Prosecution Replenish

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Aano Bhadra Kratvo Yantu Viswatah (Rig Ved)

Let all Noble thoughts come to us from all directions

CITATIONS

2021 0 Supreme(SC) 760; Phool Singh Vs. The State of Madhya Pradesh; Criminal Appeal No. 1520 of 2021; Decided on : 01-12-2021

the prosecutrix has fully supported the case of the prosecution. She has been consistent right from the very beginning. Nothing has been specifically pointed out why the sole testimony of the prosecutrix should not be believed. Even after thorough cross-examination, she has stood by what she has stated and has fully supported the case of the prosecution. We see no reason to doubt the credibility and/or trustworthiness of the prosecutrix. The submission on behalf of the accused that no other independent witnesses have been examined and/or supported the case of the prosecution and the conviction on the basis of the sole testimony of the prosecutrix cannot be sustained is concerned, the aforesaid has no substance.

2021 0 Supreme(SC) 798; Jaikam Khan Vs. The State of Uttar Pradesh; Criminal Appeal Nos. 434-436, 437-439, 440-441, 442 of 2020; Decided On : 15-12-2021(Three Judge Bench)

According to PW-1 Ali Sher Khan and PW-2 Jaan Mohammad, a large number of villagers had gathered at the spot after the incident. However, none of the independent witnesses have been examined by the prosecution. Since the witnesses examined on behalf of the prosecution are interested witnesses, non-examination of independent witnesses, though available, would make the prosecution version doubtful.

Insofar as the reliance placed by Shri Vinod Diwakar, learned AAG on the burden not being discharged by the accused and no explanation given by them in their Section 313 Cr.P.C. statement is concerned, it is trite law that only after the prosecution discharges its burden of proving the case beyond reasonable doubt, the

burden would shift on the accused. It is not necessary to reiterate this proposition of law.

The evidence of PW-9 Brahmesh Kumar Yadav (I.O.) would show that though fingerprints were taken at the spot, the fingerprint expert's report is not placed on record. Similarly, his further evidence would reveal that though he had come to the spot with the dog squad, report of the dog squad is also not placed on record. In our view, the said also casts a doubt with regard to the genuineness of the prosecution case.

2021 0 Supreme(SC) 801; Parveen @ Sonu Vs. The State of Haryana : Criminal Appeal No.1571 of 2021 (Arising out of S.L.P.(Crl.)No.5438 of 2020); Decided on : 07-12-2021

Except the alleged confessional statements of the co- accused and in absence of any other corroborative evidence, it is not safe to maintain the conviction and sentence imposed upon the Appellant.

2021 0 Supreme(SC) 802; Mohd Zahid Vs State through NCB; Criminal Appeal No. 1457 of 2021; Decided on : 07-12-2021

the principles of law that emerge are as under:

(i) if a person already undergoing a sentence of imprisonment is sentenced on a subsequent conviction to imprisonment, such subsequent term of imprisonment would normally commence at the expiration of the imprisonment to which he was previously sentenced;

(ii) ordinarily the subsequent sentence would commence at the expiration of the first term of imprisonment unless the court directs the subsequent sentence to run concurrently with the previous sentence;

(iii) the general rule is that where there are different transactions, different crime numbers and cases have been decided by the different judgments, concurrent sentence cannot be awarded under Section 427 of Cr.PC;

(iv) under Section 427 (1) of Cr.PC the court has the power and discretion to issue a direction that all the subsequent sentences run concurrently with the previous sentence, however discretion has to be exercised judiciously depending upon the nature of the offence or the offences committed and the facts in situation. However, there must be a specific direction or order by the court that the subsequent sentence to run concurrently with the previous sentence.

No leniency should be shown to an accused who is found to be guilty for the offence under the NDPS Act. Those persons who are dealing in narcotic drugs are instruments in causing death or in inflicting death blow to a number of innocent young victims who are vulnerable. Such accused causes deleterious effects and deadly impact on the society. They are hazard to the society. Such organized activities of clandestine smuggling of narcotic drugs and psychotropic substances into this country and illegal trafficking in such drugs and substances have a deadly impact on the society as a whole. Therefore, while awarding the sentence or punishment in case of NDPS Act, the interest of the society as a whole is required to be taken into consideration. Therefore, even while applying discretion under Section 427 of Cr.PC, the discretion shall not be in favour of the accused who is found to be

indulging in illegal trafficking in the narcotic drugs and psychotropic substances. As observed hereinabove, even while exercising discretion under Section 427 of Cr.PC to run subsequent sentence concurrently with the previous sentence, the discretion is to be exercised judiciously and depending upon the offence/offences committed. Therefore, considering the offences under the NDPS Act which are very serious in nature and against the society at large, no discretion shall be exercised in favour of such accused who is indulging into the offence under the NDPS Act.

2021 0 Supreme(SC) 809; Kuljit Singh and Another Vs. The State of Punjab : Criminal Appeal No. 572 of 2012; Decided On : 08-12-2021(THREE JUDGE BENCH)

A sweeping statement that the husband and in-laws of the deceased had inflicted cruelty or that the husband and his mother had done so, without specifying their roles or without stating the specific instances, will not be sufficient to hold the accused guilty for the offence under section 304-B IPC.

2021 0 Supreme(SC) 811; Bharat Chaudhary Vs. Union of India ; Petition For Special Leave To Appeal (Crl.) No. 5703 OF 2021 With Raja Chandrasekharan Vs. The Intelligence Officer, Directorate Of Revenue Intelligence ; Petition for Special Leave to Appeal (Crl.) No. 8919 of 2021; Decided on : 13-12-2021

In the absence of any clarity so far on the quantitative analysis of the samples, the prosecution cannot be heard to state at this preliminary stage that the petitioners have been found to be in possession of commercial quantity of psychotropic substances as contemplated under the NDPS Act.

In the absence of any psychotropic substance found in the conscious possession of A-4, we are of the opinion that mere reliance on the statement made by A-1 to A-3 under Section 67 of the NDPS Act is too tenuous a ground to sustain the impugned order dated 15th July, 2021(Reversal of Bail). This is all the more so when such a reliance runs contrary to the ruling in Tofan Singh ([2021] 4 SCC 1). The impugned order qua A-4 is, accordingly, quashed

2021 0 Supreme(SC) 814; N. Raghavender Vs. State of Andhra Pradesh, CBI ; Criminal Appeal No. 5 of 2010; Decided on : 13-12-2021

The alleged victim did not raise any complaint. He was neither included in the inquiry nor in investigation. He was also not examined in the court. This leads to a inference that he was not examined as he would speak against the prosecution.

Ingredients necessary to prove a charge under Section 409 IPC:

41. Section 409 IPC pertains to criminal breach of trust by a public servant or a banker, in respect of the property entrusted to him. The onus is on the prosecution to prove that the accused, a public servant or a banker was entrusted with the property which he is duly bound to account for and that he has committed criminal breach of trust. (See: Sadupati Nageswara Rao v. State of Andhra Pradesh, (2012) 8 SCC 547).

42. The entrustment of public property and dishonest misappropriation or use thereof in the manner illustrated under Section 405 are a sine qua non for making an offence punishable under Section 409 IPC. The expression ‘criminal breach of trust’

is defined under Section 405 IPC which provides, inter alia, that whoever being in any manner entrusted with property or with any dominion over a property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property contrary to law, or in violation of any law prescribing the mode in which such trust is to be discharged, or contravenes any legal contract, express or implied, etc. shall be held to have committed criminal breach of trust. Hence, to attract Section 405 IPC, the following ingredients must be satisfied:

(i) Entrusting any person with property or with any dominion over property;

(ii) That person has dishonestly mis-appropriated or converted that property to his own use;

(iii) Or that person dishonestly using or disposing of that property or wilfully suffering any other person so to do in violation of any direction of law or a legal contract.

43. It ought to be noted that the crucial word used in Section 405 IPC is 'dishonestly' and therefore, it pre-supposes the existence of mens rea. In other words, mere retention of property entrusted to a person without any misappropriation cannot fall within the ambit of criminal breach of trust. Unless there is some actual use by the accused in violation of law or contract, coupled with dishonest intention, there is no criminal breach of trust. The second significant expression is 'mis-appropriates' which means improperly setting apart for ones use and to the exclusion of the owner.

44. No sooner are the two fundamental ingredients of 'criminal breach of trust' within the meaning of Section 405 IPC proved, and if such criminal breach is caused by a public servant or a banker, merchant or agent, the said offence of criminal breach of trust is punishable under Section 409 IPC, for which it is essential to prove that:

(i) The accused must be a public servant or a banker, merchant or agent;

(ii) He/She must have been entrusted, in such capacity, with property; and

(iii) He/She must have committed breach of trust in respect of such property.

45. Accordingly, unless it is proved that the accused, a public servant or a banker etc. was 'entrusted' with the property which he is duty bound to account for and that such a person has committed criminal breach of trust, Section 409 IPC may not be attracted. 'Entrustment of property' is a wide and generic expression. While the initial onus lies on the prosecution to show that the property in question was 'entrusted' to the accused, it is not necessary to prove further, the actual mode of entrustment of the property or misappropriation thereof. Where the 'entrustment' is admitted by the accused or has been established by the prosecution, the burden then shifts on the accused to prove that the obligation vis-à-vis the entrusted property was carried out in a legally and contractually acceptable manner.

Ingredients necessary to prove a charge under Section 420 IPC:

46. Section 420 IPC, provides that whoever cheats and thereby dishonestly induces a person deceived to deliver any property to any person, or to make, alter or destroy, the whole or any part of valuable security, or anything, which is signed or sealed, and which is capable of being converted into a valuable security, shall be liable to be punished for a term which may extend to seven years and shall also be liable to fine.

47. It is paramount that in order to attract the provisions of Section 420 IPC, the prosecution has to not only prove that the accused has cheated someone but also that by doing so, he has dishonestly induced the person who is cheated to deliver property. There are, thus, three components of this offence, i.e., (i) deception of any person, (ii) fraudulently or dishonestly inducing that person to deliver any property to any person, and (iii) mens rea of the accused at the time of making the inducement. It goes without saying that for the offence of cheating, fraudulent and dishonest intention must exist from the inception when the promise or representation was made.

48. It is equally well-settled that the phrase 'dishonestly' emphasizes a deliberate intention to cause wrongful gain or wrongful loss, and when this is coupled with cheating and delivery of property, the offence becomes punishable under Section 420 IPC. Contrarily, the mere breach of contract cannot give rise to criminal prosecution under Section 420 unless fraudulent or dishonest intention is shown right at the beginning of the transaction. It is equally important that for the purpose of holding a person guilty under Section 420, the evidence adduced must establish beyond reasonable doubt, mens rea on his part. Unless the complaint showed that the accused had dishonest or fraudulent intention **'at the time the complainant parted with the monies'**, it would not amount to an offence under Section 420 IPC and it may only amount to breach of contract.

Ingredients necessary to prove a charge under Section 477-A IPC:

49. The last provision of IPC with which we are concerned in this appeal, is Section 477A, which defines and punishes the offence of 'falsification of accounts'. According to the provision, whoever, being a clerk, officer or servant, or employed or acting in that capacity, wilfully and with intent to defraud, destroys, alters, mutilates or falsifies any book, electronic record, paper, writing, valuable security or account which belongs to or is in possession of his employer, or has been received by him for or on behalf of his employer, or wilfully and with intent to defraud, or if he abets to do so, shall be liable to be punished with imprisonment which may extend to seven years. This Section through its marginal note indicates the legislative intention that it only applies where there is falsification of accounts, namely, book keeping or written accounts.

50. In an accusation under Section 477A IPC, the prosecution must, therefore, prove—(a) that the accused destroyed, altered, mutilated or falsified the books, electronic records, papers, writing, valuable security or account in question; (b) the accused did so in his capacity as a clerk, officer or servant of the employer; (c) the books, papers, etc. belong to or are in possession of his employer or had been received by him for or on behalf of his employer; (d) the accused did it wilfully and with intent to defraud.

2021 0 Supreme(SC) 831; Parvati Devi Vs. The State of Bihar Now State of Jharkhand & Ors.; Criminal Appeal No. 574 of 2012 With Ram Sahay Mahto Vs. State of Bihar Now State of Jharkhand & Ors.; Criminal Appeal No. 575 of 2012; Decided On : 17-12-2021 (THREE JUDGE BENCH)

In the instant case, despite the shoddy investigation conducted by the prosecution, we are of the view that the circumstances set out in Section 304B of the IPC have

been established in the light of the fact that the deceased, Fulwa Devi had gone missing from her matrimonial home within a few months of her marriage and immediately after demands of dowry were made on her and that her death had occurred under abnormal circumstances, such a death would have to be charactarized as a “dowry death”.
19. Recovery of the body from the banks of the river clearly indicates that Fulwa Devi had died under abnormal circumstances that could only be explained by her husband and in-laws, as she was residing at her matrimonial home when she suddenly disappeared and no plausible explanation was offered for her disappearance. The plea raised on behalf of the accused that the body recovered from the banks of Barakar river was unidentifiable, is devoid of merits when PW-3, father of the deceased testified that he could recognize the dead body as that of Fulwa Devi, from a part of the face that had remained intact and from the clothes that were found on the body. As regards A-1, the High Court and the trial Court have rightly raised a presumption against him under Section 113B of the Indian Evidence Act which prescribes that the Court shall presume that a person has caused a dowry death of a woman if it is shown that soon before her death, she had been subjected by such person to cruelty or harassment for or in connection with any demand for dowry.

2021 0 Supreme(SC) 836; Brijmani Devi Vs Pappu Kumar and Another ; Criminal Appeal No. 1664 of 2021, SLP (Crl.) Nos. 6335, 7916 of 2021; Decided On : 17-12-2021(THREE JUDGE BENCH)

it is not necessary for a Court to give elaborate reasons while granting bail particularly when the case is at the initial stage and the allegations of the offences by the accused would not have been crystalised as such. There cannot be elaborate details recorded to give an impression that the case is one that would result in a conviction or, by contrast, in an acquittal while passing an order on an application for grant of bail. At the same time, a balance would have to be struck between the nature of the allegations made against the accused; severity of the punishment if the allegations are proved beyond reasonable doubt and would result in a conviction; reasonable apprehension of the witnesses being influenced by the accused; tampering of the evidence; the frivolity in the case of the prosecution; criminal antecedents of the accused and a prima-facie satisfaction of the Court in support of the charge against the accused.
27. Ultimately, the Court considering an application for bail has to exercise discretion in a judicious manner and in accordance with the settled principles of law having regard to the crime alleged to be committed by the accused on the one hand and ensuring purity of the trial of the case on the other.
28. Thus, while elaborating reasons may not be assigned for grant of bail, at the same time an order de hors reasoning or bereft of the relevant reasons cannot result in grant of bail. It would be only a non speaking order which is an instance of violation of principles of natural justice. In such a case the prosecution or the informant has a right to assail the order before a higher forum.

2021 0 Supreme(SC) 838; Ram Ratan Vs. State of Madhya Pradesh ; Criminal Appeal No. 1333 of 2018; Decided On : 17-12-2021(THREE JUDGE BENCH)

The essential ingredients of Section 397 IPC are as follows:

1. the accused committed robbery.
2. while committing robbery or dacoity:

(i) the accused used deadly weapon.

(ii) to cause grievous hurt to any person.

(iii) attempted to cause death or grievous hurt to any person.

3. "Offender" refers to only culprit who actually used deadly weapon. When only one has used the deadly weapon, others cannot be awarded the minimum punishment. It only envisages the individual liability and not any constructive liability. Section 397 IPC is attracted only against the particular accused who uses the deadly weapon or does any of the acts mentioned in the provision. But the other accused are not vicariously liable under that section for acts of the co-accused.

2021 0 Supreme(SC) 769; The State of Maharashtra Vs. Pankaj Jagshi Gangar ; Criminal Appeal No.1493 of 2021; Decided On : 03-12-2021

It is required to be noted that while releasing the accused on bail that too by way of interim relief the High Court has not at all considered the seriousness of the offences alleged against the accused. After the investigation it has been found that the respondent – accused is running the Matka business; is providing funds to the Chhota Shakil and his gangs; that the accused is arranging funds for the expenses of purchasing weapons, information and he is active member of organized crime syndicate. By the impugned order, the High Court has observed that the sanction to invoke the provisions of the MCOCA is bad in law as there is no evidence on record. Therefore, even the High Court has not at all considered the allegations with respect to other offences under the IPC. Even such an observation at the interim relief stage on the sanction to prosecute/invoke the provisions of MCOCA was not warranted. Virtually the High Court has acquitted the accused for the offence under the MCOCA at the interim relief stage and has granted the final relief at the interim stage exonerating the respondent from MCOCA, which is wholly impermissible.

Now so far as the submissions on behalf of the accused that as the accused is released in the year 2019 pursuant to the impugned order passed by the High Court and thereafter he has not misused the liberty shown to him while releasing him on bail therefore the impugned order may not be quashed and the bail may not be cancelled is concerned, it is required to be noted that as per the law laid down by this Court in the catena of decisions quashing and setting aside the wrong order releasing the accused on bail and to cancel the bail of the accused on misuse of liberty etc., both stand on different footing and the different criteria shall be applicable. It is not a question of cancellation of bail but it is a question of quashing and setting aside the wrong order passed by the court releasing the accused on bail.

2021 0 Supreme(SC) 779; Gulab Vs. State of Uttar Pradesh ; Criminal Appeal No. 81 of 2021; Decided on : 09-12-2021 (THREE JUDGE BENCH)

It is well-settled in law that the mere fact that relatives of the deceased are the only witnesses is not sufficient to discredit their cogent testimonies. The non-examination of the daughter of the deceased who was allegedly unwell cannot be construed to be a circumstance that is fatal to the prosecution's case once the ocular evidence of PWs 1, 2 and 3 is consistent and credible. The nature of the injuries found to have been sustained by the deceased is consistent with the account furnished by the eyewitnesses.

