additional Sessions Judge and the High Court erred in coming to the conclusion that the same is hit by Section 161 or 162 of the Code which, in our considered opinion, has absolutely no bearing on the question involved. Section 161 or 162 of the Code does not refer to registration of a case, it only speaks of a statement to be recorded by the police in the course of the investigation and its evidentiary value."

The aforesaid principle was reiterated by this Court (Two Judge Bench) in Surender Kaushik & Ors. v. State of U.P. & Ors., (2013) 5 scc 148 in the following words:

"24. From the aforesaid decisions, it is quite luminous that the lodgment of two FIRs is not permissible in respect of one and the same incident. The concept of sameness has been given a restricted meaning. It does not encompass filing of a counter-FIR relating to the same or connected cognizable offence. What is prohibited is any further complaint by the same complainant and others against the same accused subsequent to the registration of the case under the Code, for an investigation in that regard would have already commenced and allowing registration of further complaint would amount to an improvement of the facts mentioned in the original complaint. As is further made clear by the three-Judge Bench in Upkar Singh, the prohibition does not cover the allegations made by the accused in the first FIR alleging a different version of the same incident. Thus, rival versions in respect of the same incident do take different shapes and in that event, lodgment of two FIRs is permissible."

the Report of the Committee of Experts that videography of crime scene during investigation is of immense value in improving administration of criminal justice. A Constitution Bench of this Court in Karnail Singh v. State of Haryana (2009) 8 scc 539 noted that technology is an important part in the system of police administration [Para 34 - (2009) 8 scc 539]. It has also been noted in the decisions quoted in the earlier part of this order that new techniques and devices have evidentiary advantages, subject to the safeguards to be adopted. Such techniques and devices are the order of the day. Technology is a great tool in investigation [Ram Singh and Ors. v. Col. Ram Singh 1985(Supp) scc 611, R. v. Maqsud Ali (1965) 2 All ER 464, R v. Robson (1972) 2 All ER 699, Tukaram S. Dighole v. Manikrao Shivaji Kokate (2010) 4 scc 329, Tomaso Bruno and anr. v. State of Uttar Pradesh (2015) 7 scc 178, Mohd. Ajmal Amir Kasab v. State of Maharashtra (2012) 9 scc 1 and State (NCT of Delhi) v. Navjot Sandhu (2005) 11 scc 600.]. By the videography, crucial evidence can be captured and presented in a credible manner.

NEWS

- The PCR amendment act, 2018 has been published in the gazette.

- Government of Telangana.
    - GOVERNMENT OF TELANGANA ABSTRACT LAW OFFICERS – Hyderabad District – Sri G.Narayana, Additional Public Prosecutor, Special Sessions Court for Fast tracking the cases related to the Atrocities against Women-2, Hyderabad (XI Addl. MSJ Court) placed as incharge of the post of Additional Public Prosecutor, II Additional Metropolitan Sessions Judge Court, Hyderabad in place of Smt. K.V.Rajani, Additional Public Prosecutor Grade-I, III Addl. MSJ Court, Hyderabad – Ratification - Orders – Issued. - G.O.Rt.No. 937- HOME (COURTS.A) DEPARTMENT Dated: 04-07-2018

- GOVERNMENT OF A.P.
    - Public Services – A.P. State Prosecution Services – Posting of Smt. G.Kalyani, Additional Public Prosecutor Grade-I / Legal Advisor –cum- Public Prosecutor, Office of the Prohibition and Excise, A.P., Vijayawada, in the existing vacancy of Addl. Public Prosecutor Grade-I, in the Court of IV Additional District & Sessions Judge-Cum-Family Court, Vijayawada, on repatriation, in relaxation of native District Rules- Orders – Issued- G.O. RT no. 644 Home (Courts-A) dated 23/07/2018.

- Prosecution Replenish congratulates Sri S.R.A. Rozedar sir, for being recognized and appreciated by the BPRD, Hyderabad.

ON A LIGHTER VEIN

Harry prays to God: Dear Lord, please make me win the lottery.

The next day Harry begs the Lord again: Please make it so I win the lottery, Lord!

The next day, Harry again prays: Please, please, dear Lord, make me win the lottery!

Suddenly he hears a voice from above: Harry, would you kindly go and buy a lottery ticket.

****

BOOK-POST

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

SAVE PAPER SAVE TREES.

AMRIT RAJ, IPS
DIG/DIRECTOR

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17-07-2018

Dear Shri Rozedar,

CDTI Hyderabad highly values the tremendous contribution and cooperation from its visiting faculty members that include senior officials from the areas of Judiciary, Prosecutions, Forensic Medicine, Police, Law, Prosecution, etc.

The ongoing courses on Investigation of Rape Cases are attended by officials from prosecution, judiciary and police departments that include some serving judges and prosecutors. Dignitaries attending these courses have expressively praised the quality lectures delivered by you that gave them an in-depth knowledge on the topic "**Lacunas in investigation, magisterial inquest and effective prosecution and trial**".

We deeply appreciate your commitment and high quality presentation to the fullest satisfaction of the participating trainees. **We look forward to your continued support.**

With warm regards,

Yours sincerely,

AmritRaj 17/7

AMRIT RAJ, IPS
DIG/DIRECTOR

Shri Rozedar
Dy. Director (Prosecutions)
Andhra Pradesh

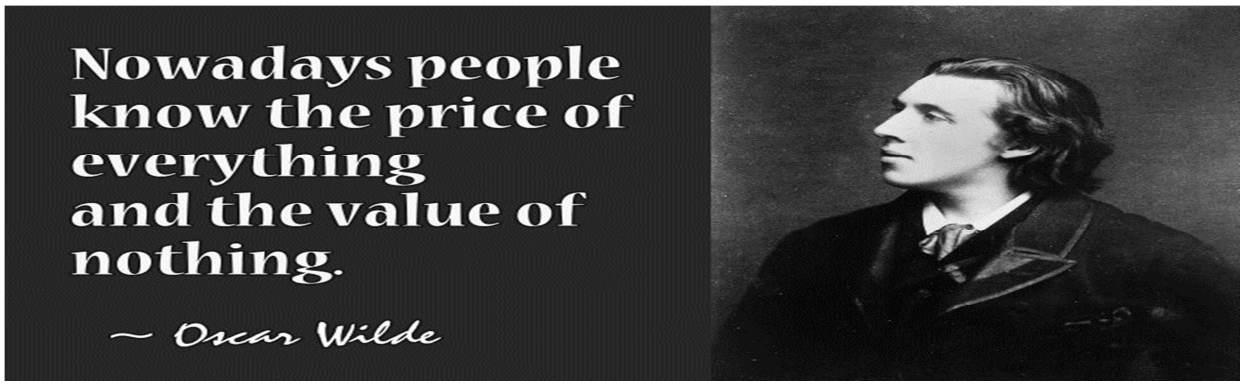
Vol- VII
Part-9

Prosecution Replenish

An Endeavour for Learning and Excellence

September, 2018

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



CITATIONS

when all the six cases are filed in the concerned Courts, they would be clubbed together and tried by one competent Court in accordance with law.
2018(2) ALT (Crl) 253(SC); 2017 0 AIR(SC) 5787; 2017 4 Crimes(SC) 293; 2018 0 CrLJ 930; 2017 4 JLJR(SC) 344; 2017 11 JT 153; 2017 13 Scale 527; 2018 1 SCC 330; 2018 1 SCC(Cri) 369; 2017 8 Supreme 483; 2017 0 Supreme(SC) 1104; Chirag M. Pathak & Ors. Vs Dollyben Kantilal; https://www.sci.gov.in/supremecourt/2014/1253/1253_2014_Judgement_15-Nov-2017.pdf ; https://indiankanoon.org/doc/162824237/;

If the evidence of an eyewitness, though a close relative of the victim, inspires confidence, it must be relied upon without seeking corroboration with minute material particulars. It is no doubt true that the Courts must be cautious while considering the evidence of interested witnesses.
When analyzing the evidence available on record, Court should not adopt hyper technical approach but should look at the broader probabilities of the case. Basing on the minor contradictions, the Court should not reject the evidence in its entirety. Sometimes, even in the evidence of truthful witness, there may appear certain contradictions basing on their capacity to remember and reproduce the minute details. Particularly in the criminal cases, from the date of incident till the day they give evidence in the Court, there may be gap of years. Hence the Courts have to take all these aspects into consideration and weigh the evidence. The discrepancies and contradictions which do not go to the root of the matter, credence shall not be given to them. In any event, the paramount consideration of the Court must be to do substantial justice. We feel that the trial Court has adopted an hyper technical approach which resulted in the acquittal of the accused.
2018(@) ALT (Crl) 262(SC); 2018 0 AIR(SC) 2457; 2018 5 Supreme 302; 2018 0 Supreme(SC) 479; https://indiankanoon.org/doc/156641000/ ; https://www.sci.gov.in/supremecourt/2015/9332/9332_2015_Judgement_15-May-2018.pdf; Khurshid Ahmed Vs State of Jammu and Kashmir.

Lodging of FIR four days after grant of bail is not supervening circumstance to warrant cancellation of the bail.

2018(2) ALT (Crl) 273(SC); 2018(2) ALD (Crl) 265(SC); 2018 0 AIR(SC) 2466; 2018 5 Supreme 339; 2018 0 Supreme(SC) 489; Ms. X Vs State of Telangana.; https://www.sci.gov.in/supremecourt/2017/42628/42628_2017_Judgement_17-May-2018.pdf; (THREE JUDGE BENCH).;

Any recovery on basis of confession, under Section 27 of the Evidence Act, cannot form the basis for conviction.

2018(2) ALT (Crl) 281(SC); 2018 0 AIR(SC) 2142; 2018 1 ALD(Cri)(SC) 749; 2018 2 Crimes(SC) 318; 2018 5 Supreme 98; 2018 0 Supreme(SC) 436;Satpal Vs State of Haryana.; http://www.mylegaladvisor.in/free-judgment/sc-judgments/satpal-vs-state-of-haryana-010518/; (THREE JUDGE BENCH);

First, it is an admitted fact emerging from the record of the case that the appellant was not produced before any Magistrate or Gazetted Officer; Second, it is also an admitted fact that due to the aforementioned first reason, the search and recovery of the contraband "Charas" was not made from the appellant in the presence of any Magistrate or Gazetted Officer; Third, it is also an admitted fact that none of the police officials of the raiding party, who recovered the contraband "Charas" from him, was the Gazetted Officer and nor they could be and, therefore, they were not empowered to make search and recovery from the appellant of the contraband "Charas" as provided under Section 50 of the NDPS Act except in the presence of either a Magistrate or a Gazetted Officer; Fourth, in order to make the search and recovery of the contraband articles from the body of the suspect, the search and recovery has to be in conformity with the requirements of Section 50 of the NDPS Act. It is, therefore, mandatory for the prosecution to prove that the search and recovery was made from the appellant in the presence of a Magistrate or a Gazetted Officer.

2018(2) ALT (Crl) 285(SC); 2018 0 AIR(SC) 2123; 2018 2 Crimes(SC) 389; 2018 2 KLT(SN) 57; 2018 4 Supreme 492; 2018 0 Supreme(SC) 427; Arif Khan @ Agha Khan Vs State of Uttarakhand; https://indiankanoon.org/doc/173720727/; https://www.sci.gov.in/supremecourt/2006/29853/29853_2006_Judgement_27-Apr-2018.pdf;

Evidence of a witness is not to be disbelieved simply because he has not reacted in a particular manner.

Relationship with deceased cannot be the reason for doubting the testimony of a witness.

Omission of names in FIR not fatal to prosecution story.

Truthfulness of eye witness evidence corroborated by medical evidence warrants conviction.

In an appeal against acquittal the appellate court is duty bound to reappreciate the evidence.

2018(2) ALT (Crl) 289(SC); 2018 0 AIR(SC) 3245; 2018 0 Supreme(SC) 711; Motiram Padu Joshi and others Vs State of Maharashtra.; http://www.advocatekhoj.com/library/judgments/announcement.php?WID=10253 ;

the High Court is not justified in maintaining the conviction under Section 201 only on the ground that no communication was given to the police and that the post-mortem had not been performed. The Trial Court has taken note of the fact that the father of the deceased and her brother (who is a doctor) had attended the last rites of the deceased and neither of them had any complaint or suspicion at that time of the commission of any offence. The Sessions Court has also taken note of the suicide note left by the deceased wherein she had taken the entire blame on herself. Yet the court has taken the view, from the consideration we have extracted from paragraph-16 of the Sessions court judgment, that the deceased might have been in a state of depression having remained alone for most of the time and it amounted to torture. The appellant has been acquitted of the offence under Section 498A by the High Court, and rightly so. The prosecution has also not been able to satisfy the ingredients under Section 201 of the IPC.

Charge and conviction under section 201 can be maintained independently. But prosecution has to establish commission of an offence, knowledge or belief of the person of commission of the offence and causing disappearance of evidence by the accused for screening the offender. Mere suspicion not sufficient.

2018(2) ALT (Crl) 297; 2018 0 AIR(SC) 951; 2018 1 ALD(Cri)(SC) 568; 2018 2 Crimes(SC) 295; 2018 2 JT 268; 2018 1 KLT(SN) 83; 2018 2 Scale 425; 2018 3 SCC 313; 2018 2 SCC(Cri) 55; 2018 3 Supreme 472; 2018 0 Supreme(SC) 132; Dinesh Kumar Kalidas Patel Vs State of Gujarat.; https://indiankanoon.org/doc/6784887/; https://www.sci.gov.in/supremecourt/2016/5764/5764_2016_Judgement_12-Feb-2018.pdf;

classification of an offence into either Part of Section 304 is primarily a matter of fact. This would have to be decided with reference to the nature of the offence, intention of the offender, weapon used, the place and nature of the injuries, existence of pre-meditated mind, the persons participating in the commission of the crime and to some extent the motive for commission of the crime. The evidence led by the parties with reference to all these circumstances greatly helps the court in coming to a final conclusion as to under which penal provision of the Code the accused is liable to be punished. This can also be decided from another point of view, i.e., by applying the 'principle of exclusion'. This principle could be applied while taking recourse to a two-stage process of determination. Firstly, the Court may record a preliminary finding if the accused had committed an offence punishable under the substantive provisions of Section 302 of the Code, that is, 'culpable homicide amounting to murder'. Then secondly, it may proceed to examine if the case fell in any of the exceptions detailed in Section 300 of the Code. This would doubly ensure that the conclusion arrived at by the court is correct on facts and sustainable in law. We are stating such a proposition to indicate that such a determination would better serve the ends of criminal justice delivery. This is more so because presumption of innocence and right to fair trial are the essence of our criminal jurisprudence and are accepted as rights of the accused.

2018(2) ALT (Crl) 396(DB)(AP); 2017 0 Supreme(AP) 718; Nagavarapu Prasad @ Nagapuri Prasad Vs State of A.P.; https://indiankanoon.org/doc/15850236/; http://judis.nic.in/HCS/list_new2.asp?FileName=14612&Table_Main_Txt=apordtext;

The averments in the counter taken by a party cannot by any stretch of imagination and understanding be considered as made with an intention to defame the other side. The parties are at liberty to take the pleas on the basis of their belief. Hence, even if the averment in a pleading is baseless, it cannot be presumed as a defamatory statement.
2018(2) ALT (Crl) 406(A.P); http://distcourts.tap.nic.in/hcorders/2011/crlp/crlp_9906_2011.pdf; Dr Mir Akber Ali Khan Vs Princess Shafiya Sakina and another.;

What the petitioner is now attempting to do is to seek an investigation into his allegation that the evidence collected by the Investigating Officer in the criminal complaints filed against him is fabricated. This is nothing but an attempt at deflecting and derailing the course of investigation into the complaints lodged against the petitioner.
The judgment of Lalita Kumari cannot be applied in such cases.
2018(2) ALT (Crl) 430(DB) (AP); 2018 0 Supreme(AP) 254; B.Sailesh Saxena Vs UOI.

In these circumstances, the petitioner/AO1 cannot put-forth an argument that he cannot be held guilty since the bribe amount was not recovered from him. In a decision reported in Virendranath v. State of Maharashtra1 , under similar circumstances when A.1 took the plea that since the tainted money was found from A.2 and not from him his complicity shall be ruled out, the Apex Court held that the tainted money was meant to be passed on to A.1 as bribe and as the A.2 took the tainted money on the directions of A.1, it was as good as if A.1 had taken the money and passed on to A.2. The Apex Court ultimately rejected the contention of A.1.
2018(2) ALT (Crl) 446(AP); http://distcourts.tap.nic.in/hcorders/2015/crlp/crlp_5647_2015.pdf; O.Yellamanda Raju VS State of A.P.

if the Police Officer prepares a statement completely different from what the petitioner stated, it will be open to the petitioner to speak the truth when he is in the witness box.
2018(2) ALT (Crl) 463 (DB)(AP); http://distcourts.tap.nic.in/hcorders/2018/wp/wp_6703_2018.pdf; Aijaz Ahmed @ Mohd. Sharfuddin Vs UOI.

where the extra judicial confession is shown voluntarily made by the accused and the witnesses no way inimical or interested to falsely implicate and there are no any other circumstances to doubt credibility of the witness; it can be a sole basis and no way a corroborative piece or a weak piece of evidence.
It is the settled law to refer in this regard on appreciation of evidence that Court need not blindly rely upon what a witness deposed but for appreciation of entire evidence on record with attending facts and circumstances including in judging the credibility of each of the witness to ascertain truth, which is the quest in the voyage of trial. Further, in appreciation of evidence, it is the settled law that, minor contradictions or inconsistencies cannot be used to jettison the evidence in its entity. The rule is that, corroboration cannot be expected with mathematical niceties in criminal cases. It is

also the settled law that, discrepancies due to normal errors of perception and observation should not be given importance. It is also the settled law that mere lapses in investigation cannot be of any help to the accused unless prejudice shown caused to him. Further, evidence of a witness can be partly rejected and partly accepted for the doctrine of falsus in uno falsus in comnibus does not apply in India and it is the duty of the Court to separate the grain from the chaff in arriving truth from the reliability of the version of a witness by ignoring any minor discrepancies, omissions, exaggerations and embellishments and even evidence of a hostile witness cannot be discarded as a whole but for to consider where it corroborates the other evidence by appreciation of credibility of the witness to that extent in arriving at truth by calling him into aid the experience of the Court in men and matters in different cases in evaluating by excluding exaggerated versions rather disbelieving evidence of the witnesses altogether for the reason even major portion of evidence of a witness found to be deficient where in case residue is sufficient to the relevancy and admissibility, it is the duty of the Court to separate the grain from the chaff, otherwise administration of criminal justice would come to a dead stop and it cannot be overlooked that witnesses just cannot help in giving embroidery to a story,
http://distcourts.tap.nic.in/hcorders/2011/crla/crla_895_2011.pdf; 2018(2) ALT (Crl) 492(DB)(AP); Sama Saraiah @ Raju Vs State of A.P.

As the concept of maintaining General Diary has its origin under Section 44 of the Police Act of 1861 as applicable to States, which makes it an obligation for the concerned Police Officer to maintain a General Diary, but such non-maintenance per se may not be rendering the whole prosecution illegal. However, such non--maintenance of General Diary may have consequences on merits of the case.
State through Lokayukta Police Vs H.Srinivas.2018(2) ALD (Crl) 194(SC); https://www.sci.gov.in/supremecourt/2017/13712/13712_2017_Judgement_18-May-2018.pdf

Keeping in view the strict interpretation of penal statute i.e., referring to rule of interpretation wherein natural inferences are preferred, we observe that a charge of forgery cannot be imposed on a person who is not the maker of the same. As held in plethora of cases, making of a document is different than causing it to be made. As Explanation 2 to Section 464 further clarifies that, for constituting an offence under Section 464 it is imperative that a false document is made and the accused person is the maker of the same, otherwise the accused person is not liable for the offence of forgery.
This case on hand is a classic example of poor prosecution and shabby investigation which resulted in the acquittal of the accused. The Investigating Officer is expected to be diligent while discharging his duties. He has to be fair, transparent and his only endeavour should be to find out the truth. The Investigating Officer has not even taken bare minimum care to find out the whereabouts of the imposter who executed the PoA. The evidence on record clearly reveals that PoA was not executed by the complainant and the beneficiary is the accused, still the accused could not be convicted. The latches in the lopsided investigation goes to the root of the matter and fatal to the case of prosecution. If this is the coordination between the prosecution and the investigating agency, every criminal case tend to end up in acquittal. In the process, the common

man will lose confidence on the criminal justice delivery system, which is not a good symptom. It is the duty of the investigation, prosecution as well as the Courts to ensure that full and material facts and evidence are brought on record, so that there is no scope for miscarriage of justice.
Sheila Sebastian Vs R.Jawaharaj and another ; 2018(2) ALD (Crl) 257(SC); 2018 0 AIR(SC) 2434; 2018 2 Crimes(SC) 449; 2018 5 Supreme 239; 2018 0 Supreme(SC) 462; https://indiankanoon.org/doc/6537403/ ;

The cherished principles or golden thread of proof beyond reasonable doubt which runs through the web of our law should not be stretched morbidly to embrace every hunch, hesitancy and degree of doubt
Assessing the common object of an assembly only on the basis of the overt acts committed by such individual members of the assembly, in our opinion is impermissible.
Sections 141, 146 and 148 create distinct offences. Section 149 only creates a vicarious liability
This case, in our opinion, is a classic illustration of how the State failed in its primary constitutional responsibility of maintaining law and order by its ineffectiveness in the enforcement of criminal law. In our opinion, the reasons for such failure are many. Some of them are (i) inefficiency arising out of either incompetence or lack of proper training in the system of criminal investigation; (ii) corruption or political interference with the investigation of crime; (iii) less than the desirable levels of efficiency of the public prosecutors to correctly advise and guide the investigating agencies contributing to the failure of the proper enforcement of criminal law; and (iv) inadequate efficiency levels of the bar and the members of the Judiciary (an offshoot of the bar) which contributed to the overall decline in the efficiency in the dispensation of criminal justice system.
In Sessions Case No.58/98 against A-16 and A-17, no evidence was recorded independently. On the other hand, the evidence recorded in Sessions Case No.118/1992 was marked as evidence in Sessions Case No.58/1998. The Indian Evidence Act, 1872 does not permit such a mode of proof of any fact barring in exceptional situations contemplated in Section 33.
2018(2) ALD(Crl) 272(SC); 2018 0 AIR(SC) 2472; 2018 5 Supreme 453; 2018 0 Supreme(SC) 484; Vinubhai Ranchhodbhai Patel Vs. Rajivbhai Dudabhai Patel & Others; https://www.sci.gov.in/supremecourt/2005/522/522_2005_Judgement_16-May-2018.pdf

P.W.4 is not only a child witness but also an eye witness. No doubt the questions and answers put to the child witness should have been recorded by the learned Judge, but that is only to understand the capacity of the witness to depose the facts. Though it does not vitiate the trial, it helps the appellate Court in appreciating the evidence, as the witness would not be available before the appellate Court. This Court also feels that in a case like this, it is always advisable to record the deposition in the language used by the witness verbatim as is provided under Section 277 Cr.P.C.
2018(2) ALD (Crl) 287; 2017 0 Supreme(AP) 716; Eesampalli Srinivas Vs State of A.P. http://distcourts.tap.nic.in/hcorders/2012/crla/crla_582_2012.pdf

the prayer made by the petitioners to treat the earliest complaint registered against them as the First Information Report and to treat all subsequent complaints as statements under Section 161/162 of the Code, cannot be granted. Similarly, no Court can issue a mandamus directing the Station House Officers of all the police stations within the jurisdiction of the High Court not to register any further FIR, as the same would also tantamount to a restriction upon the victims of such a huge scam from taking recourse to lawful remedies.

it could be seen that the cases in which the validity of multiple FIRs was raised, fell at lease into six categories, such as (1) murder/attempt to murder; (2) mob violence leading to destruction of property, murder and/or encounter; (3) theft/dacoity; (4) abuse of official position, adoption of corrupt practices and amassing of wealth; (5) hate speech; and (6) companies receiving deposits from innumerable persons and there after defaulting in repayment. Out of the 21 cases listed above, 5 cases alone relate to non-repayment of deposit money by finance companies. In all these five cases where innumerable complaints were lodged by depositors, the Supreme Court did not choose to interfere. Therefore, the decision of the Supreme Court in TT Antony on which heavy reliance is placed by the counsel for the petitioners cannot go to the rescue of the petitioners.

Despite the fact that the decision of the Two Member bench in T.T. Antony was not taken note of in (i) Narinderjit Singh Sahni, (ii) State of Punjab v. Rajesh Syal and (iii) Pramod Kumar Saxena, it is clear that in all those 3 decisions, the Supreme Court was concerned with the cases of persons who collected money from innumerable persons but failed to repay the same. The decision in T.T. Antony arose out of offences relating to Law and Order, Public Order and the Police Firing.

When the offences alleged against the writ petitioners in the present batch of cases relate to collection of deposits and failure to repay, the ratio decidendi in (i) Narinderjit Singh Sahni, (ii) Rajesh Syal and (iii) Pramod Kumar Saxena alone would apply and not the ratio in T.T. Antony.

2017 5 ALT 342; 2017 3 ALT(Cri) 30; 2017 0 Supreme(AP) 268; http://distcourts.tap.nic.in/hcorders/2016/wp/wp_29374_2016.pdf; Jakir Hussain Kosangi Vs State of A.P.

The principle of 'Falsus in uno falsus in omnibus' has not been accepted in our country. [See Bhagwan Jagannath Markad v. State of Maharashtra, (2016) 10 SCC 537 para 19] Even if some accused are acquitted on the ground that the evidence of a witness is unreliable, the other accused can still be convicted by relying on the evidence of the same witness. [See Gangadhar Behera v. State of Orissa, (2002) 8 SCC 381 para 15] Minor contradictions and omissions in the evidence of a witness are to be ignored if there is a ring of truth in the testimony of a witness. [See State of U.P. v. Dan Singh, (1997) 3 SCC 747 para 32

Evidence of close relatives cannot be thrown out altogether for that reason.

2018 (2) ALD (Crl) 346(SC); 2018 0 AIR(SC) 3277; 2018 0 Supreme(SC) 689; https://www.sci.gov.in/supremecourt/2005/12362/12362_2005_Judgement_03-Jul-2018.pdf; Pullagummi Kasi Reddy Krishna Reddy @ Rama Krishna Reddy & Ors.

where offences has already been committed earlier and later on the document is produced or given in the evidence in Court, the same is neither covered under Clauses (a), (b)(i) or (b) (ii).
2018 2 SCC Cri 770; 2018 1 Crimes(SC) 131; 2018 3 Scale 632; 2018 5 SCC 422; 2018 2 Supreme 499; Vishnu Chandru Gaonkar Vs N.M. Dessai.
https://www.sci.gov.in/supremecourt/2010/1887/1887_2010_Judgement_06-Mar-2018.pdf

This Court in Latesh v. State of Maharastra [Criminal Appeal No. 1301 of 2015, decided on January 30, 2018] has explained that the reasonable doubt in a lucid manner as a mean between excessive caution and excessive indifference to a doubt. Moreover, it has been explained that reasonable doubt should be a practical one and not an illusory hypothesis.
The plea of "interested witness", "related witness" has been succinctly explained by this Court that "related" is not equivalent to "interested". The witness may be called "interested" only when he or she derives some benefit from the result of a litigation in the decree in a civil case, or in seeing an accused person punished.
It is settled law that there cannot be any hard and fast rule that the evidence of interested witness cannot be taken into consideration and they cannot be termed as witnesses. But, the only burden that would be cast upon the Courts in those cases is that the Courts have to be cautious while evaluating the evidence to exclude the possibility of false implication. Relationship can never be a factor to affect the credibility of the witness as it is always not possible to get an independent witness.
2018(2) SCC (Cri) 777; 2018 0 AIR(SC) 1372; 2018 1 ALT(Cri)(SC) 397; 2018 2 Crimes(SC) 157; 2018 0 CrLJ 1947; 2018 4 Scale 453; 2018 5 SCC 435; 2018 3 Supreme 725; 2018 0 Supreme(SC) 290; Sudhakar @ Sudharasan Vs State;
http://www.advocatekhoj.com/library/judgments/announcement.php?WID=9878

The recoveries of used polythene pouches of wine, money, clothes, chains and bangle were all made at the disclosure by the accused which corroborates his confessional statement and proves his guilt. Therefore, the confessional statement of the appellant stands and satisfies the test of Section 27 of the Evidence Act.
As regards the claim of appellant that non-identification of the accused by the witness would not substantiate the prosecution case, admittedly no prosecution witness has identified the accused—appellant which does not mean that the prosecution case against the accused is on false footing. As a general rule, identification tests do not constitute substantive evidence. The purpose of identification test is only to help the investigating agency as to whether the investigation into the offence is proceeding in a right direction or not. In our view, non-identification of the appellant by any prosecution witness would not vitiate the prosecution case.
Moving on to the other limb of argument advanced on behalf of the appellant that the accused-appellant had no motive and the Courts below have failed to consider the fact that the evidence on record is not sufficient to establish motive of the accused. Undoubtedly, 'motive' plays significant role in a case based on circumstantial evidence where the purpose would be to establish this important link in the chain of circumstances in order to connect the accused with the crime. But, for the case on hand, proving motive is not an important factor when abundant direct evidence is

available on record. The confessional statement of the appellant itself depicts the 15 motive of the team of accused in pursuit of which they committed the robbery at the house of informant and the appellant being part of it.
2018 0 Supreme(SC) 757; Raju Manjhi Vs State of Bihar.
http://www.advocatekhoj.com/library/judgments/announcement.php?WID=10336

It is therefore held that a fair investigation, which is but the very foundation of fair trial, necessarily postulates that the informant and the investigator must not be the same person. Justice must not only be done, but must appear to be done also. Any possibility of bias or a predetermined conclusion has to be excluded. This requirement is all the more imperative in laws carrying a reverse burden of proof.
2018 0 Supreme(SC) 814; https://indiankanoon.org/doc/38505268/ ; Mohan lal vs State of Punjab.

in cases of this nature involving a large number of offenders and a large number of victims, the evidence of only two or three witnesses who give a consistent account of the incident is sufficient to sustain conviction,
It is a well settled position of law that the testimony of a witness cannot be discarded in toto merely due to the presence of embellishments or exaggerations. The doctrine of falsus in uno, falsus in omnibus, which means "false in one thing, false in everything" has been held to be inapplicable in the Indian scenario, where the tendency to exaggerate is common.
2018 0 Supreme(SC) 853; Menoka Malik and others Vs State of W.B.;
http://www.advocatekhoj.com/library/judgments/announcement.php?WID=10439

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 [See : Harbans Kaur & Anr. v. State of Haryana, 2005 CrLJ 2199].

The following prophetic words of Justice V.R. Krishna Iyer [In Shivaji Sahabrao Bobade & Anr. v. State of Maharashtra, (1973) 2 SCC 793, para 6] deserve to be etched on the walls of every criminal court in this country:

"6. … The cherished principles or golden thread of proof beyond reasonable doubt which runs through the web of our law should not be stretched morbidly to embrace every hunch, hesitancy and degree of doubt. The excessive solicitude reflected in the attitude that a thousand guilty men may go but one innocent martyr shall not suffer is a false dilemma. Only reasonable doubts belong to the accused. Otherwise any practical system of justice will then break down and lose credibility with the community. The evil of acquitting a guilty person light heartedly as a learned Author [Glanville Williams in 'Proof of Guilt'.] has sapiently observed, goes much beyond the simple fact that just one guilty person has gone unpunished. If unmerited acquittals become general, they tend to lead to a cynical disregard of the law, and this in turn leads to a public demand for harsher legal presumptions against indicted "persons" and more severe

punishment of those who are found guilty. Thus, too frequent acquittals of the guilty may lead to a ferocious penal law, eventually eroding the judicial protection of the guiltless. …"

NEWS

- The PCR amendment act, 2018 has been published in the gazette.
- the Criminal Law (Amendment) Act, 2018 shall be deemed to have come into force on the 21st day of April, 2018. Published in Gazette of India EXTRAORDINARY PART II — Section 1 AUGUST 11, 2018.
- THE SCHEDULED CASTES AND THE SCHEDULED TRIBES (PREVENTION OF ATROCITIES) AMENDMENT ACT, 2018 published in Gazette of India, EXTRAORDINARY PART II — Section 1 AUGUST 17, 2018. (NOTIFICATION PENDING)
- **GOVERNMENT OF ANDHRA PRADESH; G.O.RT.No. 717 HOME (COURTS.A) DEPARTMENT Dated: 03-08-2018-** Public Services – Prosecuting Officers - Deputation - Sri P.Venkata Subbaiah, Public Prosecutor / Legal Advisor, Intelligence Department, A.P., Vijayawada - Transfer to the Anti Corruption Bureau to work on deputation basis- Orders Issued.
- **GOVERNMENT OF ANDHRA PRADESH G.O.RT.No. 773 HOME (COURTS.A) DEPARTMENT Dated: 16-08-2018** Public Services – Prosecutions Department – Transfer of Sri Ch.Jagadish Kumar, Assistant Public Prosecutor, JFCM Court, Pithapuram, East Godavari District, to Special JFCM (Excise) Court, Kakinada**,** East Godavari District on medical grounds in the existing vacancy, in relaxation of the existing ban on transfers-Orders – Issued.
- **GOVERNMENT OF ANDHRA PRADESH G.O.RT.No. 808 HOME (COURTS.A) DEPARTMENT Dated: 29-08-2018** Public Services – Prosecuting Officers - Deputation - Transfer of Smt.J.S.Neela Manjari, Additional Public Prosecutor, Grade-II, I Additional ASJ Court, Nellore, to the O/o Commissioner of Prohibition and Excise, A.P., Vijayawada, to work on deputation basis, as Legal Advisor-cum-Public Prosecutor - Orders- Issued.
- **GOVERNMENT OF TELANGANA G.O.Ms.No. 89 HOME (COURTS.A1) DEPARTMENT Dated: 30-08-2018** Public Services - Prosecuting Officers – Panel of names for promotion to the post of Additional Public Prosecutor Grade-II (Category-5) for the panel year 2017-2018 - Approved – Orders – Issued.
- **GOVERNMENT OF TELANGANA G.O.Ms.No. 88 HOME (COURTS.A1) DEPARTMENT Dated: 30-08-2018** Public Services - Prosecuting Officers – Panel of names for promotion to the post of Additional Public Prosecutor Grade-I/Deputy Director of Prosecutions for the panel year 2017-2018 - Approved – Orders – Issued.