> It would be noticed that these observations were made in a case where the prosecution evidence suffered from serious infirmities and in determining the effect of these observations, it would not be fair or reasonable to forget the facts in respect of which they came to be made. These observations do not purport to lay down an inflexible Rule that in every case where an accused person is charged with murder caused by a lethal weapon, the prosecution case can succeed in proving the charge only if an expert is examined. It is possible to imagine cases where the direct evidence is of such an unimpeachable character and the nature of the injuries disclosed by post-mortem notes is so clearly consistent with the direct evidence that the examination of a ballistic expert may not be regarded as essential. Where the direct evidence is not satisfactory or disinterested or where the injuries are alleged to have been caused with a gun and they prima facie appear to have been inflicted by a rifle, undoubtedly the apparent inconsistency can be cured or the oral evidence can be corroborated by leading the evidence of a ballistic expert. In what cases the examination of a ballistic expert is essential for the proof of the prosecution case, must naturally depend upon the circumstances of each case.

the failure to produce a report by a ballistic expert who can testify to the fatal injuries being caused by a particular weapon is not sufficient to impeach the credible evidence of the direct eye-witnesses.

The prosecution is not required to prove that there was an elaborate plan between the accused to kill the deceased or a plan was in existence for a long time. A common intention to commit the crime is proved if the accused by their words or action indicate their assent to join in the commission of the crime.

2021 0 Supreme(SC) 780; M/s Suvarna Cooperative Bank Ltd Vs. State Of Karnataka And Anr. : Criminal Appeal Nos. 1535 of 2021; Decided on : 09-12-2021

Merely because some other persons who might have committed the offences, but were not arrayed as accused and were not charge-sheeted cannot be a ground to quash the criminal proceedings against the accused who is charge-sheeted after a thorough investigation. During the trial if it is found that other accused persons who committed the offence are not charge-sheeted, the Court may array those persons as accused in exercise of powers under Section 319 Cr.P.C.

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.

17. In the deposition of witnesses, there are always normal discrepancies, howsoever honest and truthful they may be. These discrepancies are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition, shock and horror at the time of occurrence and threat to the life. It is not unoften that improvements in earlier version are made at the trial in order to give a boost to the prosecution case, albeit foolishly. **Therefore, it is the duty of the court to separate falsehood from the truth. In sifting the evidence, the court has to attempt to separate the chaff from the grains in every case** and this attempt cannot be abandoned on the ground that the case is baffling unless the evidence is really so confusing or conflicting that the process cannot reasonably be carried out.

2021 0 Supreme(SC) 781; Bhagchandra Vs. State Of Madhya Pradesh ; Criminal Appeal Nos. 255-256 of 2018; Decided on : 09-12-2021 (THREE JUDGE BENCH)

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It could thus be seen that what is required to be considered is whether the evidence of the witness read as a whole appears to have a ring of truth. It has been held that minor discrepancies on trivial matters not touching the core of the case, hyper-technical approach by taking sentences torn out of context here or there from the evidence, would not ordinarily permit rejection of the evidence as a whole. It has

been held that the prosecution evidence may suffer from inconsistencies here and discrepancies there, but that is a shortcoming from which no criminal case is free. What is important is to see as to whether those inconsistencies go to the root of the matter or pertain to insignificant aspects thereof. It has been held that there are always normal discrepancies due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition, shock and horror at the time of occurrence. It is the duty of the court to separate falsehood from the truth in every case.

It can thus be seen that this Court has held that in case of rustic witnesses, some inconsistencies and discrepancies are bound to be found. It has been held that the inconsistencies in the evidence of the witnesses should not be blown out of proportion. To do so is to ignore hard realities of village life and give undeserved benefit to the accused. It has been held that the evidence of such witnesses has to be appreciated as a whole. A rustic witness is not expected to remember every small detail of the incident and the manner in which the incident had happened. Further, a witness is bound to face shock of the untimely death of his near relatives. Upon perusal of the evidence of the witnesses as a whole, we are of the considered view that their evidence is cogent, reliable and trustworthy.

Since the present case is a case of direct evidence, even if the prosecution has failed to prove the other incriminating circumstances beyond reasonable doubt, in our view, it will not have an effect on the prosecution case. In the present case, another factor that is to be noted is that immediately after the incident, FIR is lodged by PW-1 who was accompanied by PW-4. The FIR fully corroborates the ocular evidence of prosecution witnesses.

Evidence of Prosecutrix in Rape Cases

In the case of Sham Singh v. State of Haryana, (2018) 18 SCC 34, it is observed that testimony of the victim 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 the victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. It is further observed that seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury. In paragraphs 6 and 7, it is observed and held as under:

> "6. We are conscious that the courts shoulder a great responsibility while trying an accused on charges of rape. They must deal with such cases with utmost sensitivity. The courts should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable prosecution case. If the evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars. If for some reason the court finds it difficult to place implicit reliance on her testimony, it may look for evidence which may lend assurance to her testimony, short of corroboration required in the case of an accomplice. The testimony of the prosecutrix must be appreciated in the background of the entire case and the court must be alive

to its responsibility and be sensitive while dealing with cases involving sexual molestations or sexual assaults. [See State of Punjab v. Gurmit Singh [State of Punjab v. Gurmit Singh, (1996) 2 SCC 384] (SCC p. 403, para 21).]

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 v. State of Assam [Ranjit Hazarika v. State of Assam, (1998) 8 SCC 635)."

The golden principle to be followed in criminal jurisprudence.

The legendry H.R. Khanna, J. in the case of State of Punjab vs. Jagir Singh, Baljit Singh and Karam Singh, (1974) 3 SCC 277, observed thus:

"23. **A criminal trial is not like a fairy tale wherein one is free to give flight to one's imagination and phantasy.** It concerns itself with the question as to whether the accused arraigned at the trial is guilty of the crime with which he is charged. Crime is an event in real life and is the product of interplay of different human emotions. In arriving at the conclusion about the guilt of the accused charged with the commission of a crime, the court has to judge the evidence by the yardstick of probabilities, its intrinsic worth and the animus of witnesses. Every case in the final analysis would have to depend upon its own facts. Although the benefit of every reasonable doubt should be given to the accused, the courts should not at the same time reject evidence which is ex facie trustworthy on grounds which are fanciful or in the nature of conjectures."

Same Set of Panchas in multiple Panchanamas

The panchnamas are sought to be attacked on the ground that PW-3 is the only panch witness to all these panchnamas. We are of the view that this contention deserves no merit in the light of the following observations of this Court in the case of Himachal Pradesh Administration ((1972) 1 SCC 249):

"10. Further having held this it nonetheless said that there was no injunction against the same set of witnesses being present at the successive enquiries if nothing could be urged against them. In our view the evidence relating to recoveries is not similar to that contemplated under Section 103 of the Criminal Procedure Code where searches are required to be made in the presence of two or more inhabitants of the locality in which the place to be searched is situate. In an investigation under Section

157 the recoveries could be proved even by the solitary evidence of the Investigating Officer if his evidence could otherwise be believed. We cannot as a matter of law or practice lay down that where recoveries have to be effected from different places on the information furnished by the accused different sets of persons should be called in to witness them. In this case PW-2 and PW-8 who worked with the deceased were the proper persons to witness the recoveries as they could identify some of the things that were missing and also they could both speak to the information and the recovery made in consequence thereof as a continuous process. At any rate PW-2 who is alleged to be the most interested was not present at the time of the recovery of the dagger."

NEWS

- Andhra Pradesh -The Scheduled Castes And The Scheduled Tribes (Prevention Of Atrocities) Act, 1989 And Amended Act, 2015 &The Scheduled Castes And The Scheduled Tribes (Prevention Of Atrocities) Rules, 1995 And Amended Rules, 2016 - Model Contingency Plan Under Rule 15 Of The Said Rules.
- Andhra Pradesh- Amendment To The Andhra Pradesh Police (Civil Police) Subordinate Service Rules-1999.- Notified.
- The Assisted Reproductive Technology (Regulation) Act, 2021- Framed
- The Delhi Special Police Establishment (Amendment) Act, 2021- Notified.
- The High Court And Supreme Court Judges (Salaries And Conditions Of Service) Amendment Act, 2021- Notified.
- Amendment To The Andhra Pradesh State Legal Services Authority Service Rules, 1999- Notified
- The Narcotic Drugs And Psychotropic Substances (Amendment) Act, 2021- Notified
- Nodal Officer under COTP Rules appointed.
- Andhra Pradesh- Retirement Of Certain Police Officers On Attaining The Age Of Superannuation During The Period From 01.01.2022 To 31.12.2022 - Notified.
- Andhra Pradesh- Declaration Of Special Unit at SEB Commissionerate with State wide Jurisdiction And All SEB Stations With Corresponding Jurisdictions As Police Stations.
- The Surrogacy (Regulation) Act, 2021 Framed.
- Andhra Pradesh- Issue Of Notification Under Section 83 Of The Waqf Act, 1995 - For Setting Up Of The Andhra Pradesh State Waqf Tribunal At Kurnool Instead Of Vijayawada - Modification Orders.
- Telangana - The Telangana Public Employment (Organization of Local Cadres and Regulation of Direct Recruitment) Order 2018 – Organization of Local Cadres – Allotment of persons holding posts required to be organized into local cadres – Orders – Issued-General Administration (Spf-I) Department G.O.Ms.No.317 Dt: 06.12.2021
- Telangana - The Child and Adolescent Labour (Prohibition & Regulation) Act, 1986 (Central Act No.61 of 1986) – Amendment to the Telangana Child Labour (Prohibition and Regulation) Rules, 1995 – Final Notification- Labour Employment Training & Factories (Lab-I) Department G.O.Ms.No. 38 Dated: 15-12-2021.

THE COPIES OF THESE CIRCULARS, GAZETTES MENTIONED IN NEWS SECTION OF THIS LEAFLET ARE AVAILABLE IN OUR "PROSECUTION REPLENISH" CHANNEL IN TELEGRAM APP.

ON A LIGHTER VEIN

Wife calls her scientist husband. "Honey! Its Saturday night you are late."

Husband : " I am busy with my team in an experiment."

Wife : "What's that experiment?"

Scientist Husband : "We've just added a derivative of C2H5OH with ambient temperature H2O and aqueous CO2.

To cool this mixture added some super low temperature, solidified H2O.

Now while waiting for some protein, we are fumigating the lab with vapours of nicotine.

It's 4 or 5 round experiment. So I will be late."

Wife : "Oh dear. I won't disturb you. You take your time."

Clarifications :

* C2H5OH (whiskey)
* H2O(water)
* CO2(soda)
* Solidified H2O(ice)
* Protein(chicken tikka)
* Fumigating (smoking)

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Website : prosecutionreplenish.com

AIIMS/ ICMR-COVID-19 National Task Force/ Joint Monitoring Group (Dte.GHS)

Ministry of Health & Family Welfare, Government of India

CLINICAL GUIDANCE FOR MANAGEMENT OF ADULT COVID-19 PATIENTS

23rd September 2021

COVID-19 patient

Mild disease

Upper respiratory tract symptoms (&/or fever) WITHOUT shortness of breath or hypoxia

Home Isolation & Care

MUST DOs

- ✓ Physical distancing, indoor mask use, strict hand hygiene.
- ✓ Symptomatic management (hydration, anti-pyretics, anti-tussive, multivitamins).
- ✓ Stay in contact with treating physician.
- ✓ Monitor temperature and oxygen saturation (by applying a SpO2 probe to fingers).

Seek immediate medical attention if:

- Difficulty in breathing
- High grade fever/severe cough, particularly if lasting for >5 days
- A low threshold to be kept for those with any of the high-risk features*

MAY DOs

Therapies based on low certainty of evidence

- ❖ Inhalational Budesonide (given via Metered dose inhaler/ Dry powder inhaler) at a dose of 800 mcg BD for 5 days) to be given if symptoms (fever and/or cough) are persistent beyond 5 days of disease onset.

Moderate disease

Any one of:

1. Respiratory rate ≥ 24/min, breathlessness
2. SpO2: 90% to ≤ 93% on room air

ADMIT IN WARD

Oxygen Support:

- ➢ Target SpO_2: 92-96% (88-92% in patients with COPD).
- ➢ Preferred devices for oxygenation: non-rebreathing face mask.
- ➢ Awake proning encouraged in all patients requiring supplemental oxygen therapy (sequential position changes every 2 hours).

Anti-inflammatory or immunomodulatory therapy

- ➢ Inj. Methylprednisolone 0.5 to 1 mg/kg in 2 divided doses (or an equivalent dose of dexamethasone) usually for a duration of 5 to 10 days.
- ➢ Patients may be initiated or switched to oral route if stable and/or improving.

Anticoagulation

- ➢ Conventional dose prophylactic unfractionated heparin or Low Molecular Weight Heparin (weight based e.g., enoxaparin 0.5mg/kg per day SC). There should be no contraindication or high risk of bleeding.

Monitoring

- ➢ Clinical Monitoring: Work of breathing, Hemodynamic instability, Change in oxygen requirement.
- ➢ Serial CXR; HRCT chest to be done ONLY If there is worsening.
- ➢ Lab monitoring: CRP and D-dimer 48 to 72 hrly; CBC, KFT, LFT 24 to 48 hrly; IL-6 levels to be done if deteriorating (subject to availability).

Severe disease

Any one of:

1. Respiratory rate >30/min, breathlessness
2. SpO2 < 90% on room air

ADMIT IN ICU

Respiratory support

- Consider use of NIV (Helmet or face mask interface depending on availability) in patients with increasing oxygen requirement, if work of breathing is LOW.
- Consider use of HFNC in patients with increasing oxygen requirement.
- Intubation should be prioritized in patients with high work of breathing /if NIV is not tolerated.
- Use conventional ARDSnet protocol for ventilatory management.

Anti-inflammatory or immunomodulatory therapy

- Inj Methylprednisolone 1 to 2mg/kg IV in 2 divided doses (or an equivalent dose of dexamethasone) usually for a duration 5 to 10 days.

Anticoagulation

- Weight based intermediate dose prophylactic unfractionated heparin or Low Molecular Weight Heparin (e.g., Enoxaparin 0.5mg/kg per dose SC BD). There should be no contraindication or high risk of bleeding.

Supportive measures

- Maintain euvolemia (if available, use dynamic measures for assessing fluid responsiveness).
- If sepsis/septic shock: manage as per existing protocol and local antibiogram.

Monitoring

- Serial CXR; HRCT chest to be done ONLY if there is worsening.
- Lab monitoring: CRP and D-dimer 24-48 hourly; CBC, KFT, LFT daily; IL-6 to be done if deteriorating (subject to availability).

After clinical improvement, discharge as per revised discharge criteria.

***High-risk for severe disease or mortality**

- ✓ Age > 60 years
- ✓ Cardiovascular disease, hypertension, and CAD
- ✓ DM (Diabetes mellitus) and other immunocompromised states
- ✓ Chronic lung/kidney/liver disease
- ✓ Cerebrovascular disease
- ✓ Obesity

EUA/Off label use (based on limited available evidence and only in specific circumstances):

- ➢ Remdesivir (EUA) may be considered ONLY in patients with
  - Moderate to severe disease (requiring SUPPLEMENTAL OXYGEN), AND
  - No renal or hepatic dysfunction (eGFR <30 ml/min/m2; AST/ALT >5 times ULN (Not an absolute contradiction), AND
  - Who are within 10 days of onset of symptom/s.
    - ❖ Recommended dose: 200 mg IV on day 1 f/b 100 mg IV OD for next 4 days.
  - Not to be used in patients who are NOT on oxygen support or in home settings
- ➢ Tocilizumab (Off-label) may be considered when ALL OF THE BELOW CRITERIA ARE MET
  - Presence of severe disease (preferably within 24 to 48 hours of onset of severe disease/ICU admission).
  - Significantly raised inflammatory markers (CRP &/or IL-6).
  - Not improving despite use of steroids.
  - No active bacterial/fungal/tubercular infection.
    - ❖ Recommended single dose: 4 to 6 mg/kg (400 mg in 60kg adult) in 100 ml NS over 1 hour.