ON A LIGHTER VEIN

An old Native American wanted a loan for $500.
The banker pulled out the loan application.
"What are you going to do with the money?" he asks the Indian.
"Buy Silver, make jewelry, and sell it," was the response.
"What have you got for collateral?"
"Don't know collateral," replied the Indian
"Well that's something of value that would cover the cost of the loan.
"Have you got any vehicles?"
"Yes. 1949 Chevy pickup," replied the Indian
The banker shook his head, "How about livestock?"
"Yes, I have a horse," replied the Indian
"How old is it?" the banker asks.
"Don't know, has no teeth," replies the Indian
Finally the banker decided to make the $500 loan.
Several weeks later the old man was back in the bank.
He pulled out a roll of bills, "Here to pay." he said.
He then handed the banker the money to pay his loan off.
"What are you going to do with the rest of that money?" the banker asks.
"Put in hogan", replied the Indian
"Why don't you deposit it in my bank," the banker asked.
"Don't know deposit," replied the Indian
"You put the money in our bank and we take care of it for you.
Whenever you want to use it, you can withdraw it."
The old Indian leaned across the desk and asks the banker...
"What you got for collateral?"

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Vol- VII
Part-10

Prosecution Replenish

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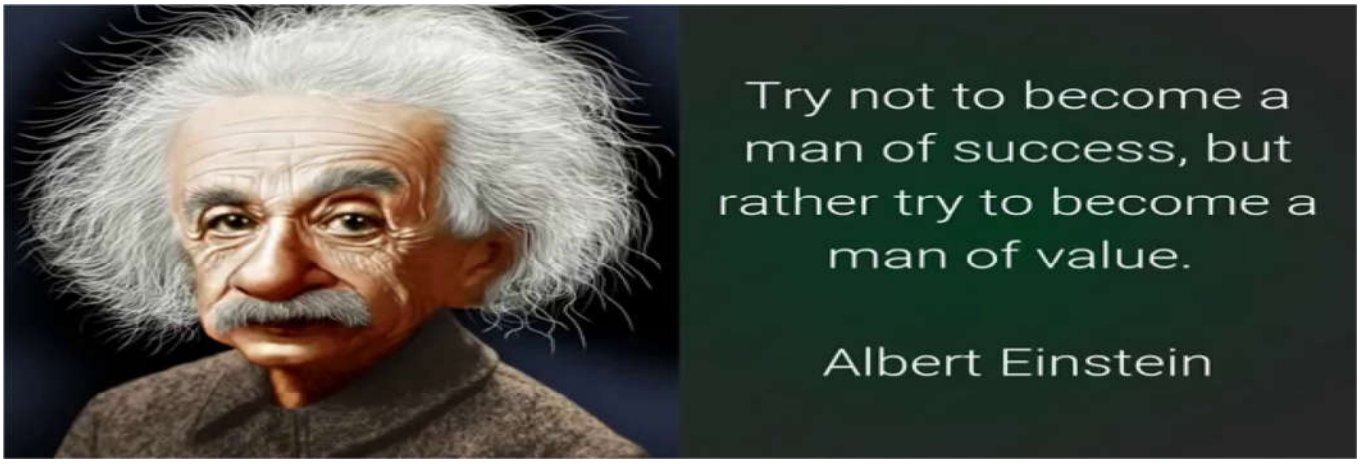
October, 2018

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



CITATIONS

Sec 174 CrPC: The purpose of holding an inquest is limited. The inquest report does not constitute substantive evidence. Hence matters relating to how the deceased was assaulted or who assaulted him and under what circumstances are beyond the scope of the report. The report of inquest is primarily intended to ascertain the nature of the injuries and the apparent cause of death. On the other hand, it is the doctor who conducts a post-mortem examination who examines the body from a medico-legal perspective. Hence it is the post-mortem report that is expected to contain the details of the injuries through a scientific examination, **2018 2 Crimes(SC) 455; 2018 3 MLJ 713; 2018 6 Scale 88; 2018 6 SCC 72; 2018 5 Supreme 36; 2018 0 Supreme(SC) 362;** https://indiankanoon.org/doc/71965246/; **TEHSEEN POONAWALLA VS UNION OF INDIA AND ANR (BATCH)**

PERJURY : Recently, this Court in Amarsang Nathaji v. Hardik Harshadbhai Patel and Others (2017) 1 scc 113) summed up the legal position as under:"6. The mere fact that a person has made a contradictory statement in a judicial proceeding is not by itself always sufficient to justify a prosecution under Sections 199 and 200 of the Penal Code, 1860 (45 of 1860) (hereinafter referred to as "IPC"); but it must be shown that the defendant has intentionally given 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. Even after the above position has emerged also, still the court has to form an opinion that it is expedient in the interests of justice to initiate an inquiry into the offences of false evidence and offences against public justice and more specifically referred to in Section 340(1) CrPC, having regard to the overall factual matrix as well as the probable consequences of such a prosecution. (See K.T.M.S. Mohd. v. Union of India). The court must be satisfied that such an inquiry is required in the interests of justice and appropriate in the facts of the case." **2018 0 AIR(SC) 2656; 2018 2 Crimes(SC) 397; 2018 4 JT 483; 2018 3 KHC(SN) 7; 2018 6 SCC 151; 2018 4 Supreme 510; 2018 0 Supreme(SC) 423;** https://indiankanoon.org/doc/23429289/; **2018(3) SCC (Cri) 89; Prof. Chintamani Malviya Vs High Court of M.P.**

TRANSFER OF CASES: The apprehension of not getting a fair and impartial enquiry or trial is required to be reasonable and not imaginary, based upon conjectures and surmises. No universal or hard and fast rule can be prescribed for deciding a transfer petition, which will always have to be decided on the facts of each case. Convenience of a party may be one of the relevant considerations but cannot override all other considerations such as the availability of witnesses exclusively at the original place, making it virtually impossible to continue with the trial at the place of transfer, and progress of which would naturally be impeded for that reason at the transferred place of trial. The convenience of the parties does not mean the convenience of the petitioner alone who approaches the court on misconceived notions of apprehension. Convenience for the purposes of transfer means the convenience of the prosecution, other accused, the witnesses and the larger interest of the society. **2018 0 AIR(SC) 1624; 2018 1 ALD(Cri)(SC) 771; 2018 0 AIIMR(Cri)(SC) 1766; 2018 2 BomCR(Cri)(SC) 549; 2018 0 CrLR 349; 2018 249 DLT(SC) 112; 2018 4 JT 27; 2018 5 Scale 242; 2018 6 SCC 358; 2018 3 Supreme 193; 2018 0 Supreme(SC) 272;** https://indiankanoon.org/doc/52069172/**; 2018(3) SCC (Cri) 103; 2018(3) ALT (Crl) 31(SC); Harita Sunil Parab Vs State NCT of Delhi.**

HONOUR KILLINGS : To meet the challenges of the agonising effect of honour crime, we think that there has to be preventive, remedial and punitive measures and, accordingly, we state the broad contours and the modalities with liberty to the executive and the police administration of the concerned States to add further measures to evolve a robust mechanism for the stated purposes.

I. Preventive Steps:-

(a) The State Governments should forthwith identify Districts, Sub-Divisions and/or Villages where instances of honour killing or assembly of Khap Panchayats have been reported in the recent past, e.g., in the last five years.

(b) The Secretary, Home Department of the concerned States shall issue directives/advisories to the Superintendent of Police of the concerned Districts for ensuring that the Officer Incharge of the Police Stations of the identified areas are extra cautious if any instance of inter-caste or inter- religious marriage within their jurisdiction comes to their notice.

(c) If information about any proposed gathering of a Khap Panchayat comes to the knowledge of any police officer or any officer of the District Administration, he shall forthwith inform his immediate superior officer and also simultaneously intimate the jurisdictional Deputy Superintendent of Police and Superintendent of Police.

(d) On receiving such information, the Deputy Superintendent of Police (or such senior police officer as identified by the State Governments with respect to the area/district) shall immediately interact with the members of the Khap Panchayat and impress upon them that convening of such meeting/gathering is not permissible in law and to eschew from going ahead with such a meeting. Additionally, he should issue appropriate directions to the Officer Incharge of the jurisdictional Police Station to be vigilant and, if necessary, to deploy adequate police force for prevention of assembly of the proposed gathering.

(e) Despite taking such measures, if the meeting is conducted, the Deputy Superintendent of Police shall personally remain present during the meeting and impress upon the assembly that no decision can be taken to cause any harm to the

couple or the family members of the couple, failing which each one participating in the meeting besides the organisers would be personally liable for criminal prosecution. He shall also ensure that video recording of the discussion and participation of the members of the assembly is done on the basis of which the law enforcing machinery can resort to suitable action.
(f) If the Deputy Superintendent of Police, after interaction with the members of the Khap Panchayat, has reason to believe that the gathering cannot be prevented and/or is likely to cause harm to the couple or members of their family, he shall forthwith submit a proposal to the District Magistrate/Sub-Divisional Magistrate of the District/ Competent Authority of the concerned area for issuing orders to take preventive steps under the Cr.P.C., including by invoking prohibitory orders under Section 144 Cr.P.C. and also by causing arrest of the participants in the assembly under Section 151 Cr.P.C.
(g) The Home Department of the Government of India must take initiative and work in coordination with the State Governments for sensitising the law enforcement agencies and by involving all the stake holders to identify the measures for prevention of such violence and to implement the constitutional goal of social justice and the rule of law.
(h) There should be an institutional machinery with the necessary coordination of all the stakeholders. The different State Governments and the Centre ought to work on sensitization of the law enforcement agencies to mandate social initiatives and awareness to curb such violence.
II. Remedial Measures:-
(a) Despite the preventive measures taken by the State Police, if it comes to the notice of the local police that the Khap Panchayat has taken place and it has passed any diktat to take action against a couple/family of an inter-caste or inter-religious marriage (or any other marriage which does not meet their acceptance), the jurisdictional police official shall cause to immediately lodge an F.I.R. under the appropriate provisions of the Indian Penal Code including Sections 141, 143, 503 read with 506 of IPC.
(b) Upon registration of F.I.R., intimation shall be simultaneously given to the Superintendent of Police/ Deputy Superintendent of Police who, in turn, shall ensure that effective investigation of the crime is done and taken to its logical end with promptitude.
(c) Additionally, immediate steps should be taken to provide security to the couple/family and, if necessary, to remove them to a safe house within the same district or elsewhere keeping in mind their safety and threat perception. The State Government may consider of establishing a safe house at each District Headquarter for that purpose. Such safe houses can cater to accommodate (i) young bachelor-bachelorette couples; **2018(3) SCC (Cri) 1; 2018 0 AIR(SC) 1601; 2018 2 Crimes(SC) 205; 2018 2 KLT(SN) 31; 2018 3 Supreme 100; 2018 0 Supreme(SC) 258;** https://indiankanoon.org/doc/92846055/ **; 2018(7) SCC 192; Shakti Vahini Vs UOI and others.**

APPEAL : It is by now well settled that the Appellate Court hearing the appeal filed against the judgment and order of acquittal will not overrule or otherwise disturb the Trial Court's acquittal if the Appellate Court does not find substantial and compelling reasons for doing so. If the Trial Court's conclusion with regard to the facts is palpably wrong; if the Trial Court's decision was based on erroneous view of law; if the Trial

Court's judgment is likely to result in grave miscarriage of justice; if the entire approach of the Trial Court in dealing with the evidence was patently illegal; if the Trial Court judgment was manifestly unjust and unreasonable; and if the Trial Court has ignored the evidence or misread the material evidence or has ignored material documents like dying declaration/report of the ballistic expert etc. the same may be construed as substantial and compelling reasons and the first appellate court may interfere in the order of acquittal. However, if the view taken by the Trial Court while acquitting the accused is one of the possible views under the facts and circumstances of the case, the Appellate Court generally will not interfere with the order of acquittal particularly in the absence of the aforementioned factors. **2018 0 AIR(SC) 2648; http://www.advocatekhoj.com/library/judgments/announcement.php?WID=10186 ; 2018 5 Supreme 684; 2018(3) SCC (Cri) 24; 2018(7) SCC 219; Jayaswamy Vs State of Karnataka.**

TRANSFER OF CASE : it is not in dispute that as per the information provided before this Court, almost 21 witnesses so far have been examined and out of which 16 witnesses have turned hostile. It is surprising to note that some of the official witnesses have also turned hostile.
After the investigation, it was found that the real accused i.e., Accused Nos. 1 and 2 in this case are alleged of colluding with the investigating officer and swapping the real accused for an imposter. It is in this context that the police officials have also been added as accused in the supplementary charge-sheet.
the members of the respondents – accused group being public representatives have significant influence in these villages so the apprehension expressed by the appellant cannot be brushed aside.
As justice should not only be done, but also seem to have been done, it would be necessary that the trial should take place in a fair and transparent manner, wherein there should be no element of bias or witness tampering. As the appellant has clearly made out a case for transfer, we are inclined to accept the prayer sought by the Appellant in this case. **2018(3) SCC (Cri) 43; 2018 0 AIR(SC) 2287; 2018 5 Supreme 413; 2018 0 Supreme(SC) 457; 2018(7) SCC 339; 2018(2) ALD (Crl) 481;** https://indiankanoon.org/doc/32987053/; **SARASAMMA @ SARASWATHIYAMMA Vs THE STATE REP. BY DEPUTY SUPERINTENDENT OF POLICE AND OTHERS.**

When earlier judgments are considered and distinguished, it will not be a case of disregarding binding decision or precedent of the Coordinate Bench.
Accused has no right to be heard during investigation. Therefore, not impleading and not hearing the accused while directing investigation by CBI will not be a ground to interfere in the order. **2018(3) SCC (Cri) 49; 2018(7) SCC 365; 2018 0 AIR(SC) 2486; 2018 5 Supreme 381; 2018 0 Supreme(SC) 501;** https://indiankanoon.org/doc/186760928/ ; **E.Sivakumar Vs UOI & others.**

There is no absolute bar against grant of anticipatory bail in cases under the Atrocities Act if no prima facie case is made out or where on judicial scrutiny the complaint is found to be prima facie mala fide.

iii. In view of acknowledged abuse of law of arrest in cases under the Atrocities Act, arrest of a public servant can only be after approval of the appointing authority and

of a non-public servant after approval by the S.S.P. which may be granted in appropriate cases if considered necessary for reasons recorded. Such reasons must be scrutinized by the Magistrate for permitting further detention.

iv. To avoid false implication of an innocent, a preliminary enquiry may be conducted by the DSP concerned to find out whether the allegations make out a case under the Atrocities Act and that the allegations are not frivolous or motivated.

v. Any violation of direction (iii) and (iv) will be actionable by way of disciplinary action as well as contempt.

The above directions are prospective.

2018(3) SCC (Cri) 124; 2018(6) SCC 454; 2018 0 AIR(SC) 1498; 2018 1 ALD(Cri)(SC) 629; 2018 0 AIIMR(Cri)(SC) 1773; 2018 1 ALT(Cri)(SC) 332; 2018 2 ALT(SC) 50; 2018 2 Crimes(SC) 169; 2018 2 CTC(SC) 779; 2018 248 DLT(SC) 39; 2018 2 ILR(Ker) 423; 2018 2 KHC 207; 2018 2 KLJ(NOC) 2; 2018 2 KLT 33; 2018 3 Supreme 44; 2018 0 Supreme(SC) 243; https://indiankanoon.org/doc/108728085/; **Dr. Subhash Kashinath Mahajan Vs. State of Maharashtra & Anr.**

{THIS JUDGMENT HOLDS GOOD, DESPITE ENACTMENT OF THE SCHEDULED CASTES AND THE SCHEDULED TRIBES (PREVENTION OF ATROCITIES) AMENDMENT ACT, 2018, DATED 17/08/2018,[ANNULING THIS JUDGMENT] AS THE CENTRAL GOVERNMENT IS YET TO NOTIFY THE DATE OF THE ACT COMING INTO FORCE}.