Prosecution Replenish

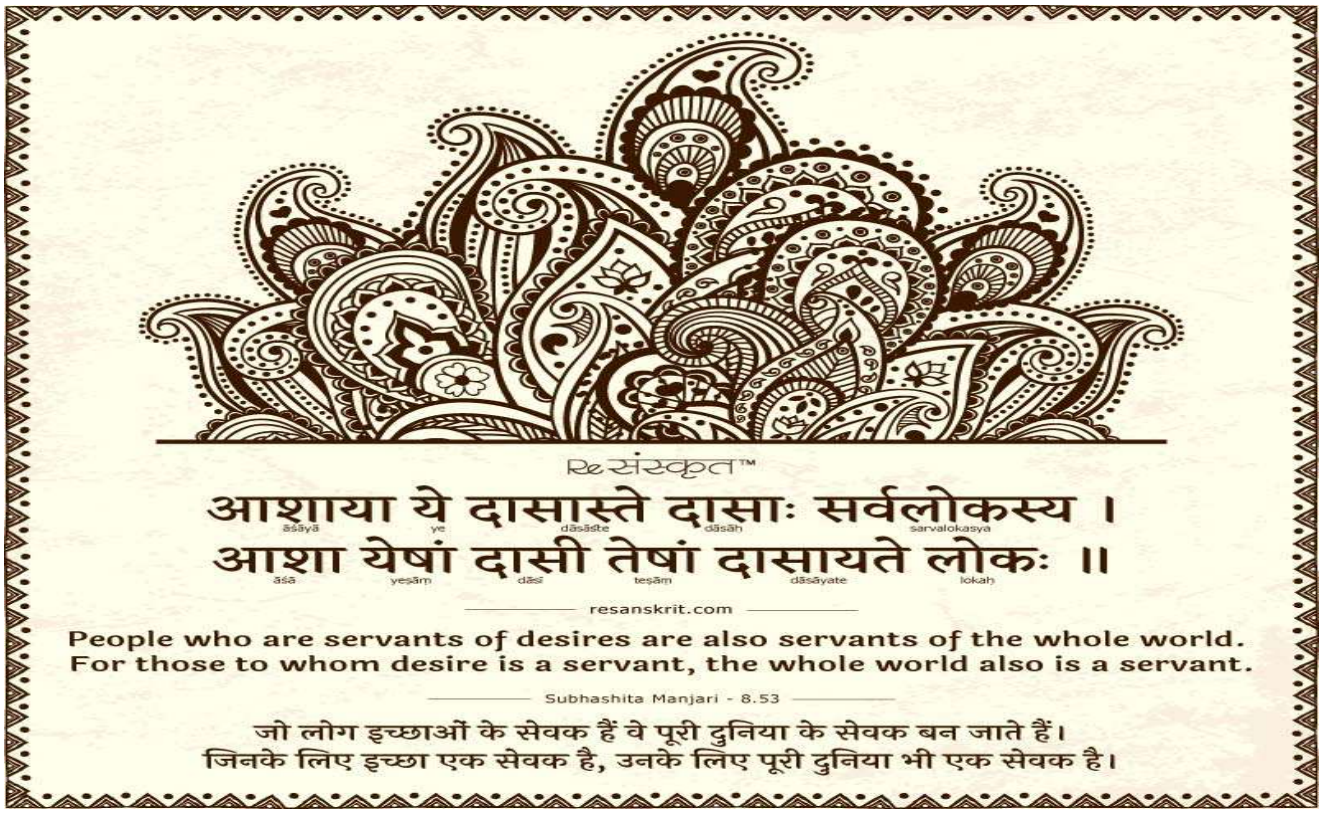
An Endeavor for Learning and Excellence

Vol- X Part – 2

Febuary,2022

Aano Bhadra Kratvo Yantu Viswatah (Rig Ved)

Let all Noble thoughts come to us from all directions



CITATIONS

2022 0 Supreme(SC) 14; Jasdeep Singh @ Jassu Vs. State of Punjab; Criminal Appeal Nos. 1584, 1585, 1586 of 2021, S.L.P. (Crl.) Nos. 11486, 11816 of 2019, 3301 of 2020 Decided On : 07-01-2022

A common intention qua its existence is a question of fact and also requires an act “in furtherance of the said intention.” One need not search for a concrete evidence, as it is for the court to come to a conclusion on a cumulative assessment. It is only a rule of evidence and thus does not create any substantive offense.

Under the Penal Code, a person is responsible for his own act. A person can also be vicariously responsible for the acts of others if he had a common intention to commit the acts or if the offence is committed by any member of the unlawful assembly in prosecution of the common object of that assembly, then also he can be vicariously responsible. Under the Penal Code, two sections, namely, Sections 34 and 149, deal with them circumstances when a person is vicariously responsible for the acts of others.

The vicarious or constructive liability under Section 34 IPC can arise only when two conditions stand fulfilled i.e. the mental element or the intention to commit the criminal act conjointly with another or others; and the other is the actual participation in one form or the other in the commission of the crime.

The common intention postulates the existence of a prearranged plan implying a prior meeting of the minds. It is the intention to commit the crime and the accused can be convicted only if such an intention has been shared by all the accused. Such

a common intention should be anterior in point of time to the commission of the crime, but may also develop on the spot when such a crime is committed. In most of the cases it is difficult to procure direct evidence of such intention. In most of the cases, it can be inferred from the acts or conduct of the accused and other relevant circumstances. Therefore, in inferring the common intention under section 34 IPC, the evidence and documents on record acquire a great significance and they have to be very carefully scrutinized by the court. This is particularly important in cases where evidence regarding development of the common intention to commit the offence graver than the one originally designed, during execution of the original plan, should be clear and cogent.

The dominant feature of Section 34 is the element of intention and participation in action. This participation need not in all cases be by physical presence. Common intention implies acting in concert.

2022 0 Supreme(SC) 19; Jayaben Vs. Tejas Kanubhai Zala and Another; With Jayaben Vs. Jaysukhbhai Devrajbhai Radadiya and Another; Criminal Appeal Nos. 1655, 1656 of 2021; decided On : 10-01-2022

Now so far as the submissions on behalf of the accused that after the accused are released on bail by the impugned judgments and orders passed by the High Court, more than two and a half years have passed and there are no allegations of misuse of liberty and therefore, the bail may not be cancelled is concerned, the aforesaid cannot be accepted. As per the settled preposition of law, cancellation of bail and quashing and setting aside the wrong order passed by the High Court releasing the accused on bail stand on different footings. There are different considerations while considering the application for cancellation of bail for breach of conditions etc. and while considering an order passed by the Court releasing the accused on bail. Once, it is found that the order passed by the High Court releasing the accused on bail is unsustainable, necessary consequences shall have to follow and the bail has to be cancelled.

Before parting, we may observe that by not filing the appeals by the State against the impugned judgments and orders releasing the accused on bail in such a serious matter, the State has failed to protect the rights of the victim. We are of the opinion that this was the fit case where the State ought to have preferred the appeals challenging the orders passed by the High Court releasing the accused on bail. In criminal matters the party who is treated as the aggrieved party is the State which is the custodian of the social interest of the community at large and so it is for the State to take all the steps necessary for bringing the person who has acted against the social interest of the community to book.

We hope and trust that in future the State Government/legal department of State Government and the Director of Prosecution shall take prompt decision in matters

such as this and challenge the order passed by the trial court and/or the High Court as the case may be where it is found that the accused are released on bail in serious offences like the present.

2022 0 Supreme(SC) 23; Union of India and Another Vs. Shaikh Istiyaq Ahmed and Others: Criminal Appeal No. 71 of 2022, S.L.P. (Crl.) No. 7723 of 2019 Decided On : 11-01-2022

On a combined reading of Section 12 and 13 of the 2003Act (**Repatriation of Prisoners Act, 2003)** and Article 8 of the Agreement, the following principles can be deduced:

(A) Any request for transfer of a prisoner from a contracting State to India shall be subject to the terms and conditions as stated in the agreement between a contracting State and Government of India.

(B) The duration of imprisonment shall be in accordance with the terms and conditions referred to in Section 12 (1) of the 2003 Act, meaning thereby that the acceptance of transfer of a prisoner shall be subject to the terms and conditions in the agreement between the two countries with respect to the transfer of prisoners. To make it further clear, the sentence imposed by the transferring State shall be binding on the receiving State i.e. India.

(C) On acceptance of the request for transfer of an Indian prisoner convicted and sentenced in a contracting State, a warrant shall be issued for detention of the prisoner in accordance with the provisions of Section 13 of the 2003 Act in the form prescribed.

(D) The warrant which is to be issued has to provide for the nature and duration of imprisonment of prison in accordance with the terms and conditions as mentioned in Section 12(1) of the Act, that is, as agreed between the two contracting States.

(E) The imprisonment of the transferred prisoner shall be in accordance with the warrant.

(F) The Government is empowered to adapt the sentence to that provided for a similar offence had that offence been committed in India. This can be done only in a situation where the Government is satisfied that the sentence of the imprisonment is incompatible with Indian law as to its nature, duration or both.

(G) In the event that the Government is considering a request for adaptation, it has to make sure that the adapted sentence corresponds to the sentence imposed by the contracting state, as far as possible.

2022 0 Supreme(SC) 22; State of Madhya Pradesh Vs. Jogendra and Another; Criminal Appeal No. 190 of 2012; Decided On : 11-01-2022

The Latin maxim “Ut Res Magis Valeat Quam Pereat” i.e. a liberal construction should be put up on written instruments, so as to uphold them, if possible and carry

into effect, the intention of the parties, sums it up. Interpretation of a provision of law that will defeat the very intention of the legislature must be shunned in favour of an interpretation that will promote the object sought to be achieved through the legislation meant to uproot a social evil like dowry demand. In this context the word "Dowry" ought to be ascribed an expansive meaning so as to encompass any demand made on a woman, whether in respect of a property or a valuable security of any nature. When dealing with cases under Section 304-B IPC, a provision legislated to act as a deterrent in the society and curb the heinous crime of dowry demands, the shift in the approach of the courts ought to be from strict to liberal, from constricted to dilated. Any rigid meaning would tend to bring to naught, the real object of the provision. Therefore, a push in the right direction is required to accomplish the task of eradicating this evil which has become deeply entrenched in our society.

In the facts of the instant case, we are of the opinion that the trial Court has correctly interpreted the demand for money raised by the respondents on the deceased for construction of a house as falling within the definition of the word "dowry."

2022 0 Supreme(SC) 36; Jaibunisha Vs. Meharban & Anr.: Criminal Appeal No.76 of 2022 (Arising Out of SLP(CRL.) No. 6329 of 2020) Jaibunisha Vs. Jumma & Ors.: With Criminal Appeal No.77 of 2022 (Arising Out of SLP(CRL.) No. 1337 of 2021) Decided On : 18-01-2022

a court deciding a bail application cannot grant bail to an accused without having regard to material aspects of the case such as the allegations made against the accused; severity of the punishment if the allegations are proved beyond reasonable doubt and would result in a conviction; reasonable apprehension of the witnesses being influenced by the accused; tampering of the evidence; the frivolity in the case of the prosecution; criminal antecedents of the accused; and a prima facie satisfaction of the Court in support of the charge against the accused.

While we are conscious of the fact that it is not necessary for a Court to give elaborate reasons while granting bail particularly when the case is at the initial stage and the allegations of the offences by the accused may not have been crystalised as such, an order de hors any reasoning whatsoever cannot result in grant of bail. If bail is granted in a casual manner, the prosecution or the informant has a right to assail the order before a higher forum.

Mohd. Khaja Pasha vs State Of Telangana, And Another on 21 January, 2022; CRIMINAL PETITION No.18 OF 2022 ALONG WITH I.A. Nos.3 AND 4 OF 2022; https://indiankanoon.org/doc/13810844/;

The non-compoundable offences U/sec. 384,385 IPC are quashed basing on the compromise between the parties.

Motam Sandeep vs The State Of Telangana on 19 January, 2022; CRIMINAL PETITION No.10286 OF 2021 ALONG WITH I.A. Nos.2 AND 3 OF 2021; https://indiankanoon.org/doc/72622939/;

The non-compoundable offences Sections 3 (1) (r)(s) and 3 (2) (v) A of the Scheduled Castes and the Scheduled Tribes(Prevention of Atrocities) Act, 1989, are quashed basing on the compromise between the parties.

Shaik Imran vs The State Of Telangana on 17 January, 2022: CRIMINAL REVISION CASE No.652 OF 2021;https://indiankanoon.org/doc/143692445/;
the Court below while granting mandatory bail can impose conditions of furnishing sureties and appearance of the petitioner before the Station House Officer.

P.Krishnam Raju, Hyderabad., vs The State Of Telangana, on 7 January, 2022: CRL RC No.2040 of 2016; https://indiankanoon.org/doc/161039926/;
when the dispute with regard to the same subject property is pending in a civil court, parallel proceedings under Section 145 Cr.P.C. are not maintainable before the Executive Magistrate. Since the civil court had already ceased the matter and the parties can approach the civil court for interim orders seeking protection

Sri Md.Gayasuddin, vs State Of A.P., Acb , Karimnagar, on 7 January, 2022: CRLA No. 1746 of 2006: https://indiankanoon.org/doc/117553710/;
The trial Court had not believed the loan theory taken by the A.O. Even if the same was not believed as the Prosecution must establish the foundational facts of demand and acceptance before calling for the explanation of the accused as to how the amount was found in his possession and as it failed to establish the fact of demand itself due to complainant turning hostile and could not examine the accompanying witness due to his death and not able to prove its case, the conviction of the accused for the offence under Section 13(1)(d)(i) of the Act is considered as not proper and hence liable to be set aside.

A.Venkatesh vs The State Of Ap., on 7 January, 2022; CRIMINAL APPEAL No.906 of 2012; https://indiankanoon.org/doc/14440105/;
The contention of the learned counsel for the appellant that P.W.2 failed to prove that she had divorce with her former husband and the customary divorce alleged by her was not in accordance with law and she suppressed the information to the accused that she was also having a child from her former husband, were not material facts to be considered in this case, as the prosecution for the offence of cheating is conducted against the accused but not against the victim. The prosecution is able to prove its case beyond all reasonable doubt against the accused for the offence under Section 417 IPC with which he was charged and rightly convicted him for the said offence. Hence, I do not find any illegality in the judgment of the conviction and sentence passed by the trial court to set aside the same.

Mohd. Gafoor Ali Gaffar Ali, Medak ... vs State Of Telangana, on 7 January, 2022;
CRIMINAL RC No.20 of 2015: https://indiankanoon.org/doc/83182742/:
The other contention raised by the learned counsel for the revision petitioner was that non examination of the MVI was fatal due to his non-examination, the court was not in a position to know whether the alleged accident was caused due to any mechanical defect. As per the charge-sheet, the crime vehicle was inspected by the MVI, Sangareddy, on 21.07.2009, the next day after the accident and he gave a report to the effect that the accident was not due to any mechanical defects in the crime vehicle. The said report was marked as Ex.P.61 on consent. The trial court relied upon the Division Bench judgement of this court in Chinthala Veerabhadra Rao Vs. State of Andhra Pradesh (2008 (2) ALD (Crl.) 207 (DB), wherein it was held that when a document is admitted in evidence under Section 294(1) Cr.P.C. and no objection is taken as to the admission of the document, the examination of the author of such document is not required and if that document was marked in the case, it is not necessary to examine its author to prove the contents of such document. The trial court also taking into consideration that no defence was taken by the accused that the accident was caused due to failure of the brakes or any other mechanical defects, rightly held that non examination of MVI was not fatal. I completely agree with the judgment of the trial court on this aspect and the said observation needs no interference by this court.

2022 0 Supreme(SC) 43; Joseph Stephen and others Vs. Santhanasamy and others; Criminal Appeal Nos. 90-93 of 2022; Decided On : 25-01-2022
As observed by this Court in the case of Mallikarjun Kodagali (supra), so far as the victim is concerned, the victim has not to pray for grant of special leave to appeal, as the victim has a statutory right of appeal under Section 372 proviso and the proviso to Section 372 does not stipulate any condition of obtaining special leave to appeal like sub-section (4) of Section 378 Cr.P.C. in the case of a complainant and in a case where an order of acquittal is passed in any case instituted upon complaint. The right provided to the victim to prefer an appeal against the order of acquittal is an absolute right. Therefore, so far as issue no.2 is concerned, namely, in a case where the victim and/or the complainant, as the case may be, has not preferred and/or availed the remedy of appeal against the order of acquittal as provided under Section 372 Cr.P.C. or Section 378(4), as the case may be, the revision application against the order of acquittal at the instance of the victim or the complainant, as the case may be, shall not be entertained and the victim or the complainant, as the case may be, shall be relegated to prefer the appeal as provided under Section 372 or Section 378(4), as the case may be. Issue no.2 is therefore answered accordingly.

2022 0 Supreme(SC) 44; Sunil Kumar Vs. The State of Bihar and Another; Criminal Appeal No. 95 of 2022; Decided On : 25-01-2022

Merely recording "having perused the record" and "on the facts and circumstances of the case" does not sub-serve the purpose of a reasoned judicial order. It is a fundamental premise of open justice, to which our judicial system is committed, that factors which have weighed in the mind of the Judge in the rejection or the grant of bail are recorded in the order passed. Open justice is premised on the notion that justice should not only be done, but should manifestly and undoubtedly be seen to be done. The duty of Judges to give reasoned decisions lies at the heart of this commitment. Questions of the grant of bail concern both liberty of individuals undergoing criminal prosecution as well as the interests of the criminal justice system in ensuring that those who commit crimes are not afforded the opportunity to obstruct justice. Judges are duty-bound to explain the basis on which they have arrived at a conclusion.

Where an order refusing or granting bail does not furnish the reasons that inform the decision, there is a presumption of the non-application of mind which may require the intervention of this Court. Where an earlier application for bail has been rejected, there is a higher burden on the appellate court to furnish specific reasons as to why bail should be granted.

Court while granting bail should consider and decide whether the case of the accused seeking bail is similar to the case of the co-accused already on Bail.

An accused is not entitled for bail on the ground that other accused in the case has been enlarged on bail.

Naveen Kumar V Allabhaneni vs The State Of Andhra Pradesh, on 17 January, 2022; I.A.Nos.1 and 2 of 2021 in Criminal Petition No.4245 of 2021; https://indiankanoon.org/doc/60478848/;

The non-compoundable provisions Sec 313 IPC and 3 & 4 DP act are quashed basing on the compromise between the parties.

Motamarri Ramanjaneyulu vs The State Of Andhra Pradesh on 17 January, 2022; WP No.807 of 2022; https://indiankanoon.org/doc/38566625/;

Instead of keeping the vehicle idle, it is appropriate to release it in favour of the petitioner for interim custody pending confiscation proceedings by imposing certain conditions to protect the interest of the respondents.

Accordingly, this writ petition is disposed of, with the following directions:

i) the 2nd respondent is directed to consider and pass appropriate orders on the representation dated 27.12.2021 submitted by the petitioner for interim custody of the vehicle pending confiscation proceedings by taking immovable property security equivalent to the value of the said vehicle from the petitioner within a period of one (1) week from the date of submission of the said security.

ii) The petitioner shall submit solvency certificate of the immovable property issued by the competent authority i.e., Tahsildar/Panchayat Secretary/Municipal Commissioner having jurisdiction over the area where the property is situated.
iii) The petitioner shall produce encumbrance certificate obtained from online issued by the competent authority stating that the property is free from all encumbrances.
iv) The petitioner shall produce an affidavit stating that the immovable property which is produced as security for release of the vehicle shall not be alienated without knowledge/permission of the confiscating authority.
v) The petitioner is directed not to alienate the vehicle or change the physical features or create any encumbrance on the said vehicle.
vi) The petitioner shall produce the vehicle whenever it is required by the concerned authorities during pendency of the proceedings before them.