After the accused obtained anticipatory bail for the offences initially charged, the accused was arrested by the I.O., as a graver provision of law was added by way of further investigation. The court suggested proper course in such cases as “it would have been certainly more appropriate to apprise the Court on this development and seek modification.”, while accepting the apology of the I.O. in the contempt petition. **2018(3) SCC (Cri) 178; 2017 0 AIR(SC) 3607; 2017 4 CurCC(SC) 416; 2017 0 DNJ(SC) 764; 2017 3 LawHerald(SC) 2436; 2017 0 Supreme(SC) 898; http://www.advocatekhoj.com/library/judgments/announcement.php?WID=9030; Satwant Singh VS Malkeet Singh.**

A court is empowered to make a complain u/s 340 or 341 CrPC if an offence referred to in section 195(1)(b) prima facie appears to have been committed; and, an enquiry thereinto is expedient

On a complaint made u/s 340 or 341, Magistrate will follow procedure for taking cognizance in a case on police report.

Court making complaint is not obliged to afford opportunity to person concerned.

2018(3) SCC (Cri) 187; 2018 0 AIR(SC) 140; 2017 0 AIISCR(Cri) 1590; 2017 4 Crimes(SC) 456; 2018 0 CrLJ 1395; 2017 11 JT 311; 2017 3 RCR(Cri) 981; 2017 9 Scale 527; 2017 8 Supreme 586; 2017 0 Supreme(SC) 755; https://indiankanoon.org/doc/194410529/; **State of Goa Vs Jose Maria Albert Vales @ Robert Vales.**

Discharge of accused during further investigation would be premature.

2018(3) SCC (Cri) 239; 2017 0 AIR(SC) 3766; 2017 3 Crimes(SC) 257; 2017 3 MLJ(Cri)(SC) 364; 2017 8 Scale 216; 2017 5 Supreme 862; 2017 0 Supreme(SC) 682; https://www.casemine.com/judgement/in/59786fa94a9326202d8a762a;

every acquittal in a criminal case has to be taken with some seriousness by the investigating and prosecuting authorities, when a case of this nature is concerned. We are aware of the fact that there has been a death of a person in this incident and there is no finality to the aforesaid episode as it ends with various unanswered questions, which point fingers at the lack of disciplined investigation and prosecution. Although Courts cannot give benefit of doubt to the accused for small errors committed during the investigation, we cannot however, turn a blind eye towards the investigative deficiencies which goes to the root of the matter. **2018 0 Supreme(SC) 839; 2018(3) ALT (Crl) 37(SC); https://indiankanoon.org/doc/74815367/; Suresh & another Vs State of Haryana.**

The Courts should be careful in proceeding against the distant relatives in crimes pertaining to matrimonial disputes and dowry deaths. The relatives of the husband should not be roped in on the basis of omnibus allegations unless specific instances of their involvement in the crime are made out. **2018(3) ALT (Crl) 54(SC); 2018 0 Supreme(SC) 840; https://indiankanoon.org/doc/85067403/; K.Subba Rao Vs State of Telangana.**

the sentence should be appropriate, adequate, just, proportionate and commensurate with the nature and gravity of the crime and the manner in which the crime is committed. The gravity of the crime, motive for the crime, nature of the crime and all other attending circumstances have to be borne in mind while imposing the sentence. The Court cannot afford to be casual while imposing the sentence, inasmuch as both the crime and the criminal are equally important in the sentencing process. The Courts must see that the public does not lose confidence in the judicial system. Imposing inadequate sentences will do more harm to the justice system and may lead to a state where the victim loses confidence in the judicial system and resorts to private vengeance. **2018 0 Supreme(SC) 755; 2018(3) ALT (Crl) 56(SC);** http://www.advocatekhoj.com/library/judgments/announcement.php?WID=10330; **State of Rajasthan Vs Mohan Lal and another.**

In cases of this nature involving a large number of offenders and a large number of victims, the evidence of only two or three witnesses who give a consistent account of the incident is sufficient to sustain conviction.
We could not find any significant variation in the testimonies of all these witnesses. No major contradiction or variation is found. The presence of the witnesses on the spot has not been seriously doubted by the defence during the cross-examination. It is but natural to have certain minor variations in the evidence of eyewitnesses, when a large number of people had gathered to assault a smaller group of people and which resulted in death of five persons and injuries to 24 persons. In such a scenario, it could not have been possible to meticulously observe all the actions of each and every accused. **The Court also should not expect from the witnesses to depose in a parrot-like fashion.** However, the overall evidence of these witnesses, prima facie, appears to be untainted.

we find from the material on record that the improvements, if any, were only with respect to weapons that had been used in the assaults and not to the factum of assaults per se. **The improvements, if any, made for the first time before the Court, no doubt, need to be eschewed.** But that does not mean that the entire evidence of the witnesses should be ignored only on the said ground.
It is a well settled position of law that the testimony of a witness cannot be discarded in toto merely due to the presence of embellishments or exaggerations. The doctrine of **falsus in uno, falsus in omnibus,** which means "false in one thing, false in everything" has been held to be inapplicable in the Indian scenario, where the tendency to exaggerate is common.**2018 0 Supreme(SC) 853; 2018(3) ALT (Crl) 63(SC);** www.advocatekhoj.com/library/judgments/announcement.php?WID=10439; **Menoka Malik and others Vs. State of West Bengal and others.**

Mere re-registration of the crime and assigning new number does not by itself mean that the National Investigation Agency registered a second F.I.R. in respect of the case. It is well known that re-registration and assigning a new number are only for administrative and statistical purpose.
"investigation into one specific case cannot be the same as in the other. Arrest and detention in custody has to be truly viewed with regard to the investigation in that specific case in which the accused person has been taken into custody". Therefore, unless two different crimes are registered for two different transactions, police custody cannot be granted after the first fifteen days of remand." **2018(3) ALT (Crl) 50(DB); 2018 0 Supreme(AP) 276; https://indiankanoon.org/doc/77959831; UOI Vs. Md. Mahaboob Baig @ Azhar Baig and another**

the ocular evidence, let in by the prosecution through these witnesses, when scanned carefully, nothing is brought out in their cross-examination to show that they were all actuated with ill-will or false motive to implicate the accused. On the other hand, except the omission elicited in the cross-examination of PW.1 and minor discrepancies in their evidence, which do not affect the core issue, their evidence is clear, cogent and beyond reproach.
It is well settled that the testimony of an injured witness gains more prominence compared to the testimony of an eyewitness and unless concrete material is brought out in his cross-examination condemning the very case of the prosecution, it solely constitutes basis for recording conviction.
http://distcourts.tap.nic.in/hcorders/2013/crla/crla_388_2013.pdf; 2018(3) ALT (Crl) 66(DB); Aklula Chandraiah and another Vs State of A.P.

merely because the death is due to septicaemia, it cannot be said that the burn injuries are not the cause of the death and the benefit of decisions cannot be extended to the accused.
when a positive statement of the deceased is available on record, there is no need to assume the reasons for the death of the deceased.
The law is well settled that even in the absence of certification of a doctor also, a statement can be relied upon, if the Magistrate is satisfied with the mental fitness of the deponent. **2018(3) ALT (Crl) 114 (DB);**

http://distcourts.tap.nic.in/hcorders/2014/crla/crla_677_2014.pdf; Lingala Jhangeer vs. State of Telangana.

Motive is, nevertheless, a double edged weapon.
http://distcourts.tap.nic.in/hcorders/2012/crla/crla_745_2012.pdf; 2018(2) ALD (Crl) 364; Kadraka Mangulu v. State of Andhra Pradesh

The Investigating Officer did not even adhere to the basic requisite investigative processes, such as conducting a test identification parade in relation to the independent witness, P.W.6, who claimed to have seen the accused at the relevant time. Further, the statement of the Investigating Officer that he decided that the accused was the culprit after recording the Section 161 CrPC statement of P.W.4 manifests that the investigation thereafter was only tailored to arraign the accused but not to probe the evidence available and independently investigate as to who was responsible for the homicide and how it was committed.
Equally lackadaisical was the approach of the doctor in conducting the post-mortem examination. In most cases, we find that despite there being evidence involving blood and DNA, no steps are taken to at least identify the blood group of the deceased, so that the same can be corroborated with the blood-stained evidence. DNA analysis, even if undertaken, does not yield any palpable result in most cases, for some strange reason. The post-mortem examination report does not contain a column with regard to the blood group of the deceased and in the event the doctor conducting the post-mortem examination is incapable of ascertaining the blood group, for want of infrastructure, steps should be taken to invariably send the blood of the deceased in every case to the Forensic Science Laboratory for identification of his blood group, so that the same could be used for such corroboration thereafter.2018(2) ALD (Crl)372; 2017 0 Supreme(AP) 465; Katta Mondaiah v. State of Andhra Pradesh **http://distcourts.tap.nic.in/hcorders/2011/crla/crla_416_2011.pdf;**

The advocate is a representative but not a delegate. He gives to his client the benefit of his learning, his talents and his judgment; but all through he never forgets what he owes to himself and to others. He will not knowingly misstate the law, he will not willfully misstate the facts, though it be to gain the case for his client. He will ever bear in mind that if he be an advocate of an individual and retained and remunerated often inadequately, for valuable services, yet he has a prior and perpetual retainer on behalf of truth and justice and there is no Crown or other license which in any case or for any party or purpose can discharge him from that primary and paramount retainer. (vide R. v. O'Connell (7 Irish Law Reports 313) The fundamentals of the profession thus require an advocate not to be immersed in a blind quest of relief for his client. The dignity of the institution cannot be violated in this quest as "law is no trade, briefs no merchandise (vide Bar Council of Maharashtra v. M.V. Dabholkar62) It is also pertinent to note at this point, the illuminating words of Vivian Bose, J. in 'G' a Senior Advocate of the Supreme Court, In re G. A Sr. Advocate of SC, In re63, who elucidated that, to use the language of the Army, an Advocate of this Court is expected at all times to comport himself in a manner befitting his status as an "officer and a gentleman". It is as far back as in 1925 that an Article titled 'The Lawyer as an Officer of the Court'

published in the Virginia Law Review, lucidly set down what is expected from the lawyer which is best set out in its own words that, the duties of the lawyer to the Court spring directly from the relation that he sustains to the Court as an officer in the administration of justice. The law is not a mere private calling, but is a profession which has the distinction of being an integral part of the State's judicial system. As an officer of the Court the lawyer is, therefore, bound to uphold the dignity and integrity of the Court; to exercise at all times respect for the Court in both words and actions; to present all matters relating to his client's case openly, being careful to avoid any attempt to exert private influence upon either the judge or the jury; and to be frank and candid in all dealings with the Court, "using no deceit, imposition or evasion," as by misreciting witnesses or misquoting precedents. "It must always be understood," says Mr. Christian Doerfler, in an address before the Milwaukee County Bar Association, in December, 1911, "that the profession of law is instituted among men for the purpose of aiding the administration of justice. A proper administration of justice does not mean that a lawyer should succeed in winning a lawsuit. It means that he should properly being to the attention of the Court everything by way of fact and law that is available and legitimate for the purpose of properly presenting his client's case. His duty as far as his client is concerned is simply to legitimately present his side of the case. His duty as far as the public is concerned and as far as he is an officer of the Court is to aid and assist in the administration of justice. When the Advocate failed to bring to the notice of the Court certain facts in obtaining an order, such order is liable to be set-aside, since the lawyer owes high degree of duty and responsibility to his profession and to his fellow members of the Bar is an obvious truth. **http://distcourts.tap.nic.in/hcorders/2017/crlp/crlp_24624_2017.pdf; 2018(2) ALD (Crl) 404; P.Kalpana v. State of Telangana and another.**

The testimony of the Public Prosecutor in his cross-examination effectively demonstrates that the wholesome requirement spelt out by Section 199(2) and 199(4) Cr.P.C., as expounded by this Court in Subramanian Swamy (supra), has not been complied with in the present case

A Public Prosecutor filing a complaint under Section 199 (2) Cr.P.C. without due satisfaction that the materials/allegations in complaint discloses an offence against an Authority or against a public functionary which adversely affects the interests of the State would be abhorrent to the principles on the basis of which the special provision under Section 199(2) and 199(4) Cr.P.C. has been structured as held by this Court in P.C. Joshi (supra) and Subramanian Swamy (supra). The public prosecutor in terms of the statutory scheme under the Criminal Procedure Code plays an important role. He is supposed to be an independent person and apply his mind to the materials placed before him. **2018 0 AIR(SC) 2171; 2018 2 BomCR(Cri)(SC) 571; 2018 0 CrLR 321; 2018 2 EastCrC(SC) 164; 2018 2 JLJR(SC) 307; 2018 2 PLJR(SC) 317; 2018 5 Scale 607; 2018 6 SCC 676; 2018 4 Supreme 215; 2018 0 Supreme(SC) 339;** https://indiankanoon.org/doc/180284861/; **K.K. Mishra Vs State of M.P.**

Section 5 of identification of prisoners act, 1920, does not mean that Police Officers are not entitled to take fingerprints until an order is taken from Magistrate. **2018(2) ALD (Crl) 511(SC); 2018 0 AIR(SC) 3131; 2018 0 Supreme(SC) 677;**

http://www.advocatekhoj.com/library/judgments/announcement.php?WID=10223 ; Sonvir @ Somvir Vs State of NCT of Delhi.

i. In view of the aforesaid findings, it is declared that insofar as Section 377 criminalises consensual sexual acts of adults (i.e. persons above the age of 18 years who are competent to consent) in private, is violative of Articles 14, 15, 19, and 21 of the Constitution.

ii. The declaration of the aforesaid reading down of Section 377 shall not, however, lead to the re-opening of any concluded prosecutions, but can certainly be relied upon in all pending matters whether they are at the trial, appellate, or revisional stages.

iii. The provisions of Section 377 will continue to govern non-consensual sexual acts against adults, all acts of carnal intercouse against minors, and acts of beastiality.

iv. The judgment in Suresh Kumar Koushal & Anr. v. Naz Foundation & Ors., (2014) 1 SCC 1 is hereby overruled for the reasons stated in paragraph 19.

It is, however, clarified that such consent must be free consent, which is completely voluntary in nature, and devoid of any duress or coercion.

2018 0 Supreme(SC) 869; https://indiankanoon.org/doc/168671544/; **NAVTEJ SINGH JOHAR & ORS Vs UOI.(BATCH).**

When an application for bail is entertained, proper conditions have to be imposed but recovery of disputed dowry items may not by itself be a ground while rejecting an application for grant of bail under Section 498-A IPC. That cannot be considered at that stage. Therefore, we do not find anything erroneous in direction Nos. 19(iv) and (v). So far as direction No. 19(vi) and 19(vii) are concerned, an application has to be filed either under Section 205 CrPC or Section 317 CrPC depending upon the stage at which the exemption is sought.

The guidelines mentioned in RAJESH SHARMA's JUDGMENT modified.

Direction No. 19(iii) is modified to the extent that if a settlement is arrived at, the parties can approach the High Court under Section 482 of the Code of Criminal Procedure and the High Court, keeping in view the law laid down in Gian Singh (supra), shall dispose of the same.