Common Intention

Krishnan and Another vs. State of Kerala, (1996) 10 SCC 508:

"15. Question is whether it is obligatory on the part of the prosecution to establish commission of overt act to press into service section 34 of the Penal Code. It is no doubt true that court likes to know about overt act to decide whether the concerned person had shared the common intention in question. Question is whether overt act has always to be established? I am of the view that establishment of an overt act is not a requirement of law to allow section 34 to operate inasmuch this section gets attracted when "a criminal act is done by several persons in furtherance of common intention of all." What has to be, therefore, established by the prosecution is that all the concerned persons had shared the common intention. Court's mind regarding the sharing of common intention gets satisfied when overt act is established qua each of the accused. But then, there may be a case where the proved facts would themselves speak of sharing of common intention: res ipsa loquitur."

304B IPC Dowy Death:-

a three Judge Bench of the Hon'ble Supreme Court in Gurmeet Singh vs. State of Punjab, (2021) 6 SCC 108 that has restated the detailed guidelines that have been laid down in Satbir Singh and Another vs. State of Haryana, (2021) 6 SCC 1 both authored by Chief Justice N.V. Ramana, relating to trial under Section 304-B IPC where the law on Section 304-B IPC and Section 113-B of the Evidence Act has been pithily summarized in the following words:

"38.1. Section 304-B IPC must be interpreted keeping in mind the legislative intent to curb the social evil of bride burning and dowry demand.

38.2. **The prosecution must at first establish the existence of the necessary ingredients for constituting an offence under Section 304-B IPC. Once these ingredients are satisfied, the rebuttable presumption of causality, provided under Section 113-B of the Evidence Act operates against the accused.**

38.3. The phrase "soon before" as appearing in Section 304-B IPC cannot be construed to mean "immediately before." The prosecution must establish existence of "proximate and live link" between the dowry death and cruelty or harassment for dowry demand by the husband or his relatives.

38.4. Section 304-B IPC does not take a pigeonhole approach in categorising death as homicidal or suicidal or accidental. The reason for such non-categorisation is due to the fact that death occurring "otherwise than under normal circumstances" can, in cases, be homicidal or suicidal or accidental."

Bail Order- Reasons

In the case of In Neeru Yadav vs. State of U.P. and Another, (2016) 15 SCC 422, after referring to a catena of judgments of this Court on the considerations to be placed at balance while deciding to grant bail, it is observed in paragraphs 15 and 18 as under:

"15. This being the position of law, it is clear as cloudless sky that the High Court has totally ignored the criminal antecedents of the accused. What has weighed with the High Court is the doctrine of parity. A history-sheeter involved in the nature of crimes which we have reproduced hereinabove, are not minor offences so that he is not to be retained in custody, but the crimes are of heinous nature and such crimes, by no stretch of imagination, can be regarded as jejune. Such cases do create a thunder and lightening having the effect potentiality of torrential rain in an analytical mind. The law expects the judiciary to be alert while admitting these kind of accused persons to be at large and, therefore, the 11 emphasis is on exercise of discretion judiciously and not in a whimsical manner.

xxx xxx xxx

18. Before parting with the case, we may repeat with profit that it is not an appeal for cancellation of bail as the cancellation is not sought because of supervening circumstances. The annulment of the order passed by the High Court is sought as many relevant factors have not been taken into consideration which includes the criminal antecedents of the accused and that makes the order a deviant one. Therefore, the inevitable result is the lancination of the impugned order."

NEWS

- APHC-SOP for efiling- ROC no. 505/2021- CPS dated 30/12/2021.
- Govt of A.P.-Amendment to the Andhra Pradesh Water, Land And Trees Rules, 2004.- notified.- 7.1.2022.
- APHC- Practise Directions- Circular no.1/2022 dt. 10.1.2022
- TSHC- Circular for filing A4 size Papers dt.10.1.2022
- TSHC- SOP-RC no. 394/SO/2020 dt.17.1.2022
- APHC- 52A(2) NDPS Instructions-RO 578/SO/2016, Dt.18.1.2022

- Govt. A.P.- Special Rules For Andhra Pradesh Mahila Police (Subordinate Service Rules 2021.- notified – 25.1.2022
- Govt. Of A.P.- Retired Chief Justices And Judges Domestic Help(S) And Other Benefits Rules, 2021.- notified- 25.1.2022
- TSHC- ROC no. 584/SO/2021- Communication of extension of limitation granted by Supreme Court.
- A.P.- Courts - Civil & Criminal - Kurnool District - Establishment Of New Senior Civil Judge's Court At Dhone.

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ON A LIGHTER VEIN

A man boasts to a friend about his new hearing aid, 'It's the most expensive one I've ever had, it cost me Rs. 1 lakh

His friend asks, 'What kind is it?'

The braggart says, 'Half past four.'

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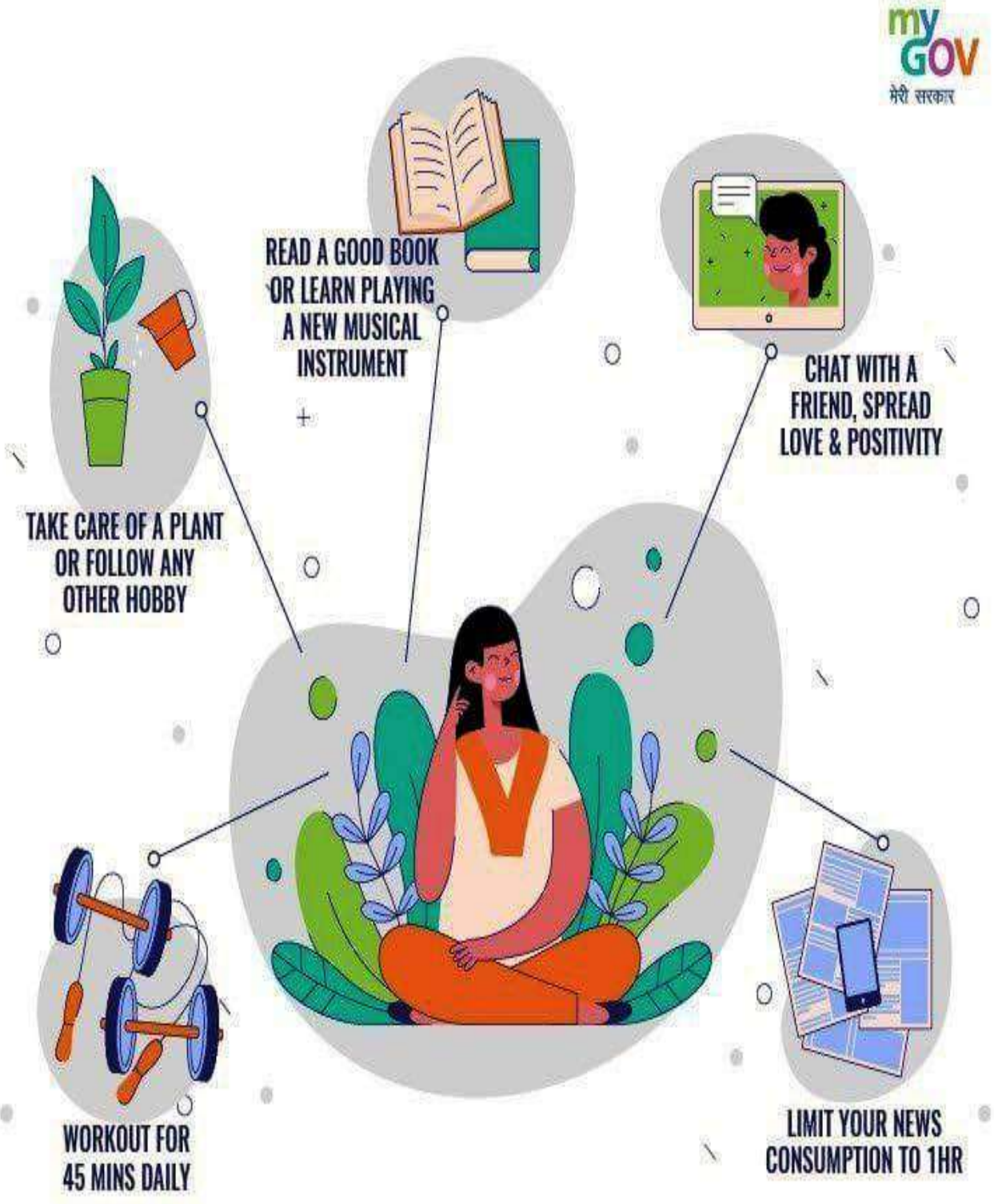


MANAGING **COVID STRESS**

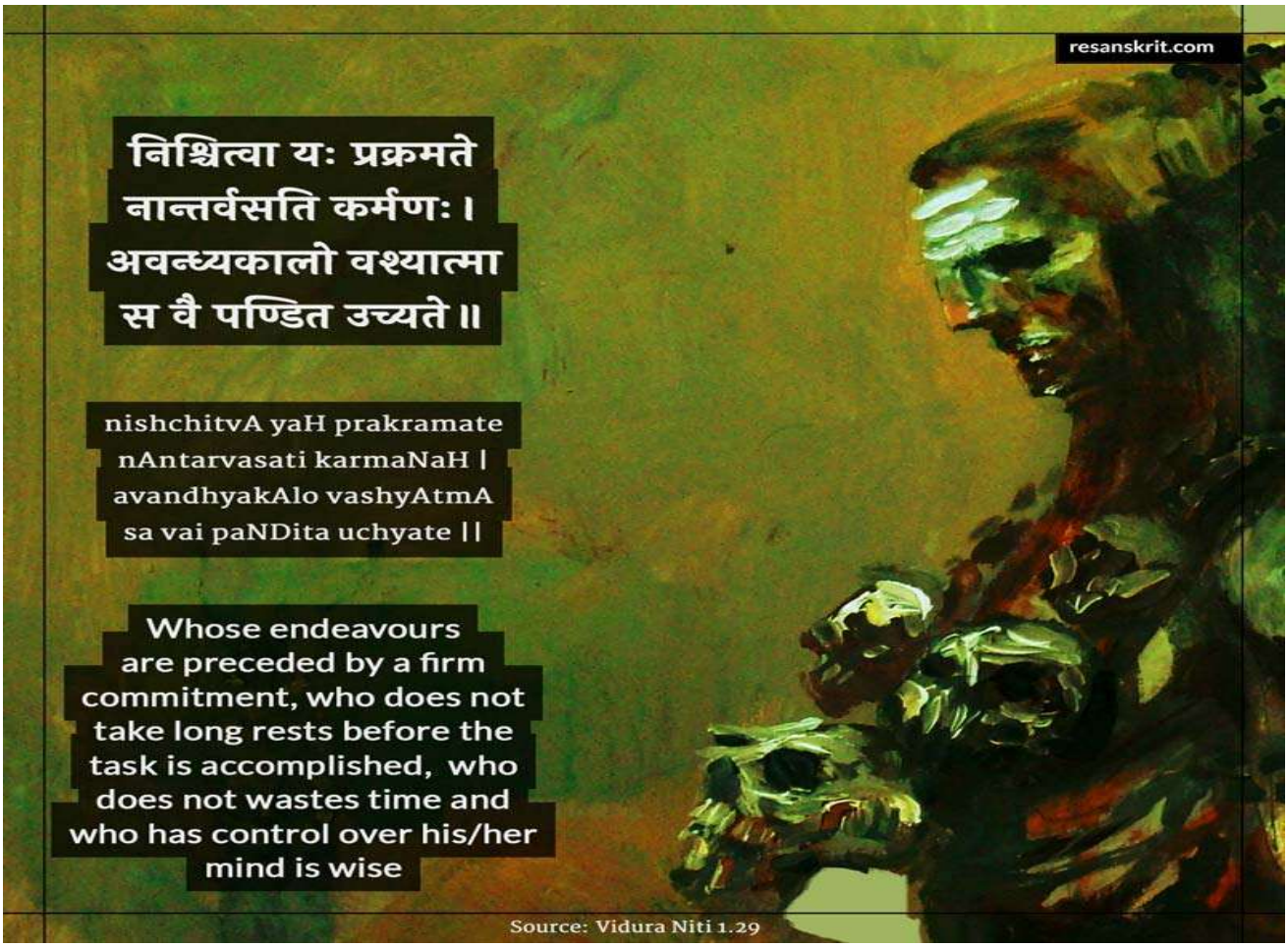
Prosecution Replenish

Vol- X Part – 3

March,2022

Aano Bhadra Kratvo Yantu Viswatah (Rig Ved)

Let all Noble thoughts come to us from all directions



CITATIONS

2022 0 Supreme(SC) 157; M/s TRL Krosaki Refractories Ltd. Versus M/s SMS Asia Private Limited & Anr.; Criminal Appeal No. 270 of 2022 (Arising out of SLP (Crl.) No. 3113 of 2018); Decided On : 22-02-2022; THREE JUDGE BENCH

Section 200 of the Code mandatorily requires an examination of the complainant; and where the complainant is an incorporeal body, evidently only an employee or representative can be examined on its behalf, As a result, the company becomes a de jure complainant and its employee or other representative, representing it in the criminal proceedings, becomes the de facto complainant. Thus in every complaint, where the complainant is an incorporeal body, there is a complainant - de jure, and a complainant - de facto. Clause (a) of the proviso to Section 200 provides that where the complainant is a public servant, it will not be necessary to examine the complainant and his witnesses. Where the complainant is an incorporeal body represented by one of its employees, the employee who is a public servant is the de facto complainant and in signing and presenting the complaint, he acts in the discharge of his official duties. Therefore, it follows that in such cases, the exemption under clause (a) of the first proviso to Section 200 of the Code will be available.

2022 0 Supreme(SC) 154; K. Shanthamma Vs. The State of Telangana: Criminal Appeal No. 261 of 2022, SLP (Criminal) No. 7182 of 2019; Decided On : 21-02-2022

The offence under Section 7 of the PC Act relating to public servants taking bribe requires a demand of illegal gratification and the acceptance thereof. The proof of demand of bribe by a public servant and its acceptance by him is sine quo non for establishing the offence under Section 7 of the PC Act.

2022 0 Supreme(SC) 153; BABU VENKATESH AND OTHERS Vs. STATE OF KARNATAKA AND ANOTHER; Criminal Appeal No. 252 of 2022 [Arising Out of SLP (Crl.) No. 2183 of 2021] with Criminal Appeal No. 253 of 2022 [Arising Out of SLP (Crl.) No. 2182 of 2021]; Criminal Appeal No. 254 of 2022 [Arising Out of SLP (Crl.) No. 2162 of 2021] and Criminal Appeal No. 255 of 2022 [Arising Out of SLP (Crl.) No. 2217 of 2021]; Decided on : 18-02-2022

This court further held that, in an appropriate case, the learned Magistrate would be well advised to verify the truth and also verify the veracity of the allegations. The court has noted that, applications under Section 156 (3) of the Cr.P.C. are filed in a routine manner without taking any responsibility only to harass certain persons.

This court has further held that, prior to the filing of a petition under Section 156 (3) of the Cr.P.C., there have to be applications under Section 154 (1) and 154 (3) of the Cr.P.C. This court emphasizes the necessity to file an affidavit so that the persons making the application should be conscious and not make false affidavit. With such a requirement, the persons would be deterred from causally invoking authority of the Magistrate, under Section 156 (3) of the Cr.P.C. In as much as if the affidavit is found to be false, the person would be liable for prosecution in accordance with law.

2022 0 Supreme(SC) 141; Manoj @ Monu @ Vishal Chaudhary Vs. State of Haryana & Anr.: Criminal Appeal No. 207 of 2022 (Arising Out Of Slp (Criminal) No. 8423 of 2019); Decided on : 15-02-2022

It was also found that though the Act(JJ Act) is a beneficial legislation but principles of beneficial legislation are to be applied only for the purpose of interpretation of the statute and not for arriving at a conclusion as to whether a person is juvenile or not.

The appellant sought to rely upon juvenility only on the basis of school leaving record in his application filed under Section 7A of the 2000 Act. Such school record is not reliable and seems to be procured only to support the plea of juvenility. The appellant has not referred to date of birth certificate in his application as it was obtained subsequently. Needless to say, the plea of juvenility has to be raised in a bonafide and truthful manner. If the reliance is on a document to seek juvenility which is not reliable or dubious in nature, the appellant cannot be treated to be juvenile keeping in view that the Act is a beneficial legislation. As also held in Babloo Pasi, the provisions of the statute are to be interpreted liberally but the benefit cannot be granted to the appellant who has approached the Court with untruthful statement.

2022 0 Supreme(SC) 118; Pappu Vs The State of Uttar Pradesh ; Criminal Appeal Nos. 1097-1098 of 2018; Decided On : 09-02-2022 THREE JUDGE BENCH

mere irregularity in preparation of memos by the IO would not falsify the factum of information by the accused/appellant leading to the discovery of the dead body.

2022 0 Supreme(SC) 120; Sk. Supiyan @ Suffiyan @ Supisan Vs. The Central Bureau of Investigation; Criminal Appeal No. 198 of 2022 [@ SLP(Crl.)No. 9796 of 2021]; Decided On : 09-02-2022

the pre-arrest bail granted to the appellant is liable to be cancelled if it is found that the appellant is not cooperating for the investigation.

2022 0 Supreme(SC) 116; Nawabuddin Vs State of Uttarakhand ; Criminal Appeal No. 144 of 2022; Decided On : 08-02-2022

Any act of sexual assault or sexual harassment to the children should be viewed very seriously and all such offences of sexual assault, sexual harassment on the children have to be dealt with in a stringent manner and no leniency should be shown to a person who has committed the offence under the POCSO Act. By awarding a suitable punishment commensurate with the act of sexual assault, sexual harassment, a message must be conveyed to the society at large that, if anybody commits any offence under the POCSO Act of sexual assault, sexual harassment or use of children for pornographic purposes they shall be punished suitably and no leniency shall be shown to them. Cases of sexual assault or sexual harassment on the children are instances of perverse lust for sex where even innocent children are not spared in pursuit of such debased sexual pleasure.

Children are precious human resources of our country; they are the country's future. The hope of tomorrow rests on them. But unfortunately, in our country, a girl child is in a very vulnerable position. There are different modes of her exploitation, including sexual assault and/or sexual abuse. In our view, exploitation of children in such a manner is a crime against humanity and the society. Therefore, the children and more particularly the girl child deserve full protection and need greater care and protection whether in the urban or rural areas. As observed and held by this Court in the case of State of Rajasthan Vs. Om Prakash, (2002) 5 SCC 745, children need special care and protection and, in such cases, responsibility on the shoulders of the Courts is more onerous so as to provide proper legal protection to these children. In the case of Nipun Saxena v. Union of India, (2019) 2 SCC 703, it is observed by this Court that a minor who is subjected to sexual abuse needs to be protected even more than a major victim because a major victim being an adult may still be able to withstand the social ostracization and mental harassment meted out by society, but a minor victim will find it difficult to do so. Most crimes against minor victims are not even reported as very often, the perpetrator of the crime is a member of the family of the victim or a close friend. Therefore, the child needs extra protection. Therefore, no leniency can be shown to an accused who has committed the offences under the POCSO Act, 2012 and particularly when the same is proved by adequate evidence before a court of law.

2022 0 Supreme(SC) 117; Kahkashan Kausar @ Sonam and Others Vs State of Bihar and Others; Criminal Appeal No. 195 of 2022, S.L.P. (Crl.) No. 6545 of 2020; Decided On : 08-02-2022

The above-mentioned decisions clearly demonstrate that this court has at numerous instances expressed concern over the misuse of Section 498A IPC and the increased tendency of implicating relatives of the husband in matrimonial disputes, without analysing the long term ramifications of a trial on the complainant as well as the accused. It is further manifest from the said judgments that false implication by way of general omnibus allegations made in the course of matrimonial dispute, if left unchecked would result in misuse of the process of law. Therefore, this court by way of its judgments has warned the courts from proceeding against the relatives and in-laws of the husband when no prima facie case is made out against them.

in the absence of any specific role attributed to the accused appellants, it would be unjust if the Appellants are forced to go through the tribulations of a trial, i.e. general and omnibus allegations cannot manifest in a situation where the relatives of the complainant's husband are forced to undergo trial. It has been highlighted by this court in varied instances, that a criminal trial leading to an eventual acquittal also inflicts severe scars upon the accused, and such an exercise must therefore be discouraged.

2022 0 Supreme(SC) 115; Serious Fraud Investigation Office vs Rahul Modi & Ors.; Criminal Appeal Nos.185-186 of 2022 (Arising out of Special Leave Petition (Crl.) Nos. 5180-5181 of 2019); Decided On : 07-02-2022

The conclusion of the High Court that the accused cannot be remanded beyond the period of 60 days under Section 167 and that further remand could only be at the post-cognizance stage, is not correct in view of the judgment of this Court in Bhikamchand Jain

the right conferred on an accused under Section 167(2) cannot be exercised after the charge-sheet has been submitted and cognizance has been taken.

Taking into account the fact that before the expiry of 180 days, no charge-sheet had been submitted nor any application filed seeking extension of time to investigate, this Court held that the appellant was entitled to be released on statutory bail notwithstanding the subsequent filing of an additional complaint. The point that was decided in the said case was that the filing of an additional complaint after the accused has availed his right to be released on default bail, should not deter the courts from enforcing this indefeasible right, if the charge-sheet was not filed before the expiry of the statutory period.

2022 0 Supreme(SC) 65; State of U.P. Vs Veerpal & Anr.; Criminal Appeal No. 34 of 2022; Decided on : 01-02-2022

When there are more than one dying declaration, and in the earlier dying declaration, the accused is not sought to be roped in but in the later dying declaration, a somersault is made by the deceased, the case must be decided on the facts of each case. The court will not be relieved of its duty to carefully examine the entirety of materials as also the circumstances surrounding the making of the different dying declarations. If the court finds that the incriminatory dying declaration

brings out the truthful position particularly in conjunction with the capacity of the deceased to make such declaration, the voluntariness with which it was made which involves, no doubt, ruling out tutoring and prompting and also the other evidence which support the contents of the incriminatory dying declaration, it can be acted upon. Equally, the circumstances which render the earlier dying declaration, worthy or unworthy of acceptance, can be considered.
The evidentiary value of the dying declaration is further enhanced by the fact that it was accompanied by a certificate from the physician who was treating the deceased prior to her death, stating that the deceased remained fully conscious while making the statement. The Trial Court rightly placed reliance on the dying declaration having due regard to the statements made by the physician as to the medical condition of the deceased while making such declaration. The Trial Court has also rightly noted that the statements of the SDM and the physician, being independent witnesses in the trial, has added weight to the prosecution case as the same could not be motivated by malice.

https://indiankanoon.org/doc/185656861/; Waheed-Ur-Rehman Parra vs Union Territory Of Jammu And ... on 25 February, 2022
the provisions of Section 173(6) of the Cr.P.C. read with Section 44 of the UAPA and Section 17 of the NIA Act stand on a different plane with different legal implications as compared to Section 207 of the Cr.P.C. The objective of Section 44, UAPA, Section 17, NIA Act, and Section 173(6) is to safeguard witnesses. They are in the nature of a statutory witness protection. On the court being satisfied that the disclosure of the address and name of the witness could endanger the family and the witness, such an order can be passed. They are also in the context of special provisions made for offences under special statutes. These considerations weighed with the trial court while passing the order dated 01.06.2021, and even the appellant has no quibble with the same.
< The order has not only permitted redaction of the address and particulars of the witnesses which could disclose their identities but has further observed as noted aforesaid that even other relevant paras in the statement which would disclose their occupation and identity could be redacted.>

https://indiankanoon.org/doc/54736183/; B. Venkat Reddy, Hyd vs P.P., Hyd Ano on 25 February, 2022
The Investigating Officer committed legal error in submitting the charge sheet against the revision petitioners without obtaining prior sanction under Section 197 of Cr.P.C. from the authority concerned and the learned Magistrate has also committed legal error in taking cognizance of the aforesaid charge sheet in the absence of sanction order under Section 197 of Cr.P.C

https://indiankanoon.org/doc/161975394/; **Sri Rajkumar Jevarathinam, vs The State Of Andhra Pradesh, on 4 February, 2022;**
Sec 37 NDPS act not attracted, in violations involving small and intermediate quantities.

https://indiankanoon.org/doc/172969140/; Sura Sammaiah vs The State Of Telangana on 24 February, 2022;
https://indiankanoon.org/doc/63033364/; Pethuru B.Raj Kumar And 3 Others vs The State Of Telangana And Another on 24 February, 2022;
Police is directed to follow the procedure laid down under Section 41A of Cr.P.C. **before arresting** the petitioner No.1/A.1 and strictly adhere to the guidelines formulated by the Hon'ble Apex Court in Arnesh Kumar's case

https://indiankanoon.org/doc/55135156/; Bachu Saritha vs State Of Telangana on 24 February, 2022
Police is directed to follow the procedure laid down under Section 41A of Cr.P.C. before arresting the petitioners/A.1 and A.2 and strictly adhere to the guidelines formulated by the Hon'ble Apex Court in Arnesh Kumar's case in a case under Section 3(1)(g)(r)(s) of Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 2015.

https://indiankanoon.org/doc/36562501/; Kallepalli Uppamma Krupa vs The State Of Telangana And 2 Others on 23 February, 2022
Giving protection and safeguarding a child, more particularly a girl child, is not the sole responsibility of the parents, relatives or guardians as the case may be, but it is the social responsibility of every citizen. Today's children are the future of our country. If a child is subjected to a sexual offence at a tender age of three years, the amount of trauma that the child undergoes cannot be described in normal words. Further, the impact of such incident on the parents and family members will be enormous. The child will have to suffer such mental stress for the rest of her life. The sufferance of the victim child may possibly affect her prospects in life.
In the peculiar facts of this case, it cannot be said that the detaining authority exceeded his jurisdiction and committed illegality in resorting to preventively detain the detenu warranting interference of this Court.

https://indiankanoon.org/doc/4332929/; **Nargani Sathibabu, vs The State Of Andhra Pradesh on 4 February, 2022**
https://indiankanoon.org/doc/67796515/; **Buddiga Durga Prasad vs The State Of Andhra Pradesh on 4 February, 2022; & BATCH**
Anticipatory Bail granted as the special report was prepared by the Police in the absence of mediators, for the offence punishable under Section 7(B) read with 8(B) of the Andhra Pradesh Prohibition (Amendment) Act, 2020.

https://indiankanoon.org/doc/128346324/; **Doddi Audi Narayana vs The State Of Andhra Pradesh on 4 February, 2022;**
Accused granted bail, as charge sheet was not filed by ACB within statutory period of 60 days.

https://indiankanoon.org/doc/123677969/; **Tiggireddy Veerababu vs State Of Andhra Pradesh on 4 February, 2022;**
https://indiankanoon.org/doc/29160210/; **Polavarapu Venkayamma vs The State Of Andhra Pradesh on 4 February, 2022;**
the fact that nowhere in the special report it is disclosed how the Police personnel came to the conclusion that the petitioner is the accused, who ran away from the spot, this Court deems it appropriate to grant pre-arrest bail to the petitioner.

https://indiankanoon.org/doc/150915321/; **Paletigandla Rajini vs The State Of Andhra Pradesh on 4 February, 2022;**
It is well settled law that mere acquittal of co-accused in criminal case after trial by itself is not a valid ground for acquittal of the other accused, whose case was separated in the said case. The petitioner herein being A.2 has to face the prosecution and trial has to be conducted against her and after appreciating the evidence on record, the trial Court has to decide the culpability or otherwise of the petitioner in the final adjudication of the case.

February 21, 2022 Criminal Appeal No 263 of 2022 (Arising out of SLP(Crl) No 9317 of 2021) X (Minor) Versus The State of Jharkhand & Anr.
Once, prima facie, it appears from the material before the Court that the appellant was barely thirteen years of age on the date when the alleged offence took place, both the grounds, namely that “there was a love affair” between the appellant and the second respondent as well as the alleged refusal to marry, are circumstances which will have no bearing on the grant of bail. Having regard to the age of the prosecutrix and the nature and gravity of the crime, no case for the grant of bail was established.

FEBRUARY 09, 2022 THE STATE OF HIMACHAL PRADESH VERSUS KARUNA SHANKER PURI CRIMINAL APPEAL NO.912/2010 WITH Criminal Appeal No.219 /2022 [@ SLP(Crl) No. 1541/2014 (II-C)] Criminal Appeal Nos.234-236/2022 [In SLP [CRL.] Nos.1165-1167/2014 @ SLP(Crl) Nos.1164- 1167/2014] Crl.A. No. 1083/2016 (II-C) Crl.A. No. 1062/2011 (II-C) Crl.A. No. 1192/2010 (II-C) Crl.A. No. 1063/2011 (II-C) Crl.A. No. 2207/2010 (II-C) Crl.A. No. 1085/2016 (II-C) Crl.A. No. 1090/2016 (II-C) Crl.A. No. 1092/2016 (II-C) Crl.A. No. 1084/2016 (II-C) Crl.A. No. 1089/2016 (II-C) Crl.A. No. 1088/2016 (II-C) Crl.A. No. 1091/2016 (II-C) Crl.A. No. 107/2017 (II-C)
an aspect we may note stands covered by the judgment in Hira Singh opining that in the case of seizure of a mixture, the quantity of neutral substance is not to be excluded and to be taken into consideration along with the actual content of weight of the offending drug while determining the small or commercial quantity.

CRIMINAL APPEAL No.1023 of 2013; 11.02.2022; Mandala Murali v. The State of AP DB;

In the present case, the Dying Declaration is the sole basis for convicting the appellant/accused. The deceased was in a fit state of mind, the Dying Declaration is true and voluntary as it was recorded by the learned Magistrate and the Doctor has certified that the deceased was in a fit state of mind at the time of giving statement and therefore there is no reason to discard the Dying Declaration.

The State Of AP. v. Ajmeera Raghu; CRIMINAL APPEAL No.353 of 2014; February 04, 2022

Children cannot be called to the court and cited as witnesses unless it is very much essential and there were no other witnesses to prove the said facts. When there were adult witnesses available, the victim herself as well as the neighbours and the other persons who can speak about the incident, the non-examination of children to prove the incident is considered as not fatal.

acquitting the accused on some minor inconsistencies which were not fatal to the prosecution case at all, is illegal.

The delay of dispatching FIR in the absence of any explanation was also considered as fatal to the case of the prosecution by the trial Court. But how the said delay in dispatching FIR to the court was fatal was not explained by the trial Court. Each and every delay was not fatal to the prosecution case unless there is a suggestion as to the false implication of the accused due to the said delay.

Syed Inayathullah vs The State Of Telangana; CRIMINAL PETITION No.824 of 2022; 7th February, 2022.

It is appropriate to mention that after issuance of notice under Section 41-A Cr.P.C., if the police feels that the accused has to be arrested, without obtaining the permission from the Magistrate concerned, they cannot arrest the accused

If the accused feels that the police failed to follow the procedure under Section 41-A Cr.P.C. or the guidelines of the Apex Court in Arnesh Kumar's case (supra), they could as well come before this Court by filing contempt petition against the concerned police officer with relevant material to substantiate their allegations, but on this basis, they cannot seek anticipatory bail.

Rajesh Yadav vs State of UP; CrlA 339-340 OF 2014; February 04, 2022

Merely because they are related witnesses, in the absence of any material to hold that they are interested, their testimonies cannot be rejected.

It is very unfortunate that the investigating officer could not be produced despite the best efforts made. The reason is obvious. There are three investigating officers. The

other two investigating officers have been examined including for the charge under the Arms Act. PW-13, the first investigating officer, has been examined in extenso during cross examination. It is only for the further examination he turned turtle. That per se would not make the entire case of the prosecution bad is law particularly when the final report itself cannot be termed as a substantive piece of evidence being nothing but a collective opinion of the investigating officer

Long adjournments are being given after the completion of the chief examination, which only helps the defense to win them over at times, with the passage of time. Thus, we deem it appropriate to reiterate that the trial courts shall endeavor to complete the examination of the private witnesses both chief and cross on the same day as far as possible. To further curtail this menace, we would expect the trial courts to take up the examination of the private witnesses first, before proceeding with that of the official witnesses.

Missu Naseem & Anr. V. The State Of Andhra Pradesh & Ors.| Criminal Appeal No. 160/ 2022;

The effect of this reasoning is that fabrication of documents is permissible if it does not cause loss to the revenue! We have thus no hesitation in coming to the conclusion that the impugned order must go and is consequently set aside

State of Manipur vs Surjakumar Okram; Civil Appeal Nos. 823-827 of 2022 (Arising out of SLP (C) Nos.2001-2005 of 2021) (THREE JUDGE BENCH);

The principles that can be deduced from the law laid down by this Court, as referred to above, are:

I. A statute which is made by a competent legislature is valid till it is declared unconstitutional by a court of law.

II. After declaration of a statute as unconstitutional by a court of law, it is non est for all purposes.

III. In declaration of the law, the doctrine of prospective overruling can be applied by this Court to save past transactions under earlier decisions superseded or statutes held unconstitutional.

IV. Relief can be moulded by this Court in exercise of its power under Article 142 of the Constitution, notwithstanding the declaration of a statute as unconstitutional.

Therefore, it is clear that there is no question of repeal of a statute which has been declared as unconstitutional by a Court. The very declaration by a Court that a statute is unconstitutional obliterates the statute entirely as though it had never been passed. The consequences of declaration of unconstitutionality of a statute have to be dealt with only by the Court.

CRIMINAL APPEAL NO.1492 OF 2021 PAPPU TIWARY Vs. STATE OF JHARKHAND; CRIMINAL APPEAL NO.1202-1203 OF 2014 LAW TIWARI @ UPENDRA KUMAR TIWARI Vs THE STATE OF JHARKHAND; January 31, 2022.

The burden on the accused is rather heavy and he is required to establish the plea of alibi with certitude

insofar as the factual context is concerned, there is little doubt that there is not a minor but a major difference in recording the number of injuries suffered by the deceased in the inquest report and the post-mortem report. However, this will not be fatal in our view. We say so keeping in mind the purpose of an inquest report, which is not a substantive evidence. The objective is to find out whether a person who has died under suspicious circumstances, what may be the apparent cause of his death. In the present case the death was unnatural. There were wounds. There is no doubt that it is a homicide case. The expert is the doctor who carries out the post-mortem and has been medico legal expert. The two fire arm injuries have been clearly identified with the wounds at the entry and at the exit being identified. We have already discussed the proximity of the time period between the intimation and the police proceeding with it right up to the stage when the post-mortem commenced. We do not find any substance in this plea.