2018 0 Supreme(SC) 877; Social Action Forum for Manav Adhikar and another Vs UOI.; https://www.sci.gov.in/supremecourt/.../40984_2014_Judgement_14-Sep-2018.pdf;

In absence of evidence of actual, constructive or conscious possession of the arms, a person cannot be convicted u/s 25 (1)(a) and 35 of the Arms Act, 1959

2018 0 Supreme(SC) 880; Mohmed Rafiq Abdul Rahim Shaikh Vs State of Gujarat; https://www.sci.gov.in/supremecourt/.../31341_2007_Judgement_13-Sep-2018.pdf;

Public Prosecutor while withdrawing a case has to apply his/her own mind and consider the effect of withdrawal on the society in the event such permission is granted. Similarly the courts also have to apply their mind before granting permission.
2018 0 Supreme(SC) 883; Abdul Wahab K vs State of Kerala and others;
https://www.supremecourtofindia.nic.in/supremecourt/2013/38722/38722_2013_Judgement_13-Sep-2018.pdf

Minor discrepancies on trivial matters not touching the core of the case, hypertechnical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error without going to the root of the matter would not ordinarily permit rejection of the evidence as a whole. Minor omissions in the police statements are never considered to be fatal. The statements given by the witnesses before the police are meant to be brief statements and could not take place of evidence in the court. Small/Trivial omissions would not justify a finding by court that the witnesses concerned are liars. The prosecution evidence may suffer from inconsistencies here and discrepancies there, but that is a shortcoming from which no criminal case is free. The main thing to be seen is whether those inconsistencies go to the root of the matter or pertain to insignificant aspects thereof. In the former case, the defence may be justified in seeking advantage of incongruities obtaining in the evidence. In the latter, however, no such benefit may be available to it.
Each criminal trial is but a quest for search of the truth. The duty of a judge presiding over a criminal trial is not merely to see that no innocent person is punished, but also to see that a guilty person does not escape. One is as important as the other. Both are public duties which the Judge has to perform. The trail court had erred and mis-appreciated the evidence to arrive at an erroneous conclusion.
2018 0 Supreme(SC) 893; SMT. SHAMIM Vs State GNCT of Delhi.
https://www.supremecourtofindia.nic.in/supremecourt/2017/31348/31348_2017_Judgement_19-Sep-2018.pdf

The serologist report was an expert opinion under Section 45 of the Evidence Act,1872 and was therefore admissible in evidence without being marked an exhibit formally or having to be proved by oral evidence.
A criminal trial is but a quest for truth. The nature of inquiry and evidence required will depend on the facts of each case. The presumption of innocence will have to be balanced with the rights of the victim, and above all the societal interest for preservation of the rule of law. Neither the accused nor the victim can be permitted to subvert a criminal trial by stating falsehood and resort to contrivances, so as to make it the theatre of the absurd. Dispensation of justice in a criminal trial is a serious matter and cannot be allowed to become a mockery by simply allowing prime prosecution witnesses to turn hostile as a ground for acquittal, as observed in Zahira Habibullah Sheikh vs. State of Gujarat, (2006) 3 SCC 374 and Mahila Vinod Kumari vs. State of Madhya Pradesh, (2008) 8 SCC 34.
Even so, the failure of a victim or a witness to identify a suspect is not always fatal to the case of the prosecution.
Prosecutrix identifying the accused in chief examination, after six months completely resiling from the facts and identification. The present was an appropriate case to direct the prosecution of the prosecutrix under Section 344 Cr.P.C alike Mahila Vinod Kumari

(supra) for tendering false evidence. But considering that the prosecutrix was barely 9 years old on the date of occurrence, that the occurrence had taken place 14 long years ago, she may have since been married and settled to a new life, all of which may possibly be jeopardised, we refrain from directing her prosecution, which we were otherwise inclined to order.
2018 0 Supreme(SC) 957; HEMUDAN NANBHA GADHVI Vs STATE OF GUJARAT; https://indiankanoon.org/doc/171003922/;

Constitutional Morality in a secular polity would imply the harmonisation of the Fundamental Rights, which include the right of every individual, religious denomination, or sect, to practise their faith and belief in accordance with the tenets of their religion, irrespective of whether the practise is rational or logical.
The Respondents and the Intervenors have made out a plausible case that the Ayyappans or worshippers of the Sabarimala Temple satisfy the requirements of being a religious denomination, or sect thereof, which is entitled to the protection provided by Article 26. This is a mixed question of fact and law which ought to be decided before a competent court of civil jurisdiction.
The limited restriction on the entry of women during the notified agegroup does not fall within the purview of Article 17 of the Constitution.
2018 0 Supreme(SC) 959; Indian Young Lawyers Association & Ors. Vs State of Kerala; https://indiankanoon.org/doc/163639357/;

Section 497 is struck down as unconstitutional being violative of Articles 14, 15 and 21 of the Constitution.

(ii) Section 198(2) of the Cr.P.C. which contains the procedure for prosecution under Chapter XX of the I.P.C. shall be unconstitutional only to the extent that it is applicable to the offence of Adultery under Section 497.

(iii) The decisions in Sowmithri Vishnu (supra), V. Rewathi (supra) and W. Kalyani (supra) hereby stand overruled. **2018 0 Supreme(SC) 955; Joseph Shine vs UOI; https://indiankanoon.org/doc/42184625/;**

the judgment in Nagaraj (2006) 8 SCC 212,) does not need to be referred to a seven–Judge Bench. However, the conclusion in Nagaraj (supra) that the State has to collect quantifiable data showing backwardness of the Scheduled Castes and the Scheduled Tribes, being contrary to the nine-Judge Bench in Indra Sawhney (1992 Supp (3) SCC 217) is held to be invalid to this extent. **2018 0 Supreme(SC) 929; https://www.sci.gov.in/supremecourt/2011/34614/34614_2011_Judgement_26-Sep-2018.pdf; JARNAIL SINGH & OTHERS Vs. LACHHMI NARAIN GUPTA & OTHERS.**

In Nankaunoo v. State of Uttar Pradesh (2016) 3 SCC 317, it was held as under:-

23 “9. ……Any omission on the part of the investigating officer cannot go against the prosecution case. Story of the prosecution is to be examined dehors such omission by the investigating agency. Otherwise, it would shake the confidence of the people not merely in the law enforcing agency but also in the administration of justice”.
In V.K. Mishra and Another v. State of Uttarakhand and Another (2015) 9 SCC 588, it was held as under:-

“38. The investigating officer is not obliged to anticipate all possible defences and investigate in that angle. In any event, any omission on the part of the investigating officer cannot go against the prosecution. Interest of justice demands that such acts or omission of the investigating officer should not be taken in favour of the accused or otherwise it would amount to placing a premium upon such omissions”. www.advocatekhoj.com/library/judgments/announcement.php?WID=10552; **STATE OF MADHYA PRADESH Vs. CHHAAKKI LAL AND ANOTHER; 2018 0 Supreme(SC) 943;**

(1) The requirement under Aadhaar Act to give one's demographic and biometric information does not violate fundamental right of privacy.
(2) The provisions of Aadhaar Act requiring demographic and biometric information from a resident for Aadhaar Number pass threefold test as laid down in Puttaswamy (supra) case, hence cannot be said to be unconstitutional.
(3) Collection of data, its storage and use does not violate fundamental Right of Privacy.
(4) Aadhaar Act does not create an architecture for pervasive surveillance.
(5) Aadhaar Act and Regulations provides protection and safety of the data received from individuals.
(6) Section 7 of the Aadhaar is constitutional. The provision does not deserve to be struck down on account of denial in some cases of right to claim on account of failure of authentication.
(7) The State while enlivening right to food, right to shelter etc. envisaged under Article 21 cannot encroach upon the right of privacy of beneficiaries nor former can be given precedence over the latter.
(8) Provisions of Section 29 is constitutional and does not deserves to be struck down.
(9) Section 33 cannot be said to be unconstitutional as it provides for the use of Aadhaar data base for police investigation nor it can be said to violate protection granted under Article 20(3).
(10) Section 47 of the Aadhaar Act cannot be held to be unconstitutional on the ground that it does not allow an individual who finds that there is a violation of Aadhaar Act to initiate any criminal process.
(11) Section 57, to the extent, which permits use of Aadhaar by the State or any body corporate or person, in pursuant to any contract to this effect is unconstitutional and void. Thus, the last phrase in main provision of Section 57, i.e. “or any contract to this effect” is struck down.
(12) Section 59 has validated all actions taken by the Central Government under the notifications dated 28.01.2009 and 12.09.2009 and all actions shall be deemed to have been taken under the Aadhaar Act.
(13) Parental consent for providing biometric information under Regulation 3 & demographic information under Regulation 4 has to be read for enrolment of children between 5 to 18 years to uphold the constitutionality of Regulations 3 & 4 of Aadhaar (Enrolment and Update) Regulations, 2016.
(14) Rule 9 as amended by PMLA (Second Amendment) Rules, 2017 is not unconstitutional and does not violate Articles 14, 19(1)(g), 21 & 300A of the Constitution and Sections 3, 7 & 51 of the Aadhaar Act. Further Rule 9 as amended is not ultra vires to PMLA Act, 2002.

(15) Circular dated 23.03.2017 being unconstitutional is set aside.
(16) Aadhaar Act has been rightly passed as Money Bill. The decision of Speaker certifying the Aadhaar Bill, 2016 as Money Bill is not immuned from Judicial Review.
(17) Section 139AA does not breach fundamental Right of Privacy as per Privacy Judgment in Puttaswamy case.
(18) The Aadhaar Act does not violate the interim orders passed in Writ Petition (C) No. 494 of 2012 and other Writ Petitions.
It is better to be unique than the best. Because, being the best makes you the number one, but being unique makes you the only one.
2018 0 Supreme(SC) 947; Justice K.S. Puttaswamy (Retd.)& Another Vs. UOI & ors.; https://www.supremecourtofindia.nic.in/supremecourt/2012/35071/35071_2012_Judgement_26-Sep-2018.pdf

Model guidelines for broadcasting of the proceedings and other judicial events of the Supreme Court of India.
2018 0 Supreme(SC) 945; https://indiankanoon.org/doc/43629806/; **Swapnil Tripathi Vs. Supreme Court of India;**

It deserves to be clarified that an order granting stay of conviction is not the rule but is an exception to be resorted to in rare cases depending upon the facts of a case. Where the execution of the sentence is stayed, the conviction continues to operate. But where the conviction itself is stayed, the effect is that the conviction will not be operative from the date of stay. As order of stay, of course, does not render the conviction non-existent, but only non-operative.
2018 0 Supreme(SC) 940; https://www.sci.gov.in/supremecourt/.../12704_2016_Judgement_26-Sep-2018.pdf; Lok Prahari Vs Election Commission of India.

SENTENCE
in Alister Anthony Pareira Vs. State of Maharashtra [(2012) 2 SCC 648] wherein it is observed thus:
"84. Sentencing is an important task in the matters of crime. One of the prime objectives of the criminal law is imposition of appropriate, adequate, just and proportionate sentence commensurate with the nature and gravity of crime and the manner in which the crime is done. There is no straitjacket formula for sentencing an accused on proof of crime. The courts have evolved certain principles: the twin objective of the sentencing policy is deterrence and correction. What sentence would meet the ends of justice depends on the facts and circumstances of each case and the court must keep in mind the gravity of the crime, motive for the crime, nature of the offence and all other attendant circumstances."

Testimony of a Prosecutrix
It is also by now well settled that the courts must, while evaluating evidence, remain alive to the fact that in a case of rape, no self-respecting woman would come forward in a court just to make a humiliating statement against her honour such as is involved in the commission of rape on her. In cases involving sexual molestation, supposed considerations which have no material effect on the veracity of the prosecution case or even discrepancies in the statement of the prosecutrix should not, unless the discrepancies are such which are of fatal nature, be allowed to throw out an otherwise reliable prosecution case. The inherent bashfulness of the females and the tendency to conceal outrage of sexual aggression are factors which the courts should not overlook. The

testimony of the victim in such cases is vital and unless there are compelling reasons which necessitate looking for corroboration of her statement, the courts should find no difficulty to act on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. Seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury. (see Ranjit Hazarika vs. State of Assam, (1998) 8 SCC 635).

Rules of natural justice are not statutory rules. They are not cast in a rigid mould nor can they be put in a legal strait-jacket. They are not immutable but flexible. These rules can be adapted and modified by statutes and statutory rules. (Union of India v. Tulsiram Patel, (1985) 3 SCC 398). The rules of natural justice are not a constant: they are not absolute and rigid rules having universal application. The requirement of natural justice must depend on the circumstances of the case, the nature of the inquiry, the rules under which the authority is acting, the subject matter that is being dealt with, and so forth. (State of Kerala v. K.T. Shaduli Yousuff, (1977) 39 STC 478 (SC) ; Suresh Koshy George v. The University of Kerala, [1969] 1 S.C.R. 317 ; Russel v. Duke of Norfolk, [1949] 1 All. England Reports 108). As the rules of natural justice are not embodied rules, what particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case and the framework of the law. (Maneka Gandhi v. Union of India, AIR 1978 SC 597 ; Suresh Koshy George, [1969] 1 S.C.R. 317 ; D.F.O., South Kheri v. Ram Sanehi Singh, (1971) 3 SCC 864 = AIR 1973 SC 205).

15. Principles of natural justice is not a "mantra" to be applied in a vacuum, or be put in a straitjacket. Natural justice is not an unruly horse, no lurking landmine, nor a judicial cure-all. The court has to determine whether observance of the principles of natural justice was necessary for that particular case. (Chairman, Board of Mining Examination and Chief Inspector of Mines v. Ramjee, (1977) 2 SCC 256 ; Tulsiram Patel, (1985) 3 SCC 398 ; ECIL v. B. Karunakar, (1993) 4 SCC 727 ; Municipal Committee, Hoshiarpur v. Punjab State Electricity Board, (2010) 13 SCC 216). It should not proceed as if there are inflexible rules of natural justice of universal application. Each case depends on its own circumstances. Rules of natural justice vary with the laws prescribed by the legislature. (M/s. Chingleput Bottlers v. M/s. Majestic Bottling Co., AIR 1984 S.C. 1030).

16. Not only can principles of natural justice be modified but, in exceptional cases, they can even be excluded where the nature of the action to be taken, its object and purpose and the scheme of the relevant statutory provisions warrant its exclusion. (Tulsiram Patel, (1985) 3 SCC 398 ; State of U.P. v. Sheo Shanker Lal Srivastava, (2006) 3 SCC 276). If a statutory provision either specifically, or by necessary implication, excludes the application of any or all the principles of natural justice, then the court cannot ignore the mandate of the Legislature or the statutory authority and read, into the concerned provision, principles of natural justice. (Union of India v. Col. J.N. Sinha, (1970) 2 SCC 458 ; Tulsiram Patel, (1985) 3 SCC 398). The implication of natural justice being presumptive, it may be excluded by express words of the statute or by necessary intendment. (Swadeshi Cotton Mills v. Union of India, (1981) 1 SCC 664 ; Tulsiram Patel, (1985) 3 SCC 398).

NEWS

- GOVERNMENT OF TELANGANA- Criminal Cases – Designation of all the Assistant Public Prosecutors / Public Prosecutors working in Magistrate Courts / District Courts as Special Public Prosecutors to conduct prosecution of the cases on behalf of Department of Mines Safety filed under the Mines Act, 1952 - Orders – Issued. G.O.Rt.No. 1383, HOME (COURTS.A1) DEPARTMENT Dated: 22-09-2018
- GOVERNMENT OF TELANGANA-Budget Estimates 2018-19 – Budget Release Order for Rs.13,00,000/- to the Director of Prosecutions, Telangana State, Hyderabad – Administrative Sanction - Orders – Issued. G.O.Rt.No. 511, LAW (LA, LA&J-HOME-COURTS-B2) DEPARTMENT, Dated: 19-09-2018.
- GOVERNMENT OF TELANGANA- ALLOWANCES – Dearness Allowance from 25.676% of the basic pay to 27.248% to Employees from 1st of January, 2018, G.O.Ms.No. 143, FINANCE (HRM.IV) DEPARTMENT, 05-09-2018.
- GOVERNMENT OF Andhra Pradesh -ALLOWANCES – Dearness allowance from 24.104% of the basic pay to 25.676% of basic pay from 1st July, 2017 - G.O.MS.No. 150, FINANCE(PC and TA) DEPARTMENT, 17-09-2018.
- A.P. GAZETTE- No.736 AMARAVATI, MONDAY , SEPTEMBER 10, 2018 G.598 -EMPOWERING ALL JUDICIAL MAGISTRATES OF FIRST CLASS IN THE DISTRICTS OF STATE OF ANDHRA PRADESH AND ALL THE METROPOLITAN MAGISTRATES COURTS IN METROPOLITAN CITIES OF VISAKHAPATNAM AND VIJAYAWADA, TO TRY OFFENCES UNDER THE BUREAU OF INDIAN STANDARDS ACT, 2016.*[G.O.Ms.No. 134, Law (L, LA & J-Home-Courts-A), 10th September, 2018.]*
- THE TELANGANA GAZETTE - No. 28] HYDERABAD, THURSDAY, SEPTEMBER 6, 2018. -AMENDMENT TO TELANGANA STATE PROTECTION OF DEPOSITORS OF FINANCIAL ESTABLISHMENTS RULES, 1999. *[G.O.Ms.No.99, Home (Passports), 5th September, 2018.]*
- TELANGANA GAZETTE- CONSUMER AFFAIRS, FOOD AND CIVIL SUPPLIES DEPARTMENT(CS.I–RC)- ENHANCEMENT OF HONORARIUM TO THE PRESIDENTS AND MEMBERS OF DISTRICT CONSUMER FORUM – AMENDMENT TO THE TELANGANA STATE CONSUMER PROTECTION RULES, 1987. *[G.O.Ms.No. 19, Consumer Affairs, Food & Civil Supplies, (CS.I-RC), 1st September 2018.]*
- TELANGANA Gazette- No. 243] HYDERABAD, THURSDAY, AUGUST 30, 2018. - GENERAL ADMINISTRATION DEPARTMENT-*(SPF-MC)* [1] G.