On the issues such as what fire arm was used, whether the injuries were caused by bullet or pellet and the distance from which the fire arm was used, it was submitted that where the weapon and ammunition is of uncertain make and quality, the normal pellet pattern based on standard weapon and ammunition cannot be applied with accuracy

The test which is applied of proving the case beyond reasonable doubt does not mean that the endeavour should be to nick pick and somehow find some excuse to obtain acquittal.

https://indiankanoon.org/doc/84996983/; Gopala Krishna Kalanidhi Vs State of A.P; CRIMINAL PETITION NOS.950, 953 AND 954 OF 2022 Date : 25-02-2022

During the course of investigation, notice under Section 41A Cr.P.C. was given to all the three petitioners herein. Pursuant to the said notice given to them, they appeared before the C.B.I. After enquiry, the C.B.I. has arrested them on 12.02.2022 Alleging that the petitioners did not cooperate with the investigating agency to disclose the names of the persons, who are behind the conspiracy that was hatched up in making such comments by way of displaying the posts in the social media, the C.B.I. has arrested them. Thereafter, they were remanded to judicial custody.

NOSTALGIA

498A- charging the relatives:

in K. Subba Rao vs. State of Telangana, (2018) 14 SCC 452 it was also observed that"6. 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."

Preventive detention:

Hon'ble Supreme Court in Haradhan Saha vs state of W.B.((1975) 3 SCC 198). The Hon'ble Supreme Court held as under:

> "32. The power of preventive detention is qualitatively different from punitive detention. The power of preventive detention is a PNR,J & Dr.GRR,J WP No.18680 of 2021 precautionary power exercised in reasonable anticipation. It may or may not relate to an offence. It is not a parallel proceeding. It does not overlap with prosecution even if it relies on certain facts for which prosecution may be launched or may have been launched. An order of preventive detention may be, made before or during prosecution. An order of preventive detention may be made with or without prosecution and in anticipation or after discharge or even acquittal. The pendency of prosecution is no bar to an order of preventive detention. An order of preventive detention is also not a bar to prosecution.
>
> 33. Article 14 is inapplicable because preventive detention and prosecution are not synonymous. The purposes are different. The authorities are different. The nature of proceedings is different. In a prosecution an accused is sought to be punished for a past act. In preventive detention, the past act is merely the material for inference about the future course of probable conduct on the part of the detenu."

Acquittal of co-Accused:

The Apex Court in the case of Megh Singh v. State of Punjab1 held that acquittal of co-accused does not by itself entitle the other accused in the same case to acquittal as a single significant detail may alter the entire aspect. In another judgment rendered in the case of Gorle S. Naidu v. State of A.P.2, the Apex Court held that mere acquittal of a large number of co-accused persons does not per se entitle others to acquittal. Following the aforesaid two judgments of the Apex Court, the Full Bench of the Kerala High Court also in the case of Moosa v. Sub Inspector of Police3 held that the fact that the co-accused have secured acquittal after trial cannot by itself be reckoned as a relevant circumstance for invocation of powers under Section 482 Cr.P.C. to quash the proceedings as against the accused who has not faced the trial. It is held that the judgment of acquittal of a co-accused is not a relevant document for considering the prayer to quash the (2003) 8 SCC 666 (2003) 12 SCC 449 2006 CriLJ 1922 proceedings under Section 482 Cr.P.C. against the accused who has not faced the trial.

NEWS

- Prosecution Replenish congratulates Smt B.Vanaja and Ms D.Kalpana on their promotion as Sr.APP's, Telangana.
- A.P. High Court - Revised guidelines for transfer dt.16.02.2022.
- The Central Motor Vehicles (Motor Vehicle Accident Fund) Rules, 2022, shall come into force from 1st April,2022
- The Compensation to Victims of Hit and Run Motor Accidents Scheme, 2022 shall come into force with effect from the 1st April, 2022
- Section 50; 51; 52; 53; 54; 55; 56; 57; and Section 93 of Motor Vehicles (Amendment) Act, 2019 (32 of 2019) shall come into effect from 1st April,2022.

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ON A LIGHTER VEIN

My neice calls me "Ankle"

I call her "Knees"

.

Ours is a Joint family

(very Ortho-docs family)

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Prosecution Replenish

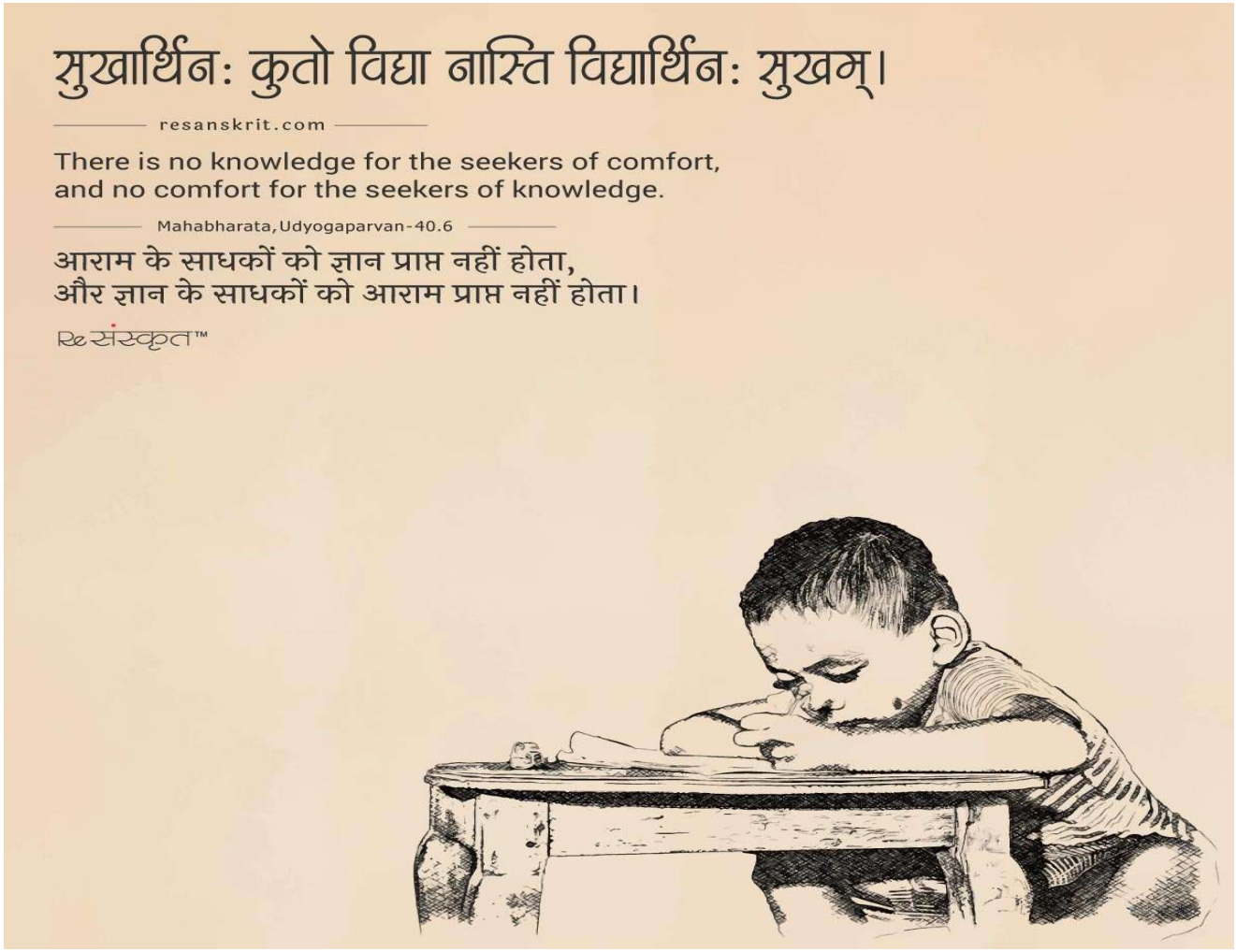
Vol- X

Part – 4

April,2022

Aano Bhadra Kratvo Yantu Viswatah (Rig Ved)

Let all Noble thoughts come to us from all directions



CITATIONS

https://indiankanoon.org/doc/89781270/; Satti Somi Reddy, vs The State Of Andhra Pradesh, on 29 March, 2022; CRIMINAL PETITION No.1891 OF 2022

It is now well settled law that in order to constitute an offence punishable under Section 306 IPC for abetment to commit suicide, the necessary ingredients contemplated under Section 107 IPC relating to intentional instigation given by the accused to the deceased or intentional aid given by the accused to the deceased to commit suicide are to be established. The said ingredients are conspicuously absent in this case. It is not the case of the prosecution that either the petitioner herein or the other accused instigated the deceased or aided him to commit suicide. The deceased got dejected on account of the fact that his love affair with the said girl Keerthi failed and their marriage could not take place and he was also dejected as he was admonished by the elders. So, he has taken an extreme decision of putting an end to his life. So, in the said facts and circumstances of the case, it cannot be

said prima facie that the petitioner herein or the other accused have abetted the deceased to commit suicide.

https://indiankanoon.org/doc/12103808/; Gedela Yeriki Naidu vs The State Of Andhra Pradesh on 29 March, 2022; CRIMINAL PETITION No.1892 OF 2022

The photographs that are now produced by the learned counsel for the petitioner to contend that it is a case of consensual sexual intercourse as both of them are in love will not enure to the benefit of the case of the petitioner. The facts of the case as narrated in the F.I.R clearly show that he has tied thali around her neck to make her believe that she is his wife and thereby had sexual intercourse with her. Therefore, the said intimate photographs cannot be taken into consideration to show that no such offence was committed by the petitioner. The petitioner being a Jailor is not justified in resorting to such acts by trapping a woman who is in helpless condition who has been visiting the Central Prison to see her mother who is undergoing life imprisonment in the said jail. His conduct is most reprehensible in the nature of it. Therefore, in the said facts and circumstances of the case, this Court is of the considered view that this is not a fit case for grant of anticipatory bail to the petitioner.

https://indiankanoon.org/doc/151109603/; CRLP No.530 of 2022 : 09-02-2022;

The mere fact that after the case was registered against the petitioners on the report lodged by the de facto complainant that the present report was lodged against them as a counter blast by itself cannot be a ground to quash the F.I.R. Whether the allegations are false or not and whether the report was lodged as a counter blast to the report lodged by the de facto complainant or not is the matter to be ascertained by the Investigating Officer during the course of investigation.

https://indiankanoon.org/doc/189623706/; Y.Ramalinga Reddy And Another vs The State Of A.P., on 24 March, 2022; CRIMINAL PETITION NO.9556 OF 2015

the accusations made in the complaint and the material placed on record. It is the contention of the learned counsel for the petitioners that the present complaint amounts to second complaint in view of the fact that, earlier, 2nd respondent/defacto complainant filed a report before police and the same was registered as crime No.309 of 2011, dated 29.10.2011 of Kurnool II Town police station for the offences punishable under Sections 408 and 420 IPC, and after completion of investigation, police filed a final report treating the case as civil in nature, vide proceedings C.No.456/SDP-K/2013, dated 08.08.2013 of the Sub Divisional Police Officer, Kurnool. It is his further submission that thereafter, 2nd respondent/defacto complainant preferred the present complaint and the same was referred to police for investigation, and basing on the same, subject crime No.217 of 2015, dated 01.09.2015 of Kurnool II Town police station was registered. On a perusal of both

the complaints would go to show that the set of facts is one and the same in both the crimes. Both the FIRs deal with regard to same occurrence. In any event, second complaint is not maintainable and it is nothing but abuse of process of Court.
https://indiankanoon.org/doc/119961945/; Abdul Nazar Mohammad Sk.Nazar vs State Of AP, 24.03.2022; IA.Nos.3 and 4 of 2022 in/and CRLP No.2132/2022
< High Court quashed the case registered for the offences U/Sec. 323,506 R/w 34 IPC, under its inherent power u/s. 482 CrPC, basing on the compromise arrived between the parties and basing on the Apex Court judgment Gian Singh Vs State of Punjab>

https://indiankanoon.org/doc/171123082/; Devarakonda Sankar vs The State Of Andhra Pradesh on 24 March, 2022; IA.Nos.3 and 4 of 2022 IN/AND CRIMINAL PETITION No.2130 Of 2022
High Court quashed the case registered for the offences U/324, 307, 506 r/w 34 IPC, under its inherent power u/s. 482 CrPC, basing on the compromise arrived between the parties and basing on the Apex Court judgment Gian Singh Vs State of Punjab.

I.A.N0s.1 of 2021 & 2 of 2021 in Crl.A.No.1266 of 2017; Pentakota Chandra Rao S/o Sarabayya Naidu Vs. State of A.P and another
http://tshcstatus.nic.in/hcaporders/2017/201900012662017_1.pdf; HON'BLE SRI JUSTICE JOYMALYA BAGCHI;
This Court has considered the evidence on record, particularly that of victim/PW.1, which is convincing and corroborated by other witnesses. Post conviction compromise in a non-compoundable offence, particularly involving sexual violence against women does not justify setting-aside the order of conviction. Hence, the conviction recorded against the appellant is upheld.
In view of the aforesaid circumstances, I modify the sentence imposed upon the appellant and direct that the appellant shall undergo sentence of imprisonment for the period already undergone on all counts. Sentences on such counts shall run concurrently. Fine amount has already been paid and shall remain un-altered.
http://tshcstatus.nic.in/hcaporders/2017/201900012662017_4.pdf; HON'BLE SRI JUSTICE K. SREENIVASA REDDY
For the reasons stated above read with the settlement arrived at, between the parties, this Court feels it appropriate to quash the proceedings in Criminal Appeal No.1266 of 2017 and all the offences emanating out of the F.I.R. leading to the Criminal Appeal shall stand annulled and the judgments and orders passed by the trial Court are set side, resultantly, the appellant shall be deemed to have been acquitted of the charged offences for all intents and purposes.

< both judgments were given independently in the same case, when the case was posted before the Hon'ble Judges on separate days in a span of 4 days>.

https://indiankanoon.org/doc/187121810/; Syed Sabeena vs The State Of Telangana on 25 March, 2022; WRIT PETITION No.35523 of 2021
https://indiankanoon.org/doc/118034861/; Shaik Nazneen vs The State Of Telangana on 25 March, 2022; WRIT PETITION No.35519 of 2021
A perusal of the detention order would disclose that the detaining authority after considering that the detenu, along with his associates, was targeting lonely women as victims and was snatching gold ornaments from their necks while they were proceeding on the public road and conducting the offences in an organized manner and such acts had the potential of creating a sense of fear and insecurity among women and hinder their day to day work, considered the same as prejudicial to the maintenance of public order. He also considered the linking evidence of the recovery of the gold ornaments from the possession of the detenu and that the witnesses correctly identified the detenu in the Test Identification parade proceedings and the CCTV footage collected by the police had clearly shown the movements of the detenu and his boarding into Ertiga Car bearing No.AP 39 TU 5033 and also considering that though bails were granted to the detenu, no conditions were imposed in the said bail orders, as such, ordinary law and order was not sufficient to deal with the situation, had taken recourse to the preventive detention.

https://indiankanoon.org/doc/79443714/; Palle Mallesham vs The State Of Telangana.,Rep.,Pp on 25 March, 2022; CRIMINAL PETITION No.1160 of 2016
the issue whether possession and transportation of black jaggery and alum by itself is an offence under Section 7(a) read with 8(e) of the A.P. Excise Act, is no more res integra. This Court in Crl.P. No.1095 of 2016 by relying on the decision in Jai Gayathri Traders and General Merchants v. The Prohibition and Excise Inspector [W.P. 9471 of 2018 decided on 12.06.2018], held that:
"7)... The general principle of criminal law that preparation for committing offence is not offence, is not applicable to exceptional case under law dealing with intoxicants, for even preparation to manufacture liquor is made an offence under the statute. The majority decision was summed up thus:

> "Para 52: We may now summarise our discussion on the main question whether keeping or being in possession of black jaggery material for the purpose of manufacture of liquor is an offence under the Excise Act.
> (a) The provisions of the A. P. Excise Act including Sections 13(f) and 34(e) should be interpreted with reference to the objects of the Act and penal provisions dealing with excise offences should also receive broader

interpretation having regard to the fact that the Excise Act is intended to achieve partially the objective of Article 47 of the Constitution of India;

(b) Having regard to the provisions of Sections 13, 34 and 53 and 55 of the Excise Act, we must hold that if Commissioner, Collector, Police Officer or Excise Officer "has reason to believe" that black jaggery (material) is likely to be used for manufacture of ID liquor the same can be seized and persons can be arrested and subject to facts and circumstances of each case including any report of the chemical examiner a charge sheet can be filed under Section 34(e) of the Excise Act.