369. THE TELANGANA PUBLIC EMPLOYMENT (ORGANISATION OF LOCAL CADRES AND REGULATION OF DIRECT RECRUITMENT) ORDER, 2018. *[G.O.Ms.No. 124, General Administration (SPF-MC), 30th August, 2018.]*

- TELANGANA Gazette-- No.247] HYDERABAD, THURSDAY, SEPTEMBER 6, 2018 - GENERAL ADMINISTRATION DEPARTMENT- *(SPF-MC)*- THE TELANGANA PUBLIC EMPLOYMENT (ORGANISATION OF LOCAL CADRES AND REGULATION OF DIRECT RECRUITMENT) ORDER, 2018 - CORRIGENDUM. *[G.O.Ms.No. 132, General Administration (SPF-MC), 1st September, 2018.]*
- THE MUSLIM WOMEN (PROTECTION OF RIGHTS ON MARRIAGE) ORDINANCE, 2018, has come into force from 19/09/2018, which makes Talak-e-biddat a cognozable, compoundable, non-bailable offence, punishable with upto 3 years imprisonment. The Victim has to be heard prior to grant of bail.

ON A LIGHTER VEIN

Three sons left home to make their fortunes, and they all did very, very well for themselves. They got together recently and were discussing what they each had done to benefit their aging mother.

"Well," said the first one, "I bought Mom a huge house in Beverly Hills."

"I bought her a Mercedes and hired a full-time driver for her." said the second brother

"I've got you both beat," said the third. "I bought her a miraculous parrot that can recite any Bible verse you tell it to."

A little later, the mother sent out a thank you letter to all three sons. "Gerald -- the house you bought was too big. I only live in one room, but I have to clean the entire house. Milton -- the car is useless because I don't go anywhere because I'm too old. But Robert -- you know exactly what I like. The chicken was delicious."

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SAVE PAPER SAVE TREES.

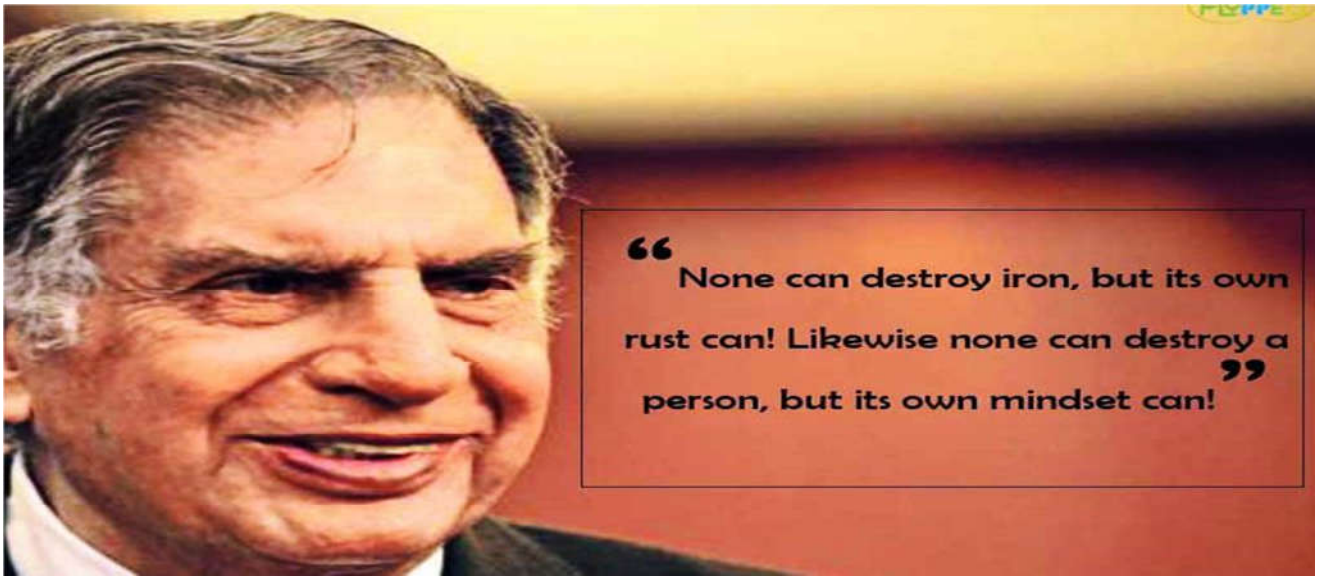
Vol- VII
Part-11

Prosecution Replenish

An Endeavour for Learning and Excellence

November, 2018

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



CITATIONS

As noted hereinbefore, neither any suggestions were put to the prosecution witnesses probablising the death of the two children in any manner other than the one pleaded by the prosecution, nor the accused has explained her stand when incriminating circumstances were put to her during her Section 313 Cr.P.C. examination. All that she has answered in her Section 313 Cr.P.C. examination is that either she is not aware or false or that she has not committed the offence. When she was asked to say anything regarding the quantum of sentence, even at that stage, she did not say that she was innocent. She stated that she has nothing to say. Though the accused has a right to be silent, that would not prevent the court from drawing adverse inference from such silence, when the accused failed to explain the incriminating circumstances

The failure of the defence to deny the crucial facts spoken to by PW-1 about the conduct of the accused and the stoic silence she has maintained, despite the fact that

administered to them, would make the failure of the prosecution to investigate about the source of the accused securing poison, pale into insignificance.
Though in the absence of recovery of any incriminating material, the alleged confessional statement is not admissible in evidence, the fact remains that due to long hiatus between the date of incident and the date of arrest, there was every possibility for the accused to cause the disappearance of the poison tin. Even in the absence of the direct evidence of the accused being in possession of poison, the strong circumstances discussed above, would leave the court in no doubt that being a nurse and a person habituated to live independently by frequently going to Vijayawada, it is not difficult for her to procure poison and administer the same to her children.
Gangavarapu Grace Mani Vs. State; 2018 0 Supreme(AP) 218; 2018(2) ALD(Crl) 542; https://indiankanoon.org/doc/138282909/ ;

No Identification Test of the weapon as contemplated under Rule 35 of the Criminal Rules of Practice and Circular Orders, 1990 (for short, "the Rules"), was held. A perusal of the evidence of these witnesses shows that they have deposed that they can identify the weapon if it is shown to them. Accordingly, on being shown the crowbar, they have deposed that the same weapon was used by appellant No.1 in the commission of the offence. This procedure looks to us to be very strange. When only one weapon was produced by the prosecution in the Court without being mixed up with other weapons, that by itself is suggestive of the fact that the prosecution seeks to project the same as crime weapon. Therefore, it is not difficult for any prosecution witness to take the hint and identify such weapon as the crime weapon. Indeed, to avoid such a situation, Rule 35 of the Rules envisaged the Identification parade of the properties in the presence of the Magistrate.
Kothareddi Aswartha Reddy and another Vs State of A.P; 2018 0 Supreme(AP) 110; 2018(2) ALD (Crl) 596; https://indiankanoon.org/doc/165907295/

As pointed out by the learned Public Prosecutor before going into the legal position, coming to the facts, the very embracing her to Islam community was long back and for the purpose of marriage and subsequent to that they had sexual intercourse and his question that she was pregnant or not that itself shows he had sexual intercourse with her. It is leave about she pretended falsely as if pregnant without that or not, as the very e-mail messages show after her conversion into Islam community for the purpose of marriage, he had sexual intercourse with her clearly shows it is not with her consent to have the sexual intercourse as a message but for on the pretense of marriage even embraced to Islam that itself shows, it is not a voluntary consent within the meaning of Section 39 r/w 90 I.P.C.
the petitioner is not entitled to the concession of anticipatory bail and the fact that he is an employee and likelihood of losing job if arrested cannot even be considered to outweigh over the sufferance of victim.
SARDAR ABBAS ZAIDI Vs State of Telangana and another; 2018 0 Supreme(AP) 380;

there is nothing to hold the twin limitations contemplated by Sections 37(1) of the NDPS Act have no application for what Section 37(2), speaks those are in addition and not in exclusion of the guidelines for bail provided by the Code of Criminal Procedure.

Polavarapu Govind Vs. The Senior Intelligence Officer, Directorate of Revenue Intelligence, Regional Unit, Vijayawada.; 2018(2) ALD (Crl) 615; http://distcourts.tap.nic.in/hcorders/2018/crlp/crlp_5990_2018.pdf;

complainant was working as Computer Operator at TVS Show room Nizamabad. While so, on 18.04.2017 the caste elders of complainant approached A1 who was working as MEO of Kalther Mandal and settled the marriage of complainant with A1 and engagement was also performed as per their caste tradition. Thereafter, on 21.04.2017 when the caste elders went to Madwar Thanda where A1 is residing for fixing the marriage date, A1 with the connivance of his uncle A2 expressed his unwillingness to marry the complainant, quarreled and abused them in filthy language. Basing on the said complaint, the police of Nizamabad II Town PS registered a case in Cr.No.46 of 2017 under Sections 417, 420 and 109 IPC and after investigation laid charge sheet and case was registered as C.C.No.394 of 2017 on the file of I Additional Judicial First Class Magistrate, Nizamabad.

On perusal of the FIR, charge sheet and the statements of the witnesses, this Court finds force in the contention of the petitioners. It is not the case of complainant that on the false pretext of marriage, the 1st petitioner/A1 has either induced her to have sexual intercourse with him or obtained dowry and other paraphernalia from her parents. In that view, even if the compliant allegations are true, mere failure to keep up the promise will not come within the ambit of cheating.

Varthya Shanker and another Vs State of Telangana; 2018 0 Supreme(AP) 318; 2018(2) ALD (Crl) 622; https://indiankanoon.org/doc/103229240/

After marriage, she resided with her husband in her matrimonial house and the petitioners 1 and 2 who are sisters of her husband have quarreled with her saying that her parents presented 1 tola of gold but it weighed only 10 grams and not 12 grams and also whether she had any boyfriend before marriage.

there are allegations against the petitioners. It is alleged that at the time of marriage the parents of the defacto complainant presented cash and gold articles and household articles to her husband, but her husband and the petitioners herein have harassed her physically and mentally for additional dowry and her husband used to come in drunken condition and beat her. The truth of the allegations can be verified only at the time of trial. **Kotagiri Ashwini & others Vs State of A.P.; 2018(2) ALD (Crl) 625; https://indiankanoon.org/doc/75792927/:**

every acquittal in a criminal case has to be taken with some seriousness by the investigating and prosecuting authorities, when a case of this nature is concerned. We are aware of the fact that there has been a death of a person in this incident and there is no finality to the aforesaid episode as it ends with various unanswered questions, which point fingers at the lack of disciplined investigation and prosecution. Although Courts cannot give benefit of doubt to the accused for small errors committed during the investigation, we cannot however, turn a blind eye towards the investigative deficiencies which goes to the root of the matter.

Suresh Vs State of Haryana; 2018(3) ALT (Crl) 37(SC); 2018 0 Supreme(SC) 839; https://indiankanoon.org/doc/74815367/;

The relatives of the husband should not be roped in on the basis of omnibus allegations unless specific instances of their involvement in the crime are made out.
K.Subba Rao and others Vs State of Telangana; 2018 0 Supreme(SC) 840; 2018(3) ALT(Crl) 54(SC); https://indiankanoon.org/doc/85067403/;

We could not find any significant variation in the testimonies of all these witnesses. No major contradiction or variation is found. The presence of the witnesses on the spot has not been seriously doubted by the defence during the cross-examination. It is but natural to have certain minor variations in the evidence of eyewitnesses, when a large number of people had gathered to assault a smaller group of people and which resulted in death of five persons and injuries to 24 persons. In such a scenario, it could not have been possible to meticulously observe all the actions of each and every accused. The Court also should not expect from the witnesses to depose in a parrot-like fashion. However, the overall evidence of these witnesses, prima facie, appears to be untainted.
So far as the issue of unlawful assembly and common object of the unlawful assembly is concerned, the Court generally could determine those aspects based on the evidence on record. Prima facie, the Court can visualize the common object of unlawful assembly from this evidence. The Court cannot expect the prosecution to prove its case by leading separate evidence with respect to unlawful assembly and common object. If those factors can be found out based on the available material on record, there is no reason as to why the Courts should ignore the same.
where the eye witnesses account is found to be trustworthy and credible, medical opinion pointing to alternative possibilities is not accepted as conclusive
Menoka Malik and others Vs State of West Bengal and others; 2018 0 Supreme(SC) 853; 2018(3) ALT(Crl) 63(SC); https://indiankanoon.org/doc/76425760/;

merely because the mouth and head portions of the accused were masked, it cannot be said that it was not possible for PW-1 to identify the accused.
Mahankali Venkanna Vs State of A.P.; 2018(3) ALT(Crl) 21(DB)(AP); 2018 0 Supreme(AP) 247; https://indiankanoon.org/doc/40693172/;

It may be true that originally his brother was alone liable to pay the balance of the alimony amount. However, the petitioner stood as a guarantor and offered the cheques to make the complainant and her father agreeable for obtaining the divorce by mutual consent. Therefore, the liability of the petitioner falls within the ambit of debt or other liability employed in Section 138 of N.I Act. The petitioner cannot take recourse on the argument that he does not owe any liability to the complainant to pay the alimony and therefore, the issuance of cheques does not fall within the ambit of Section 138 of N.I Act. **Chittuluri Venkata Subramanya Rajaram Vs. Kotagiri Shivani and another ; 2018 0 Supreme(AP) 269;** https://indiankanoon.org/doc/197245183/; **2018(3) ALT (Crl) 17(A.P)**

police custody can be granted after the first 15 days of the remand, only if the accused is involved in different transaction/different occurrence, and if the investigating agency wants to have the police custody in another crime, they should first show his arrest in that crime and then make an application seeking detention in police custody.

even where there is change in the investigating agency; re-registration of a crime after transfer to a new investigating agency and adding of new sections of law during the course of investigation, police custody can only be in the first 15 days of the remand of that incident/occurrence.
Union of India, rep. by Addl. Superintendent of Police, National Investigation Agency Vs Md. Mahaboob Baig @ Azhar Baig and another; 2018 0 Supreme(AP) 276; https://indiankanoon.org/doc/77959831/; **2018(3) ALT (Crl) 50(DB)(AP);**

unless the discrepancies are vital, they cannot affect the credibility of the witnesses as corroboration of evidence with mathematical niceties cannot be expected in criminal cases and trivial discrepancies ought not to obliterate an otherwise acceptable evidence
It is well settled that the testimony of an injured witness gains more prominence compared to the testimony of an eyewitness and unless concrete material is brought out in his cross-examination condemning the very case of the prosecution, it solely constitutes basis for recording conviction.
Aklula Chandraiah and another Vs The State of Andhra Pradesh; 2018(3) ALT (Crl) 66 (DB) (AP) ; http://distcourts.tap.nic.in/hcorders/2013/crla/crla_388_2013.pdf;

when a positive statement of the deceased is available on record, there is no need to assume the reasons for the death of the deceased
Though there is septicaemia, the primary cause is the injury and septicaemia is only a secondary cause and hence, held that the offence would fall under the third limb of Section 300 IPC.
The law is well settled that even in the absence of certification of a doctor also, a statement can be relied upon, if the Magistrate is satisfied with the mental fitness of the deponent: **Lingala Jhangeer Vs State of Telangana; 2018(3) ALT (Crl) 114(DB)(AP); http://distcourts.tap.nic.in/hcorders/2014/crla/crla_677_2014.pdf;**

A duty is cast on the prosecution to furnish proper explanation to the Court how the person who has been accused of assaulting the deceased, received injuries on his person in the same occurrence. We may note that the injuries alleged to have been caused are not properly explained. An alternative story is set up wherein the injuries are attributed to mob justice, such allegations without substantive evidence cannot be accepted.
Kumar Vs State; 2018 0 AIR(SC) 2386; 2018 2 Crimes(SC) 442; 2018 6 JT 85; 2018 7 SCC 536; 2018 5 Supreme 231; 2018 0 Supreme(SC) 463; 2018(3) ACC (Cri) 245; http://www.advocatekhoj.com/library/judgments/announcement.php?WID=10132

the absence of entries in the General Diary concerning the preliminary enquiry would not be per se illegal. Our attention is not drawn to any bar under any provision of CrPC barring investigating authority to investigate into matter, which may for some justifiable ground, not found to have been entered in the General Diary right after receiving the Confidential Information. It may not be out of context to mention that nothing found in the paragraph 120.8 of the Lalitha Kumari Case (Supra), justifies the conclusion reached by the High Court by placing a skewed and literal reading of the conclusions

reached by the Bench therein. It is well settled that judgments are not legislations, they have to be read in the context and background discussions.
State by Lokayuktha Police Vs H.Srinivas; 2018 0 AIR(SC) 2701; 2018 3 JLJR(SC) 31; 2018 5 JT 387; 2018 2 KLT(SN) 75; 2018 3 PLJR(SC) 171; 2018 7 SCC 572; 2018 5 Supreme 374; 2018 0 Supreme(SC) 494; 2018(3) SCC (Cri) 267; http://www.advocatekhoj.com/library/judgments/announcement.php?WID=10162

unless and untill ingredients under Section 463 are satisfied a person cannot be convicted under Section 465 by solely relying on the ingredients of Section 464, as the offence of forgery would remain incomplete.
Keeping in view the strict interpretation of penal statute i.e., referring to rule of interpretation wherein natural inferences are preferred, we observe that a charge of forgery cannot be imposed on a person who is not the maker of the same. As held in plethora of cases, making of a document is different than causing it to be made. As Explanation 2 to Section 464 further clarifies that, for constituting an offence under Section 464 it is imperative that a false document is made and the accused person is the maker of the same, otherwise the accused person is not liable for the offence of forgery.
Sheila Sebastian Vs R. Jawaharaj & Anr.; 2018 0 AIR(SC) 2434; 2018 2 Crimes(SC) 449; 2018 7 SCC 581; 2018 5 Supreme 239; 2018 0 Supreme(SC) 462; https://indiankanoon.org/doc/6537403/; 2018(3) SCC (Cri) 275;