(c) In a situation such as (a) and (b) above, if the circumstances so warrant the person/accused is entitled to approach under Section 482 of Cr.P.C. and/or Article 226 of the Constitution of India and seek quashing of proceedings provided his case come within well settled principles for quashing F.I.R., charge sheet or criminal case. However, a Writ Petition in such an event at the stage of investigation is not permissible when there is prima facie material to show that black jaggery is not fit for human consumption and was intended for manufacture of ID liquor."

https://indiankanoon.org/doc/38301076/; National Investigation Agency vs Nalamasa Krishna A4 on 25 March, 2022; CRIMINAL APPEAL Nos.388, 389 & 390 of 2021

The circumstances are somewhat peculiar in this case. As seen from the material placed on record, the bail applications of A1, A3 and A4 were filed seeking bail for the offences under Section 120B of IPC, Sections 8(1) and 8(2) of TPS Act and Sections 18, 18B and 20 of the UAP Act for which, the respondents/A1, A3 and A4 were remanded. By the time the subject bail applications of A1, A3 and A4 came up for consideration before the Special Court for the second time, some offences were deleted and some offences were added against A1, A3 and A4. However, the Special Court completely ignored the said fact and proceeded to decide the bail applications of A1, A3 and A4 for the offences for which they were remanded i.e., Section 120B of IPC, Sections 8(1) and 8(2) of TPS Act and Sections 18, 18B and 20 of the UAP Act. None of the parties to the proceedings brought the fact of additions and deletions of certain offences alleged against the A1, A3 and A4 to the notice of the Special Court, before passing the orders, dated 04.09.2021. Here, it is apt to state that while considering bail application(s) of the accused, the Court shall decide whether the accused is entitled for bail for all the offences alleged against him/her. Bail cannot be granted to the accused taking into consideration some of the offences alleged against him and omitting some of the offences, in the same crime. When the same was pointed out by this Court, all the learned counsel on record fairly conceded for remitting the matter to the Special Court for deciding the bail applications of A1, A3 and A4 for all the offences for which cognizance was taken against them. Further, the aspect as to whether there is prima facie case against A1, A3 and A4 for invoking Section 43D(5) of UAP Act is required to be examined and determined in relation to all the offences for which cognizance was taken against

A1, A3 and A4, on filing of Police Report under Section 173(2) of Cr.P.C. Section 439 of Cr.P.C. mandates filing application/s for bail for which, accusation of offence was made. On the date of determination of the bail applications for second time, the accusation against the respondents/A1, A3 and A4 was/is under Section 120B IPC, Sections 17, 18, 18B, 38, 39 and 40 of UAP Act 1967. The bail applications could have been heard and determined for those offences, taking into consideration the directions/observations by this Court vide common judgment, dated 20.07.2021, passed in Criminal Appeal Nos.419, 457 and 468 of 2020.

2022 0 Supreme(SC) 180; Abdul Vahab Vs. State of Madhya Pradesh ; Criminal Appeal No. 340 of 2022, SLP (Crl.) No. 8964 of 2019; Decided On : 04-03-2022

once the confiscation proceedings are initiated under the provisions of the aforenoted legislation, the jurisdiction of criminal courts is ousted, since it is the authorized officer who is vested with power to pass orders for interim custody of vehicles and the Magistrate is kept away.

The confiscation proceeding, before the District Magistrate, is different from criminal prosecution. However, both may run simultaneously, to facilitate speedy and effective adjudication with regard to confiscation of the means used for committing the offence. The District Magistrate has the power to independently adjudicate cases of violations under Sections 4, 5, 6, 6A and 6B of the 2004 Act and pass order of confiscation in case of violation. But in a case where the offender/accused are acquitted in the Criminal Prosecution, the judgment given in the Criminal Trial should be factored in by the District Magistrate while deciding the confiscation proceeding.

2022 0 Supreme(SC) 232; Gangadhar Narayan Nayak @ Gangadhar Hiregutti Vs. State of Karnataka & Ors.: Criminal Appeal No. 451 of 2022 (Arising out of SLP (Criminal) No. 8662 of 2021): Decided on : 21-03-2022

Is section Section 155(2) CrPC applicable to Section 23 of POCSO court, has been referred for placing before appropriate bench, in view of difference of opinion of the two judges of Hon'ble Supreme Court.

2022 0 Supreme(SC) 235; Vijay Kumar Ghai & Ors. Vs. The State Of West Bengal & Ors.; riminal Appeal No. 463 of 2022 (arising out of S.L.P (Crl.) No. 10951 of 2019); Decided on : 22-03-2022

"Entrustment" of property under Section 405 of the Indian Penal Code, 1860 is pivotal to constitute an offence under this. The words used are, 'in any manner entrusted with property'. So, it extends to entrustments of all kinds whether to clerks, servants, business partners or other persons, provided they are holding a position of 'trust'. A person who dishonestly misappropriates property entrusted to them contrary to the terms of an obligation imposed is liable for a criminal breach of trust and is punished under Section 406 of the Penal Code.

The definition in the section does not restrict the property to movables or immoveable alone. This Court in R.K. Dalmia vs Delhi Administration, (1963) 1 SCR 253 held that the word 'property' is used in the Code in a much wider sense than the expression 'moveable property'. There is no good reason to restrict the meaning of the word 'property' to moveable property only when it is used without any qualification in Section 405.

in order to attract the ingredients of Section of 406 and 420 IPC it is imperative on the part of the complainant to prima facie establish that there was an intention on part of the petitioner and/or others to cheat and/or to defraud the complainant right from the inception. Furthermore it has to be prima facie established that due to such alleged act of cheating the complainant (Respondent No. 2 herein) had suffered a wrongful loss and the same had resulted in wrongful gain for the accused(appellant herein). In absence of these elements, no proceeding is permissible in the eyes of law with regard to the commission of the offence punishable u/s 420 IPC.

2022 0 Supreme(SC) 231; Nahar Singh vs. State of Uttar Pradesh & Anr.; CRIMINAL APPEAL NO. 443 OF 2022 (Arising out of Petition for Special Leave to Appeal (Crl.) No.8447 OF 2015); Decided On : 16-03-2022

In the present case, the name of the accused had transpired from the statement made by the victim under Section 164 of the Code. In the case of Dharam Pal ((2014) 3 SCC 306), it has been laid down in clear terms that in the event the Magistrate disagrees with the police report, he may act on the basis of a protest petition that may be filed and commit the case to the Court of Session. This power of the Magistrate is not exercisable only in respect of persons whose names appear in column (2) of the charge-sheet, apart from those who are arraigned as accused in the police report. In the subject-proceeding, the Magistrate acted on the basis of an independent application filed by the de facto complainant. If there are materials before the Magistrate showing complicity of persons other than those arraigned as accused or named in column 2 of the police report in commission of an offence, the Magistrate at that stage could summon such persons as well upon taking cognizance of the offence. As we have already discussed, this was the view of this Court in the case of Raghubans Dubey [AIR 1967 SC 1167]. Though this judgment dealt with the provisions of the 1898 Code, this authority was followed in the case of Kishun Singh [(1993) 2 SCC 16]. For summoning persons upon taking cognizance of an offence, the Magistrate has to examine the materials available before him for coming to the conclusion that apart from those sent up by the police some other persons are involved in the offence. These materials need not remain confined to the police report, charge sheet or the F.I.R. A statement made under Section 164 of the Code could also be considered for such purpose.

2022 0 Supreme(SC) 224; GADADHAR CHANDRA Vs. THE STATE OF WEST BENGAL; CRIMINAL APPEAL NO. 1661 OF 2009; Decided on : 15-03-2022

Apart from PW1, there is no other material witness. The prosecution relied upon the statement of Arjun recorded under Section 164 of CrPC. Even assuming that it is a confessional statement, in view of Section 30 of the Indian Evidence Act, 1872, the same cannot be used against the appellant as Arjun is being separately tried before the Juvenile Justice Board. It is not the prosecution case that the appellant and Arjun were waiting for the deceased near the road by which the deceased used to go back to his village after attending the school. PW1 had stated that along with Arjun and the appellant, Susanta Kr. Chandra and Rabu were also sitting. When the deceased and PW1 came there, the appellant and Arjun ran after them. The relationship between the appellant and Arjun is not brought on record. If, according to the prosecution case, there was a meeting of minds and prior concert between the appellant and Arjun when they were sitting with Susanta Kr. Chandra and Rabu, the prosecution ought to have examined both Susanta Kr. Chandra and Rabu. In fact, they appear to be eye witnesses to the incident. They were privy to the conversation between the appellant and Arjun. The prosecution has not explained its failure to examine these two crucial witnesses, who apart from being eye witnesses, were sitting along with the appellant and Arjun just before the incident near the place of incident. The prosecution has withheld the evidence of two material witnesses who could have thrown light on the incident. Hence, this is a case for drawing an adverse inference against the prosecution. Moreover, the knife allegedly used by the appellant has not been recovered. According to the prosecution, the appellant questioned the deceased why he had beaten Subhas Chandra, the appellant's elder brother. After that, there was an exchange of words. The exchange of blows was between the deceased and Arjun. The scuffle was between the deceased and Arjun. Ultimately, it was Arjun who stabbed the deceased. As consistently held by this Court, common intention contemplated by Section 34 of IPC pre-supposes prior concert. It requires meeting of minds. It requires a pre-arranged plan before a man can be vicariously convicted for the criminal act of another. The criminal act must have been done in furtherance of the common intention of all the accused. In a given case, the plan can be formed suddenly. In the present case, the non-examination of two crucial eye witnesses makes the prosecution case about the existence of a prior concert and pre-arranged plan extremely doubtful.

2022 0 Supreme(SC) 184; State of M.P. Vs. Ramji Lal Sharma and Another; Criminal Appeal No. 293 of 2022; Decided On : 09-03-2022

once it has been established and proved by the prosecution that all the accused came at the place of incident with a common intention to kill the deceased and as

such, they shared the common intention, in that case it is immaterial whether any of the accused who shared the common intention had used any weapon or not and/or any of them caused any injury on the deceased or not.

2022 0 Supreme(SC) 219; Kamla Devi vs. State of Rajasthan & Anr; Criminal Appeal No. 342 of 2022 With Kamla Devi Vs. State of Rajasthan & Anr.; Criminal Appeal No. 343 of 2022; Decided On : 11-03-2022

As noted in Gurcharan Singh vs. State (Delhi Admn.) [1978 CriLJ 129], when bail has been granted to an accused, the State may, if new circumstances have arisen following the grant of such bail, approach the High Court seeking cancellation of bail under section 439 (2) of the CrPC. However, if no new circumstances have arisen since the grant of bail, the State may prefer an appeal against the order granting bail, on the ground that the same is perverse or illegal or has been arrived at by ignoring material aspects which establish a prima-facie case against the accused. Strangely, the State of Rajasthan has not filed any appeal against the impugned orders herein.

While we are conscious of the fact that a Court considering the grant of bail must not engage in an elaborate discussion on the merits of the case, we are of the view that the High Court while passing the impugned orders has not taken into account even a single material aspect of the case. The High Court has granted bail to the respondents-accused by passing a very cryptic and casual order, de hors cogent reasoning. We find that the High Court was not right in allowing the applications for bail filed by the respondents accused.

2022 0 Supreme(SC) 217; Sagar vs State of U.P. and Another ; Criminal Appeal No. 397 of 2022, SLP (Crl) Nos. 7373 of 2021; Decided On : 10-03-2022

The Constitution Bench has given a caution that power under Section 319 of the Code is a discretionary and extraordinary power which should be exercised sparingly and only in those cases where the circumstances of the case so warrant and the crucial test as noticed above has to be applied is one which is more than prima facie case as exercised at the time of framing of charge, but short of satisfaction to an extent that the evidence, if goes un-rebutted, would lead to conviction.

2022 0 Supreme(SC) 185; Devadassan Vs The Second Class Executive Magistrate, Ramanathapuram & Ors.; Criminal Appeal No. 388 of 2022 (Arising Out of SLP (CRL.) No. 8438 of 2021) Decided On : 09-03-2022

As per Section 107 Cr.P.C, on receiving the information, that any person is likely to commit a breach of peace or disturb the public tranquility or to do any wrongful act, the Executive Magistrate may have power to show cause on violation of the terms of the bond so executed for maintaining peace. As per Section 108 of Cr.P.C., similar power has been given for maintaining the security for good behaviour from persons disseminating seditious matters. Similarly, to take security for good behaviour from suspected persons and habitual offenders, powers under Sections 109 and 110 Cr.P.C. have been conferred upon the Executive Magistrate. In the present case,

the order was passed under Sections 111 and 117 Cr.P.C. for security. On violation, recourse, specified under Section 122 Cr.P.C. is permissible. Therefore, the Legislature introduced the said Chapter conferring powers on the authorities to take action for violation of peace and tranquility in public order by the citizens of the locality, otherwise, by following the procedure as prescribed, the action may be taken by the competent authority.

It is a trite law that by following the procedure established by law, the personal liberty of the citizens can be dealt with.

2022 0 Supreme(SC) 183; M. Nageswara Reddy Vs. The State of Andhra Pradesh and Others; Criminal Appeal Nos. 72-73 of 2022 WITH The State of Andhra Pradesh Vs. Kasireddy Ramakrishna Reddy and Others; Criminal Appeal No. 74 of 2022; Decided On : 07-03-2022

Having gone through the reasoning given by the High Court, we are of the opinion that the High Court has unnecessarily given weightage to some minor contradictions. The contradictions, if any, are not material contradictions which can affect the case of the prosecution as a whole. PW-6 was an injured eye-witness and therefore his presence ought not to have been doubted and being an injured eye-witness, as per the settled proposition of law laid down by this Court in catena of decisions, his deposition has a greater reliability and credibility.

Now so far as the finding recorded by the High Court in the final conclusion that the same reasoning which was adopted by the court below for acquitting accused Nos. 4 to 11 will also be equally applicable to accused Nos. 1 to 3 is concerned, it is to be noted that the roles attributed to Accused Nos. 1 to 3 and Accused Nos. 4 to 11 are different. Accused Nos. 1 to 3 are the main assailants. They are identified by the eye-witnesses/injured eye-witnesses. The overt acts of Accused Nos. 1 to 3 are different than that of Accused Nos. 4 to 11. Therefore, the case of Accused Nos. 4 to 11 is not comparable with the case of Accused Nos. 1 to 3.

2022 0 Supreme(SC) 173; Karan Singh Vs. The State of Uttar Pradesh and Others; Criminal Appeal No. 327 of 2022 (Arising Out of SLP (Crl.) No. 717 of 2020); Decided On : 02-03-2022

The Court has to accept the normal conduct of a person. The witness who is watching the murder of a person being brutally beaten by 15 persons can hardly be expected to a state a minute by minute description of the event. Everybody, and more particularly a person who is known to or is related to the deceased, would give all his attention to take steps to prevent the assault on the victim and then to make every effort to provide him with the medical aid and inform the police. The statements which are recorded immediately upon the incident would have to be given a little leeway with regard to the statements being made and recorded with

utmost exactitude. It is a settled principle of law that every improvement or variation cannot be treated as an attempt to falsely implicate the accused by the witness.
The prosecution was required to prove its case beyond reasonable doubt, which it has done, and not beyond all iota of doubt. The fact that one of the injured witnesses may not have mentioned the name of Appellant Karan Singh does not demolish the evidence of the other witnesses.
The fact that the trial/appeal should have taken years and that other accused should have died during the appeal cannot be a ground for acquittal of the Appellant.

A case under Sections 363, 366, 370, 370(A)(1), 376(3) read with Section 34 of the Indian Penal Code, 1860, Section 6 of Protection of Children from Sexual Offences Act, 2012, Sections 4(1), 5(1)(a), 6(1)(a) of Immoral Traffic (Prevention) Act, 1956 and Section 3(2)(v) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 was registered against the petitioner along with other accused in the above crime.
It is settled law that customer who visited the brothel house for prostitution, is not liable for prosecution under the Immoral Traffic (Prevention) Act, 1956. Further, the petitioner was arrested on 14.02.2022 and since then he has been in judicial custody almost for the last one month. Therefore, in the facts and circumstances of the case, the petitioner is entitled to bail. In fact, this Court has earlier granted bail to A-36 to A-38 in the above crime who are facing the prosecution on the ground that they are found at the brothel house as customers. Therefore, the petitioner who is similarly placed, is also entitled to bail.
https://indiankanoon.org/doc/97694483/; Sankurtri Naveen Krishna Naveen vs The State Of Andhra Pradesh on 16 March, 2022; CRIMINAL PETITION No.1624 OF 2022

(It is not brought to the notice of the Hon'ble High Court that the Sec 370A IPC registered in the case is applicable to the customer)

The petitioner was not apprehended by the police while he was selling any such ID liquor to A-1. It is only on the basis of alleged statement said to have been given by A-1 that he has purchased the said ID liquor from the petitioner herein, the petitioner is shown as accused in the above crime. Therefore, in the said facts and circumstances of the case, the petitioner is entitled to pre-arrest bail in the above crime.
https://indiankanoon.org/doc/28636481/; Buddiga Durga Prasad vs The State Of Andhra Pradesh on 16 March, 2022; CRIMINAL PETITION No.1702 OF 2022

https://indiankanoon.org/doc/79805163/; Sartaj Khan vs The State Of Uttarakhand Thru ... on 24 March, 2022; THREE JUDGE BENCH; CRIMINAL APPEAL NO.852 OF 2018

a part of the offence was definitely committed on the soil of this country and as such going by the normal principles the offence could be looked into and tried by Indian courts. Since the offence was not committed in its entirety, outside India, the matter would not come within the scope of Section 188 of the Code and there was no necessity of any sanction as mandated by the proviso to Section 188.

Civil and Criminal remedies:

in K. Jagadish Vs. Udaya Kumar G.S. & Anr., (2020) 14 SCC 552, wherein it was reiterated that two remedies i.e. civil and criminal are not mutually exclusive but can co-exist since they essentially differ in their context and consequence.

Considerations for bail:

This Court has, on several occasions has discussed the factors to be considered by a Court while deciding a bail application. The primary considerations which must be placed at balance while deciding the grant of bail are: (i) the seriousness of the offence; (ii) the likelihood of the accused fleeing from justice; (iii) the impact of release of the accused on the prosecution witnesses; (iv) likelihood of the accused tampering with evidence. While such list is not exhaustive, it may be stated that if a Court takes into account such factors in deciding a bail application, it could be concluded that the decision has resulted from a judicious exercise of its discretion, vide Gudikanti Narasimhulu & Ors. vs. Public Prosecutor, High Court of Andhra Pradesh[(1978) 1 SCC 240] ; Prahlad Singh Bhati vs. NCT of Delhi & Ors. – [(2001) 4 SCC 280 ; Anil Kumar Yadav vs. State (NCT of Delhi) [(2018) 12 SCC 129].