The principle of 'Falsus in uno falsus in omnibus' has not been accepted in our country. [See Bhagwan Jagannath Markad v. State of Maharashtra, (2016) 10 scc 537 para 19] Even if some accused are acquitted on the ground that the evidence of a witness is unreliable, the other accused can still be convicted by relying on the evidence of the same witness. [See Gangadhar Behera v. State of Orissa, (2002) 8 scc 381 para 15] Minor contradictions and omissions in the evidence of a witness are to be ignored if there is a ring of truth in the testimony of a witness. [See State of U.P. v. Dan Singh, (1997) 3 scc 747 para 32]
State of A.P. Vs. Pullagummi Kasireddy Krishna Reddy; 2018 0 AIR(SC) 3277; 2018 6 JT 346; 2018 7 SCC 623; 2018 0 Supreme(SC) 689; 2018(3) SCC (Cri) 283; https://indiankanoon.org/doc/183235252/;

on account of long cohabitation, even if the relationship is held to be consensual and the petitioner is not held liable for the offence alleged, the petitioner can be fastened the civil liability treating the relationship to be de facto marriage in view of long cohabitation. This interpretation may have to be considered so that a girl is not subjected to any exploitation and is not rendered remediless even if a criminal offence is not made out. **Aloka Kumar Vs The State of Karnataka & Ors; 2018 7 SCC 729; 2018 0 Supreme(SC) 682; https://indiankanoon.org/doc/32720052/; 2018(3) SCC (Cri) 329.**

In Sessions Case No.58/98 against A-16 and A-17, no evidence was recorded independently. On the other hand, the evidence recorded in Sessions Case No.118/1992 was marked as evidence in Sessions Case No.58/1998. The Indian

Evidence Act, 1872 does not permit such a mode of proof of any fact barring in exceptional situations contemplated in Section 33. Entire Trial Vitiated.
This case, in our opinion, is a classic illustration of how the State failed in its primary constitutional responsibility of maintaining law and order by its ineffectiveness in the enforcement of criminal law. In our opinion, the reasons for such failure are many. Some of them are (i) inefficiency arising out of either incompetence or lack of proper training in the system of criminal investigation; (ii) corruption or political interference with the investigation of crime; (iii) less than the desirable levels of efficiency of the public prosecutors to correctly advise and guide the investigating agencies contributing to the failure of the proper enforcement of criminal law; and (iv) inadequate efficiency levels of the bar and the members of the Judiciary (an offshoot of the bar) which contributed to the overall decline in the efficiency in the dispensation of criminal justice system.
Over a period of time lot of irrelevant and unwarranted considerations have crept into the selection and appointment process of Public Prosecutors all over the country. If in a case like the one on hand where three people were killed and more than five people were injured, if charges are not framed in accordance with the mandate of law, the blame must be squarely taken by both the bar and the bench.
The following prophetic words of Justice V.R. Krishna Iyer [In Shivaji Sahabrao Bobade & Anr. v. State of Maharashtra, (1973) 2 scc 793, para 6] deserve to be etched on the walls of every criminal court in this country:
"6. … The cherished principles or golden thread of proof beyond reasonable doubt which runs through the web of our law should not be stretched morbidly to embrace every hunch, hesitancy and degree of doubt. The excessive solicitude reflected in the attitude that a thousand guilty men may go but one innocent martyr shall not suffer is a false dilemma. Only reasonable doubts belong to the accused. Otherwise any practical system of justice will then break down and lose credibility with the community. The evil of acquitting a guilty person light heartedly as a learned Author [Glanville Williams in 'Proof of Guilt'.] has sapiently observed, goes much beyond the simple fact that just one guilty person has gone unpunished. If unmerited acquittals become general, they tend to lead to a cynical disregard of the law, and this in turn leads to a public demand for harsher legal presumptions against indicted "persons" and more severe punishment of those who are found guilty. Thus, too frequent acquittals of the guilty may lead to a ferocious penal law, eventually eroding the judicial protection of the guiltless. …"
Vinubhai Ranchhodbhai Patel Vs. Rajivbhai Dudabhai Patel & Others ; 2018 0 AIR(SC) 2472; 2018 3 EastCrC(SC) 60; 2018 3 JLJR(SC) 292; 2018 7 JT 78; 2018 7 SCC 743; 2018(3) SCC(Cri) 743; 2018 0 Supreme(SC) 484; http://www.advocatekhoj.com/library/judgments/announcement.php?WID=10148;

Mere Abduction is not punishable, unless coupled with the other ingredients.
Kavita Chandrakant Lakhani Vs. State of Maharashtra & Anr.; 2018 0 AIR(SC) 2099; 2018 2 Crimes(SC) 504; 2018 3 SCC(Cri) 391; 2018 6 SCC 664; 2018 5 Supreme 1; 2018 0 Supreme(SC) 417; https://indiankanoon.org/doc/9713272/;

If the extra judicial confession inspires confidence, is voluntary and corroborated by independent evidence, convictio0n can be based on such confession. However, each

and every circumstance mentioned in the confession need not be separately and independently corroborated.
RAM LAL Vs STATE OF HIMACHAL PRADESH; 2018 0 Supreme(SC) 964; https://indiankanoon.org/doc/123334260/;

Statement u/s 161 may be treated as dying declaration after death, even after a long time if mentioning the manner of injury and cause of death.
PRADEEP BISOI @ RANJIT BISOI Vs. THE STATE OF ODISHA; 2018 0 Supreme(SC) 981; https://indiankanoon.org/doc/151109603/;

Any person found to be carrying prohibited weaponry, licensed or otherwise, during protests/demonstrations would prima facie be presumed to have an intention to commit violence and be proceeded in that regard as per law.
Miscreants found at the spot must be arrested.
Appropriate action must be taken against the person(s) giving call for violence under Sections 153A, 295A read with 298 and 425 of the Indian Penal Code, 1860.
Person(s) involved in such violence may be granted conditional bail upon depositing the quantified loss caused due to such violence or furnishing security for such quantified loss.
Such person(s) shall be liable to pay compensation for loss/damage to life and property.
Kodungallur Film Society & Anr. Vs. Union of India & Ors.; 2018 0 Supreme(SC) 961; https://indiankanoon.org/doc/139119795/

It is a settled legal position that the facts need not be self-probatory and the word "fact" as contemplated in Section 27 of the Evidence Act is not limited to "actual physical material object". 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. It includes a discovery of an object, the place from which it is produced and the knowledge of the accused as to its existence.
2018 0 Supreme(SC) 1075; Asar Mohammad and Ors. Vs. The State of U.P.; http://www.advocatekhoj.com/library/judgments/announcement.php?WID=10690

NOSTALGIA

PROCEDURE TO PROVE CONTRADICTION:
The word "duly proved" used in Section 162 Cr.P.C., came up for consideration before the Apex Court in V.K.Mishra's case [2015(2) ALD (Crl) 533 (SC)]. Dealing with the same, the Court held the words 'duly proved' used in Section 162 Cr.P.C., clearly show that the record of the statements of the witnesses, cannot be admitted in evidence straightaway nor can be looked into, but they must be duly proved for the purpose of contradiction by eliciting admissions from the witnesses during cross-examination and also during the cross-examination of the Investigating Officer. Statement before the Investigating Officer can be used for contradiction, but only after strict compliance of

Section 145 of the Evidence Act i.e., by drawing attention to the parts intended for contradiction.

The intention of legislature in framing Section 162 was to protect the accused against the user of the statements of witnesses made before the police during investigation, at the trial, presumably on the assumption that the said statements were not made under circumstances inspiring confidence. The section as well as proviso is intended to serve the interest of the accused. The section, while, it enacts an absolute bar against the statement made before a Police Officer being used for any purpose whatsoever, it enables the accused to rely upon it for a limited purpose of contradicting a witness in the manner provided under Section 145 of the Evidence Act by drawing his attention to parts of the statement intended for contradiction. It is to be noted here that the said statement cannot be used for corroboration for prosecution or a defence witness or even a court witness. Nor can it be used for contradicting a defence witness or a court witness. (Tahasildar Singh and another v. State of UP, AIR 1959 SC 1012).

Therefore, the statement of witness made before the Investigating Officer under Section 161 Cr.P.C., can be used for the purpose of contradiction, but not for corroboration. The statement recorded under Section 161 Cr.P.C., is expressly made inadmissible except to contradict the maker there of, as envisaged under Section 145 of the Evidence Act. The procedure that is to be followed, which would be in conformity with Section 145 of the Evidence Act i.e. to contradict the evidence given by the prosecution witness at the trial, with the statement made by him before the police during the investigation. That is, to draw the attention of the witness to that part of the contradictory statement, which he made before the police and question him whether he in fact made the statement. If the witness admits, having made the particular statement of the police, that admission will go into the evidence and will be recorded as part of the evidence of the witness and can be relied upon by the accused for establishing the contradiction. However, if, on the other hand, the witness denies to have made such a statement before the police, the particular portion of the statement recorded should be marked for identification and when the Investigating Officer comes into the witness box he should be questioned as to whether such a statement was made to him by the witnesses during the course of investigation. The answers given would prove the statement and the same shall be treated as evidence.

In V.K.Mishra and another v State of Uttarakhand and another, 2015(2) ALD (Crl) 533 (SC), the Apex Court held as under:

"15. Section 162 Cr.P.C. bars use of statement of witnesses recorded by the police except for the limited purpose of contradiction of such witnesses as indicated there. The statement made by a witness before the police under Section 161(1) Cr.P.C. can be used only for the purpose of contradicting such witness on what he has stated at the trial as laid down in the proviso to Section 162 (1) Cr.P.C. The statements under Section 161 Cr.P.C. recorded during the investigation are not substantive pieces of evidence but can be used primarily for the limited purpose:- (i) of contradicting such witness by an accused under Section 145 of Evidence Act; (ii) the contradiction of such

witness also by the prosecution but with the leave of the Court and (iii) the reexamination of the witness if necessary."

Sec 228-A IPC

State Of Punjab Versus Ramdev Singh; 2004 0 AIR(SC) 1290; 2003 0 AIR(SCW) 6947; 2004 1 CCR(SC) 41; 2004 1 Crimes(SC) 149; 2004 1 JCC 55; 2003 10 JT 416; 2003 2 Scale 645; 2003 10 SCC 675; 2004 0 SCC(Cri) 307; 2003 8 Supreme 791; 2003 0 Supreme(SC) 1290;

We do not propose to mention name of the victim. Section 228-A of IPC makes disclosure of identity of victim of certain offences punishable. Printing or publishing name of any matter which may make known the identity of any person against whom an offence under Sections 376, 376-A, 376-B, 376-C, or 376-D is alleged or found to have been committed can be punished. True it is, the restriction, does not relate to printing or publication of judgment by High Court or Supreme Court. But keeping in view the social object of preventing social victimization or ostracism of the victim of a sexual offence for which Section 228-A has been enacted, it would be appropriate that in the judgments, be it of this Court. High Court or lower Court, the name of the victim should not be indicated. We have chosen to describe her as victim in the judgment. (See State of Karnataka vs. Puttaraja (2003 (8) Supreme 364)

NEWS

- GOVERNMENT OF TELANGANA - Public Services – Prosecuting Officers – Sri A.Shankar, Additional Public Prosecutor Grade-I working as Legal Advisor in the Office of the Director General, Telangana State Disaster Response and Fire Services Department, Hyderabad on Foreign Service Deputation – Extension of deputation for a further period of two years (i.e., 2nd and 3rd year) from 16-12-2017 to 15-12-2019 – Orders – Issued.- G.O.Rt.No. 1460; HOME (COURTS.A1) DEPARTMENT Dated: 10-10-2018.

- GOVERNMENT OF TELANGANA- Public Services – Prosecuting Officers – Smt. A.Lakshmi Manogna, Assistant Public Prosecutor working as Legal Advisor-cum-Special Public Prosecutor in the O/o. Director General, Anti Corruption Bureau, Hyderabad on Foreign Service Deputation – Extension of deputation for a further period of two years (i.e., 4th and 5th year) from 31-07-2018 to 30-07-2020 – Orders – Issued. G.O.Rt.No. 1488; HOME (COURTS.A1) DEPARTMENT; Dated: 12-10-2018.

- GOVERNMENT OF TELANGANA- LAW OFFICERS – Ranga Reddy District – Smt. P.Manjula Devi, Additional Public Prosecutor Grade-II, Principal Assistant Sessions Court, Ranga Reddy District placed as incharge of the post of Additional Public Prosecutor, IX Additional Sessions Court-

cum-IX Additional Metropolitan Sessions (Fast Track) Court, Ranga Reddy District – Ratification – Orders – Issued.- G.O.Rt.No. 1513; HOME (COURTS.A) DEPARTMENT; Dated: 22-10-2018

ON A LIGHTER VEIN

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SAVE PAPER SAVE TREES

Vol- VII
Part-12

Prosecution Replenish

An Endeavour for Learning and Excellence

December, 2018

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

You will continue to suffer if you have an emotional reaction to everything that is said to you. True power is sitting back and observing things with logic. True power is restraint. IF words control you, that means everyone else can control you. Breathe and allow things to pass

-Warren Buffett

Excerpts from Joseph Shine Vs UOI.

"भर्तृभ्रातृ पितृजाति श्रवश्रुश्वसुर देवरैः।
बन्धुभिश्च स्त्रियः पूज्यां भूषणाच्छादनाशनैः।।"

Bhartr bhratr pitrijnati swasruswasuradevaraih
Bandhubhisca striyah pujyah bhusnachhadanasnaih

A free translation of the aforesaid is as follows: —

> The women are to be respected equally on a par with husbands, brothers, fathers, relatives, in-laws and other kith and kin and while respecting, the women gifts like ornaments, garments, etc. should be given as token of honour.‖

"अतुलं तत्र तत्तेजः सर्वदेवशरीरजम्।
एकस्थं तदभून्नारी व्याप्तलोकत्रयं त्विषा।।"

Atulam yatra tattejah sarvadevasarirajam
Ekastham tadabhunnari vyaptalokatrayam tvisa

A free translation of the aforesaid is reproduced below: —

> The incomparable valour (effulgence) born from the physical frames of all the gods, spreading the three worlds by its radiance and combining together took the form of a woman.‖

CITATIONS

mere matching of the blood group cannot lead to the conclusion of the culpability of the accused, in the absence of a detailed serological comparison, since millions of people would have the same blood group

in the absence of any witness identifying the weapon of offence used in the commission of crime, or the opinion of the post-mortem doctors that the injury was possible by the said knife, or the FSL report regarding the blood of the deceased being found on the said knife, the knife cannot be said to be connected with the offence.

It is true that under Section 4 thereof police is competent to take fingerprints of the accused but to dispel any suspicion as to its bona fides or to eliminate the possibility of fabrication of evidence it was eminently desirable that they were taken before or under the order of a Magistrate. **(2018) 3 SCC (Cri) 486; 2018 0 AIR(SC) 3131; 2018 3 BomCR(Cri) 300; 2018 3 Crimes(SC) 173; 2018 0 CrLJ 3624; 2018 250 DLT 420; 2018 2 KLD 227; 2018 8 SCC 24;** https://indiankanoon.org/doc/148082208/; **Sonvir @ Somvir Vs. The State of NCT of Delhi.**

the FIR need not contain an exhaustive account of the incident.

A FIR is not an encyclopaedia of the case

It is a common phenomenon that the witnesses are rustic and can develop a tendency to exaggerate. This, however, does not mean that the entire testimony of such witnesses is falsehood. Minor contradictions in the testimony of the witnesses are not fatal to the case of the prosecution.

any member of the unlawful assembly can be prosecuted for the criminal act; it need not to be proved that he had committed an overt act:
The Forensic Science Laboratory report discloses that the samples collected from the scene of the offence had bloodstains of human origin. However, since the bloodstains were disintegrated by the time the bloodstains were examined by the Forensic Science Laboratory, the blood group could not be determined. For the same, the accused cannot be unpunished, more particularly when the bloodstains were found of human origin.
(2018) 3 SCC (Cri) 517; 2018 0 AIR(SC) 3199; 2018 3 Crimes(SC) 95; 2018 0 CrLJ 3901; 2018 6 JT 395; 2018 2 KLD 299; 2018 8 SCC 127; 2018 6 Supreme 294; 2018 0 Supreme(SC) 697; Prabhu Dayal Vs. The State of Rajasthan; http://www.advocatekhoj.com/library/judgments/announcement.php?WID=10236

When the review will be maintainable:

(i) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;
(ii) Mistake or error apparent on the face of the record;
(iii) Any other sufficient reason. The words “any other sufficient reason” have been interpreted in Chhajju Ram v. Neki and approved by this Court in Moran Mar Basselios Catholicos v. Most Rev. Mar Poulose Athanasius to mean “a reason sufficient on grounds at least analogous to those specified in the rule”. The same principles have been reiterated in Union of India v. Sandur Manganese & Iron Ores Ltd.

20.2. When the review will not be maintainable:

(i) A repetition of old and overruled argument is not enough to reopen concluded adjudications.
(ii) Minor mistakes of inconsequential import.
(iii) Review proceedings cannot be equated with the original hearing of the case.
(iv) Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.
(v) A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected but lies only for patent error.
(vi) The mere possibility of two views on the subject cannot be a ground for review.
(vii) The error apparent on the face of the record should not be an error which has to be fished out and searched.
(viii) The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition.
(ix) Review is not maintainable when the same relief sought at the time of arguing the main matter had been negatived.”

Upon consideration of the evidence of PW-1 and other evidences including scientific evidence, this Court has arrived at the conclusion that accused no.2-Mukesh was

driving the bus. Issue whether accused No.2-Mukesh has a driving licence for driving the bus or not has no relevance
(2018) 3 SCC (Cri) 531; 2018 0 AIR(SC) 3220; 2018 3 BomCR(Cri) 628; 2018 3 ILR(Ker) 181; 2018 6 JT 546; 2018 4 KLT(SN) 29; 2018 8 SCC 149; 2018 0 Supreme(SC) 704; https://indiankanoon.org/doc/164573856/; Mukesh Vs State of NCT of Delhi.

a confessional statement of a co-accused cannot by itself be taken as a substantive piece of evidence against another co-accused and can at best be used or utilized in order to lend assurance to the Court. In the absence of any substantive evidence it would be inappropriate to base the conviction of the appellant purely on the statements of co-accused.
2018 2 ALD Crl 763; (2018) 3 SCC (Cri) 567; 2018 0 AIR(SC) 3574; 2018 3 BomCR(Cri) 585; 2018 3 Crimes(SC) 464; 2018 0 CrLJ 4346; 2018 3 ILR(Ker) 517; 2018 2 KLD 419; 2018 3 KLT 1027; 2018 3 MLJ(Cri) 753; 2018 8 SCC 271; 2018 0 Supreme(SC) 744; Surinder Kumar Khanna Vs. Intelligence Officer Directorate of RevenueIntelligence;https://www.sci.gov.in/supremecourt/2017/36059/36059_2017_Judgement_31-Jul-2018.pdf;

there is inherent improbability in the version of the respondent - complainant insofar as the offence under Section 376 IPC is concerned. This is because, according to the complainant, she came to know about the factum of the earlier marriage of the accused appellant in the year 2014 though the parties were married in the year 2009. That apart, in the complaint dated 19th December, 2014 it is stated that the same has been lodged after one year of the knowledge of the previous marriage of the accused appellant.

5. In view of the inherent improbability in the case of the complainant we are of the view that though the trial against the accused appellant under Sections 493, 494, 495, 496, 420, 506 IPC and under Section 67A of the Information Technology Act, 2000 should continue the supplementary charge-sheet insofar as the offence under Section 376 IPC is concerned ought to be interfered with by us. We order accordingly.
2018 0 AIIMR(Cri)(SC) 2303; 2017 4 Crimes(SC) 271; 2018 12 SCC 625; 2017 8 Supreme 268; 2017 0 Supreme(SC) 1067; Karan Singh Tyagi Vs.State of U.P. & Others; https://indiankanoon.org/doc/170884855/;

As regards the claim of appellant that non-identification of the accused by the witness would not substantiate the prosecution case, admittedly no prosecution witness has identified the accused—appellant which does not mean that the prosecution case against the accused is on false footing. As a general rule, identification tests do not constitute substantive evidence. The purpose of identification test is only to help the investigating agency as to whether the investigation into the offence is proceeding in a right direction or not. In our view, non-identification of the appellant by any prosecution witness would not vitiate the prosecution case.
The identification parade belongs to the stage of investigation, and there is no provision in the Code which obliges the investigating agency to hold or confers a right upon the accused to claim, a test identification parade. They do not constitute substantive evidence and these parades are essentially governed by Section 162 of

the Code. Failure to hold a test identification parade would not make inadmissible the evidence of identification in Court. The weight to be attached to such identification should be a matter for the Courts of fact. In appropriate cases it may accept the evidence of identification even without insisting on corroboration [See : Kanta Prashad v. Delhi Administration, 1958 CriLJ 698 and Vaikuntam Chandrappa and Ors. v. State of Andhra Pradesh, AIR 1960 SC 1340].
Undoubtedly, 'motive' plays significant role in a case based on circumstantial evidence where the purpose would be to establish this important link in the chain of circumstances in order to connect the accused with the crime. But, for the case on hand, proving motive is not an important factor when abundant direct evidence is available on record. The confessional statement of the appellant itself depicts the motive of the team of accused in pursuit of which they committed the robbery at the house of informant and the appellant being part of it.
2018 2 ALD (Crl) 757; 2018 0 AIR(SC) 3592; 2018 3 Crimes(SC) 477; 2018 0 Supreme(SC) 757; Raju Manjhi Vs State of Bihar; https://indiankanoon.org/doc/198713922/.

P.W.3 is an absolutely independent witness and had no reason to falsely implicate the accused. As noted above, it was not even suggested to him that he had any reason to speak falsehood. The suggestion of the defence that the death occurred due to the previous injuries and also the deceased falling from the bed cannot be accepted even with a pinch of salt for, by the fall from the bed, five injuries on the neck, which include deep contusions to muscles, would not have been possible. The undeniable presence of the accused at the time of the occurrence squarely attracts Section 106 of the Indian Evidence Act, 1872, which throws burden on the person to explain the fact which is especially within his/her knowledge. While taking the incredible stand that due to the hard/blunt object coming into contact with the neck, the deceased sustained those injuries, the accused failed to discharge the burden cast on her under the aforementioned provision of law.
2018 0 Supreme(AP) 180; 2018 2 ALD Crl 777; Bathula Ademma Vs State of Andhra Pradesh; https://indiankanoon.org/doc/180463678/;

there are frivolous litigations but that does not mean that there are no innocent sufferers who eagerly wait for justice to be done. That apart, certain criminal offences destroy the social fabric. Every citizen gets involved in a way to respond to it; and that is why the power is conferred on the Public Prosecutor and the real duty is cast on him/her. He/she has to act with responsibility. He/she is not to be totally guided by the instructions of the Government but is required to assist the Court; and the Court is duty bound to see the precedents and pass appropriate orders.
2018 (3) ALT (Crl) 162(SC); 2018 0 AIR(SC) 4265; 2018 3 Crimes(SC) 420; 2018 4 ILR(Ker) 1; 2018 4 KHC 715; 2018 0 Supreme(SC) 883; Abdul Wahab K Vs State of Kerala; https://indiankanoon.org/doc/124284991/;

The principle of 'Falsus in uno falsus in omnibus' has not been accepted in our country. [See Bhagwan Jagannath Markad v. State of Maharashtra, (2016) 10 SCC 537 para 19] Even if some accused are acquitted on the ground that the evidence of a witness is unreliable, the other accused can still be convicted by relying on the

evidence of the same witness. [See Gangadhar Behera v. State of Orissa, (2002) 8 SCC 381 para 15] Minor contradictions and omissions in the evidence of a witness are to be ignored if there is a ring of truth in the testimony of a witness.
The rejection of the evidence of PW-2, 3 and 5 by the High Court on the ground that they did not attribute specific overt acts to each accused is also erroneous.
Evidence of close relatives cannot be thrown out altogether for that reason.
2018 0 AIR(SC) 3277; 2018 3 Crimes(SC) 104; 2018 0 CrLJ 4357; 2018 6 JT 346; 2018 2 KLD 254; 2018 7 SCC 623; 2018 6 Supreme 216; 2018 0 Supreme(SC) 689; http://www.advocatekhoj.com/library/judgments/announcement.php?WID=10228 ; 2018 (3) ALT (Crl) 168(SC); The State of Andhra Pradesh Vs. Pullagummi Kasi Reddy Krishna Reddy @ Rama Krishna Reddy & Ors.

If the investigating officer does not find it necessary to arrest an accused person during investigations, a strong case should be made out for placing that person in judicial custody after a charge sheet is filed.
2018 (3) ALT (Crl) 180(SC); 2018 0 AIR(SC) 980; 2018 0 CrLJ 2161; 2018 2 JT 466; 2018 2 MLJ(Cri) 201; 2018 2 Scale 285; 2018 3 SCC 22; 2018 1 SCC(Cri) 675; 2018 0 Supreme(SC) 119; https://indiankanoon.org/doc/122663958/; Dataram Singh Vs State of Uttar Pradesh.

Concept of certainty of law should be allowed to prevail and govern.
A Bench disagreeing with decision of a larger or coequal Bench can only refer the matter to a larger Bench. Secondly, if the matter has already come up for hearing before a Bench of larger quorum and that Bench itself feels that the view of the law taken by a Bench of lesser quorum, which is in doubt, needs correction or reconsideration then by way of exception it may proceed to hear the case and examine the correctness of the previous decision in question dispensing with the need of a specific reference or the order of the Chief Justice constituting the Bench and such listing.
Manifest arbitrariness invalidates legislation.
Section 497 is manifestly arbitrary and it violates Articles 14, 15 and 21; hence is unconstitutional.
Adultery does not fit into the concept of a crime. It should better be left as a ground for divorce.
Consequent upon section 497 IPC being declared unconstitutional, its procedural provision in section 198 CrPC also becomes unconstitutional.
Article 15 refers to State making laws. Cannot include existing law.
In contextual interpretation ‘context’ means the statute as a whole, the previous state of law, other statutes in pari materia, the general scope of the statute and the mischief that it was intended to remedy.
There is no presumption of constitutionality in respect of pre-constitutional law.
Sowmithri Vishnu and V. Revathi overruled.
2018(3) ALD (Crl) 205(SC); 2018 0 AIR(SC) 4898; 2018 4 ILR(Ker) 79; 2018 4 KHC(SN) 18; 2018 2 KLD 627; 2018 7 Supreme 1; 2018 0 Supreme(SC) 955; Joseph Shine Vs. Union of India.

a person proposed to be used as a witness in a criminal case may fall under two categories. The first is when a witness is summoned by serving a notice under Section 160(1) Cr.P.C and the second is when he is summoned to the police station even without serving a notice under Section 160(1) Cr.P.C.

17. If the petitioner had been summoned to the police station after serving a notice under Section 160(1) Cr.P.C., the petitioner could not have had any grievance. This is in view of the fact that he is not obliged to sign any statement and hence if the Police Officer prepares a statement completely different from what the petitioner stated, it will be open to the petitioner to speak the truth when he is in the witness box. Moreover, if the story had taken this particular route, the petitioner would not even have come to know about what was recorded, until he is confronted in the witness box, with a false statement prepared by the Police in his name under Section 161 Cr.P.C.

18. If the story had proceeded on the line indicated in the second alternative viz., that of being summoned without serving a notice on him, the petitioner should have sent a notice either by himself or through his lawyer to the Police refusing to appear before the Police Officer unless a notice under Section 160(1) Cr.P.C was served on him. The moment such a notice is served, any prudent Police Officer will avoid enlisting such a person as a witness, unless the Police Officer himself wants to derail the investigation. At least at the stage of Section 161 of the Code, no Police Officer would bet upon an unwilling horse.

Seeking the registration of a criminal complaint against the Investigation Officer, especially at the instance of a person sought to be made a witness, even during the course of investigation into another criminal complaint, would sabotage the investigation. If even during the course of investigation by an Investigating Officer, a criminal complaint is registered against the very same Investigating Officer about the manner in which he is collecting evidence, the same would derail the investigation into the criminal complaints

2018(3) ALT (Crl) 258(DB); 2018 4 ALD 661; 2018 0 Supreme(AP) 252; Aijaz Ahmed Vs UOI.; https://indiankanoon.org/doc/183778284/;

Mere summoning a person by the police to enquire in a matter will not amount to defamation; **2018(3) ALT (Crl) 375;**

http://distcourts.tap.nic.in/hcorders/2011/crlp/crlp_4786_2011.pdf;

R.PRABHAVATHI, PUTTUR, CHITTOOR DISTRICT AND ANOTHER vs PIMPOLU MURALI, PUTTUR, CHITTOR DISTRICT AND ANR, REP.BY PP.

As per the alleged variance between the medical and ocular evidence concerned, it is well-settled that oral evidence has to get primacy and the medical evidence is basically opinionative and that the medical evidence states that the injury could have been caused in the manner alleged and nothing more. The testimony of the eye witness cannot be thrown out on the ground of inconsistency.

The arguments advanced by the learned counsel for the appellant that PWs 2 and 3 have criminal antecedents and were involved in other criminal cases are not relevant to be reckoned with.

Delay in setting the law into motion by lodging the complaint is normally viewed by the courts in suspicion because there is possibility of concoction of evidence against the accused. In such cases, it becomes necessary for the prosecution to satisfactorily

explain the delay in registration of FIR. But there may be cases where the delay in registration of FIR is inevitable and the same has to be considered. Even a long delay can be condoned if the witness has no motive for falsely implicating the accused. **2018 0 Supreme(SC) 1176; Palani Vs State of Tamilnadu.**

NOSTALGIA

in the case of Amarsang Nathaji as Himself and as Karta and Manager Vs. Hardik Harshadbhai Patel and others, (2017) 1 scc 113 has dealt with sec 340 CrPC in detail.

"6. The mere fact that a person has made a contradictory statement in a judicial proceeding is not by itself always sufficient to justify a prosecution under Sections 199 and 200 of the Indian Penal Code (45 of 1860) (hereinafter referred to as "the IPC"); but it must be shown that the defendant has intentionally given 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. Even after the above position has emerged also, still the court has to form an opinion that it is expedient in the interests of justice to initiate an inquiry into the offences of false evidence and offences against public justice and more specifically referred in Section 340(1) of the CrPC, having regard to the overall factual matrix as well as the probable consequences of such a prosecution.(See K.T.M.S. Mohd. And Another vs. Union of India), (1992) 3 scc 178. The court must be satisfied that such an inquiry is required in the interests of justice and appropriate in the facts of the case."

NDPS ACT:

In fact regarding such requirement as to what is a compliance of section 50, the five judge bench expression of the Apex Court in Vijayasinh Chandubha Jadeja Vs. State of Gujarat(2011(1) SCC 609)- observed categorically also with reference to the amendment to section 50 by Act 9 of 2001 and by clarifying the earlier constitutional bench expressions in Baldev Singh(supra) and another expression in Karnail Singh Vs. State of Haryana(2009 (8) SCC 539) on the section 50 compliance that, informing to the suspect under section 50 of the NDPS Act of right to be searched of his person in the presence of any Gazetted Officer or Magistrate can be either oral or in writing and it is any of such non-compliance that too it must be shown that failure to apply such mandatory provision of Section 50 of the NDPS Act cause prejudice to the accused and then only it has to render such recovery of illicit article from the suspect inadmissible to vitiate the conviction, if the conviction is recorded solely on the basis of such illicit article recovered by violating of the section 50 of the NDPS Act by searching a person. It is also observed that whether complied with or not and any prejudice caused or not must be matters in trial to appreciate from evidence to be let in.

NEWS

- GOVERNMENT OF ANDHRA PRADESH ABSTRACT Public Services – Prosecution Department - Shifting of posts of Additional Public Prosecutor Grade-I from the Courts with no pendency of cases to the other Courts with pendency of cases - in Nellore, Visakhapatnam and Vijayawada in the interest of justice and administration – Orders – Issued. G.O.RT.No. 1014 HOME (COURTS.A) DEPARTMENT Dated: 06-11-2018

- GOVERNMENT OF ANDHRA PRADESH Public Services – Prosecution Department - Shifting of posts of Additional Public Prosecutor Grade-I from the Courts with no pendency of cases to the other Courts with pendency of cases - in Nellore, Visakhapatnam and Vijayawada in the interests of justice and administration – Errata to G.O.Rt.No.1014, Home (Courts.A) Department, Dated.06-11-2018 - Orders-Issued. G.O.RT.No. 1028 HOME (COURTS.A) DEPARTMENT Dated: 12-11-2018
- GOVERNMENT OF ANDHRA PRADESH Public Services – A.P. State Prosecution Services - Promotion of Smt.Rafat, Additional Public Prosecutor Grade-I to the post of Public Prosecutors/Joint Director of Prosecutions – Postings – Orders – Issued. G.O.Rt.No.1065 HOME (COURTS.A) DEPARTMENT Dated:27-11-2018.

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