Cross examination- Rules

The Hon'ble High Court of Calcutta in A.E.G. Carapiet vs. A.Y. Derderian had held as follows:

> "9. The law is clear on the subject. Wherever the opponent has declined to avail himself of the opportunity to put his essential and material case in cross-examination, it must follow that he believed that the testimony given could not be disputed at all. It is wrong to think that this is merely a technical rule of evidence. It is a rule of essential justice. It serves to prevent surprise at trial and miscarriage of justice, because it gives notice to the other side of the actual case that is going to be made when the turn of the party on whose behalf the cross-

examination is being made comes to give and lead evidence by producing witnesses. It has been stated on high authority of the House of Lords that this much a counsel is bound to do when cross-examining that he must put to each of his opponent's witnesses in turn, so much of his own case as concerns that particular witness or in which that witness had any share. If he asks no question with regard to this, then he must be taken to accept the plaintiff's account in its entirety. Such failure leads to miscarriage of justice, first by springing surprise upon the party when he has finished the evidence of his witnesses and when he has no further chance to meet the new case made which was never put and secondly, because such subsequent testimony has no chance of being tested and corroborated.

10. On this point the most important and decisive authority is Browne v. Dunn, reported in (1893) 6 R 67. It is a decision of the House of Lords where Lord Herschell, L.C., Lord Halsbury, Lord Morris and Lord Bowen were all unanimous on this particular point. Lord Chancellor Herschell, at page 70 of the report observed: "Now, my Lords, I cannot help saying that it seems to me to be absolutely essential to the proper conduct of a cause where it is intended to suggest that a witness is not speaking the truth on a particular point, to direct his attention to the fact, by some questions put in cross-examination showing that imputation is intended to be made, and not to take his evidence and pass is by as a matter altogether unchallenged and then, when it is impossible for him to explain, as perhaps he might have been able to do if such questions had been put to him, the circumstances which it is suggested indicate that the story he tells ought not to be believed, to argue that he is a witness unworthy of credit. My Lords, I have always understood that if you intend to impeach a witness you are bound, whilst he is in the box, to give him an opportunity of making any explanation which is open to him; and, as it seems to me, that is not only a rule of professional practice in the conduct of a case, but is essential to fair play and fair dealing with witnesses."

24. Subsequently, the Hon'ble Supreme Court in the case of Muddasani Venkata Narasaiah (dead) through L.Rs., vs. MuddasaniSarojana had affirmed the said proposition in the following manner. 15. Moreover, there was no effective cross-examination made on the plaintiff's witnesses with respect to factum of execution of sale deed, PW 1 and PW 2 have not been cross-examined as to factum of execution of sale deed. The cross-examination is a matter of substance not of procedure one is required to put one's own version in cross-examination of opponent. The effect of non-crossexamination is that the statement of witness has not been disputed. The effect of not cross-examining the witnesses has been

considered by this Court in Bhoju Mandal v. Debnath Bhagat [AIR 1963 SC 1906] . This Court repelled a submission on the ground that the same was not put either to the witnesses or suggested before the courts below. Party is required to put his version to the witness. If no such questions are put the Court would presume that the witness account has been accepted as held in Chuni Lal Dwarka Nath v. Hartford Fire Insurance Co. Ltd. [Chuni Lal Dwarka Nath v. Hartford Fire Insurance Co. Ltd., 1957 SCC OnLine P&H 177 : AIR 1958 P&H 440] 16. In Maroti Bansi Teli v. Radhabai [Maroti Bansi Teli v. Radhabai, 1943 SCC OnLine MP 128 : AIR 1945 Nag 60] , it has been laid down that the matters sworn to by one party in the pleadings not challenged either in pleadings or cross-examination by other party must be accepted as fully established. The High Court of Calcutta in A.E.G. Carapiet v. A.Y. Derderian [A.E.G. Carapiet v. A.Y. Derderian, 1960 SCC OnLine Cal 44 : AIR 1961 Cal 359] has laid down that the party is obliged to put his case in cross-examination of witnesses of opposite party. The rule of putting one's version in crossexamination is one of essential justice and not merely technical one. A Division Bench of the Nagpur High Court in KuwarlalAmritlal v. RekhlalKoduram [KuwarlalAmritlal v. RekhlalKoduram, 1949 SCC OnLine MP 35 : AIR 1950 Nag 83] has laid down that when attestation is not specifically challenged and witness is not cross-examined regarding details of attestation, it is sufficient for him to say that the document was attested. If the other side wants to challenge that statement, it is their duty, quite apart from raising it in the pleadings, to cross-examine the witness along those lines. A Division Bench of the Patna High Court in Karnidan Sarda v. Sailaja Kanta Mitra [Karnidan Sarda v. Sailaja Kanta Mitra, 1940 SCC OnLine Pat 288 : AIR 1940 Pat 683] has laid down that it cannot be too strongly emphasised that the system of administration of justice allows of cross-examination of opposite party's witnesses for the purpose of testing their evidence, and it must be assumed that when the witnesses were not tested in that way, their evidence is to be ordinarily accepted. In the aforesaid circumstances, the High Court has gravely erred in law in reversing the findings of the first appellate court as to the factum of execution of the sale deed in favour of the plaintiff.

25. The Hon'ble High Court of Calcutta, has encapsulated the basic principles that need to be followed, while cross examining a witness. I am in complete and respectful agreement with the said principles enunciated in the said judgment. The Hon'ble Supreme Court's affirmation of the said principles seals the entire issue.

NEWS

- The text of the Foreigners (Amendment) Order, 2022 published in Gazette.
- Islamic Research Foundation ('IRF') declared as an unlawful association by a notification dated 15th November, 2021 published in the Gazette of India
- The Central Advisory board under the National Security Act, 1980 constituted.

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ON A LIGHTER VEIN

I asked my grandfather for 20 bucks

He exclaimed "20 bucks", "what for?"

"To buy groceries", I told him.

"when I was a boy", my grandfather said," my mama would give me one rupee, just one rupee, and I'd go to the store and come home with two loaves of bread, two sacks of potatoes, a carton of eggs, three bottles of milk, a can of coffee and a box of tea."

He shrugged and paused.

"Times have changed and you can't do that now," he told me, "too many security cameras."

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Vol- X

Part – 5

May,2022

Aano Bhadra Kratvo Yantu Viswatah (Rig Ved)

Let all Noble thoughts come to us from all directions

CITATIONS

https://indiankanoon.org/doc/191746378/; CRLP No.6155 of 2015: 30.4.2022; Anchula Naga Mani James vs State Of AP

the dispute is with regard to creation of the fake documents and selling away the joint family property to A3. By any stretch of imagination, the dispute cannot be said that this is a civil proceeding. Truth or otherwise has to be established in the course of trial. It cannot be assumed by this Court and come to a conclusion that the dispute is purely civil in nature. It is well settled that in certain cases the very same set of facts may give rise to remedies in civil as well as in criminal proceedings and even if a civil remedy is availed by a party, he is not precluded from setting in motion the proceedings in criminal law. Time and again, the Hon'ble Supreme Court is cautioning that Criminal prosecution cannot be thwarted at the initial stage merely because civil proceedings are also pending. This view of mine is also fortified by the judgment of Hon'ble Apex Court in K. Jagadish Vs. Udaya Kumar G.S. and another

https://indiankanoon.org/doc/194633549/; G.Satayanarayana, vs The State Of Andhra Pradesh, on 29 April, 2022; CRI.R.C. No.924 of 2011;

When an application under Section 321 Cr.P.C. is made, it is not necessary for the Court to assess the evidence to discover whether the case would end in conviction or acquittal. All that the Court has to see is whether the application is made in good faith and not to thwart or stifle the process of law.

https://indiankanoon.org/doc/62467244/; K. Megha Shalini vs The State Of Telangana And 4 Others : 27 April, 2022; WP NO.19058 OF 2020

The burden is on the petitioner to prove that she was being brought up by the maternal grandparents in the community of her mother who is of Mala community. There was no evidence whatsoever placed before the authorities, though the relatives of the petitioner have subsequently confirmed the contentions of the petitioner that on marriage of her parents, the parents of her father excommunicated them. Therefore, they were brought up by the maternal grandparents. Other than the statements of the relatives, no other independent evidence has been placed before the authorities below in support of her relatives.

https://indiankanoon.org/doc/177878275/; Criminal Appeal No.420 OF 2020 Date: 27.04.2022; Banoth Swamy vs The State Of Telangana

The reason for the delay in lodging complaint is bereft of any reasoning. Further, the Court cannot come to aid of the complainant and victim. They themselves have shown hostility to the prosecution of the case. Further, there are no reasons shown to infer any kind of compulsion or force used upon the witnesses P.Ws.1 and 2 to support the appellant. In such case, where there are two different versions, one supporting the prosecution in chief examination and another version in the cross-examination totally contradicting their version in the chief examination, it is not safe to rely upon the chief examination and convict the appellant. Further, the circumstances in the case of there being no compliant when the alleged sexual assault took place or during the pregnancy or when the pregnancy was terminated in the hospital. In the said facts and circumstances, the conviction recorded against the appellant cannot be sustained and accordingly, set aside. Accordingly, the Criminal Appeal is allowed setting aside the conviction recorded by the trial Court under Section 376(1) of IPC and Section 4 of the Act of 2012.

https://indiankanoon.org/doc/52970447/; Kamaram Yellaiah vs The State Of Telangana on 27 April, 2022; CRIMINAL APPEAL No.160 OF 2021

As seen from the record, the victim-P.W.1 has stated that on 05.09.2015 in the afternoon when she went to answer nature's call, the appellant came and committed rape on her. The location is not stated. The manner in which rape was committed either by using force or otherwise is not stated by the victim-P.W.1. In the event of a person committing rape forcibly, using force would be the first step. However, there is no narration by P.W.1 about any force being used, the time spent, the surroundings, whether she shouted for help and the exact location where the rape was committed are all missing which casts any amount of doubt on the version of P.W.1, coupled with the fact that the complaint was lodged with a delay of 9 days

https://indiankanoon.org/doc/52751843/; Bonala Ramesh vs The State Of Telangana on 26 April, 2022; CRIMINAL APPEAL No.140 OF 2022

It is not safe to place reliance upon Exs.P3 and P4 to conclude that the age of PW1 as projected by the prosecution as 16 years and 8 months at the time of incident as correct.

Learned Counsel for the appellant drawing the attention to Exs.P3 and P4 argued that they firstly appear to be fabricated for the reasons of Ex.P3 being provided to the police after PW1 was traced on 02.03.2014 and according to PW4 the said certificate was given on 03.03.2014. Secondly, no credibility can be attached to Ex.P3 and P4 for the reasons of they being provided to the police and the original admission register was not produced before the Court. Further, Ex.P4 when looked at minutely, the name of PW1 is at Sl.No.1485 whereas the name of appellant is at Sl.No.1484 which is highly improbable and there is no explanation as t how the names of the accused and PW1 appear one after the other.

https://indiankanoon.org/doc/27493924/; Mohammed Osamn vs The State Of Telangana on 26 April, 2022: CRIMINAL APPEAL No.365 OF 2020

The argument that no semen or spermatozoa was found is not a ground to conclude that there was no rape. Section 375 of IPC does not require secretion of semen to conclude the offence of rape.

G.P. HEMAKOTI REDDY vs State of A.P; CRIMINAL PETITION NO.321 OF 2015; 12.04.2022;

As per the FIR, the allegations of abusing the informant were within the four walls of her building. It is not the case of the informant that there was any member of the public (not merely relatives or friends) at the time of the incident in the house. Therefore, the basic ingredient that the words were uttered “in any place within public view” is not made out.

A reading of the contents in the First Information Report goes to show that no words have been uttered by the petitioner-accused to humiliate 2nd respondent-defacto complainant that he belongs to such caste, and except stating that the accused used unparliamentary language, nothing has been stated in the First Information Report so as to come to the conclusion that the petitioner abused 2nd respondent-defacto complainant by his caste. In the absence of any averments to that effect, mere conversation over phone would not in any way come within the purview of the offence under the provisions of the Act, 1989.

https://indiankanoon.org/doc/159641554/; Vemula Durga Prasad vs The State Of Andhra Pradeh on 27 April, 2022; WRIT PETITION No.12215 of 2022

i) The 2nd respondent is directed to consider and pass appropriate orders on the representation dated 01.04.2022 submitted by the petitioner for interim custody of the vehicle pending confiscation proceedings by taking immovable property security equivalent to the value of the said vehicle from the petitioner within a period of one week from the date of submission of the said security.

ii) The petitioner shall submit solvency certificate of the immovable property issued by the competent authority i.e., Tahsildar/Panchayat Secretary/Municipal Commissioner having jurisdiction over the area where the property is situated.
iii) The petitioner shall produce encumbrance certificate obtained from online issued by the competent authority stating that the property is free from all encumbrances.
iv) The petitioner shall produce an affidavit stating that the immovable property which is produced as security for release of the vehicle shall not be alienated without knowledge/permission of the confiscating authority.
v) The petitioner shall produce the vehicle whenever it is required by the concerned authorities during pendency of the proceedings before them.
vi) The petitioner shall not alienate the vehicle during the pendency of the proceedings.

https://indiankanoon.org/doc/40231760/;Muppidi John Kennedy, vs State Of Andhra Pradesh; 28 April, 2022;
having regard to the seriousness of the offence as it is a case of cheating gullible unemployed youth by collecting lakhs of rupees from them on a false promise to provide jobs to them taking undue advantage of their unemployment and having regard to the gravity of the offences in which the petitioner is involved, this Court is of the considered view that this is not at all a fit case to grant bail to the petitioner at this stage, more particularly, when the investigation in this case is still pending.

G.RAMESH BABU Vs STATE OF AP; CRIMINAL PETITION NO.8276 OF 2016; 21.04.2022;
Simultaneously initiation of criminal proceedings under Section 145 Cr.P.C. along with the civil proceedings is nothing but abuse of process of the Court. Multiplicity of litigation is not in the interest of parties and by virtue of the same even public money will be wasted and the same would lead to meaningless litigation. Parallel proceedings for one and the same dispute ought not to be continued.

https://indiankanoon.org/doc/52709138/; Balakrishnaappanaidu Rukesh vs The State Inspector Of Police, on 28 April, 2022;
when the petitioner was involved in similar crime earlier and as he was involved in a similar crime after he was enlarged on bail in the earlier crime and in view of the said conduct of the petitioner, this Court is of the considered view that the petitioner is not entitled to bail

Crl.Appeal No.174 of 2022; Vysyaraju Murali Krishna Raju Vs State of A.P; https://indiankanoon.org/doc/60169371/; 28.04.2022;
This Criminal Appeal is preferred against the judgment of conviction passed by the Assistant Sessions Judge, Tekkali, for the offence under Section 18(c) of the Drugs and Cosmetics Act, 1940, punishable under Section 27(b)(ii) of the said Act. The period of imprisonment imposed against the appellant is three years.

Therefore, as per Section 374(3)(a) of Cr.P.C., the Appeal against the said judgment of conviction lies to the Court of Session. However, the Appeal has been filed directly in the High Court. The Registry has erroneously registered the said Appeal and listed the same for hearing before the Court today. It is only when the sentence of more than seven years is imposed by the Assistant Sessions Judge, then only the Appeal lies to the High Court under Section 374(2) Cr.P.C.

https://indiankanoon.org/doc/160563381/; Korada Rajababu vs The State Of Andhra Pradesh on 26 April, 2022; WRIT APPEAL NOs.703 & 748 OF 2021

;Warrants will never become dead or lapsed and they will remain in force till they are executed or returned by the police officers or the authority to whom they are entrusted or they are cancelled/withdrawn by the competent court.

https://indiankanoon.org/doc/106292391/; Yarra Bala Siva Satyasai Nagaraju vs State Of Andhra Pradesh; 11.04.2022; CRLP NOs.2288 AND 2292 OF 2022

A case under Sections 363, 366, 370, 370(A)(1), 376(3) read with Section 34 of the Indian Penal Code, 1860, Section 6 of Protection of Children from Sexual Offences Act, 2012, Sections 4(1), 5(1)(a), 6(1)(a) of Immoral Traffic (Prevention) Act, 1956 and Section 3(2)(v) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 was registered against the petitioners along with other accused in the above crime.

Earlier, this Court as per the orders dated 16.03.2022 passed in Crl.P.No.1624 of 2022 enlarged other accused who are facing similar allegations on bail on the ground that as per settled law, the customer who has visited the brothel house for prostitution is not liable for prosecution under the Immoral Traffic (Prevention) Act, 1956. Therefore, the petitioners who are similarly placed are also entitled to bail.

https://indiankanoon.org/doc/74664278/; Panditi Lakshmareddy vs The State Of A.P. on 8 April, 2022; CRL R C No.645 OF 2007; 08.04.2022

It is thus settled in law with respect to the evidence of the child witness that:

(i) Though the child witnesses are dangerous witnesses as they are pliable and liable to be influenced easily, shacked and moulded, but if after careful scrutiny of their evidence the Court comes to the conclusion that there is an impress of truth in it, there is no obstacle in the way of accepting the evidence of a child witness.

ii) The evidence of the child witness cannot be discriminated only on the ground that of being a tendered age.

iii) The corroboration of a child witness is not a rule but a measure of caution and prudence,

iv) Some discrepancies in the statement of a child witness cannot be made the basis for discarding the testimony. Discrepancies in the deposition, if not in material particulars, would lend credence to the testimony of a child witness.

(v) The decision on the question whether the child witness has sufficient intelligence primarily rests with the trial Judge who notices his manners, his apparent possession or lack of intelligence.
(vi) The trial Judge may resort to any examination which will tend to disclose his capacity and intelligence as well as his understanding of the obligation of an oath.
(vii) The decision of the trial court may, however, be disturbed by the higher Court if from what is preserved in the records, it is clear that his conclusion was erroneous. This precaution is necessary because child witnesses are amenable to tutoring and often live in a world of make beliefs.
viii) While appreciating the evidence of the child witness, the courts are required to rule out the possibility of the child being tutored.
ix) In the absence of any allegation regarding tutoring or using the child witness for ulterior purposes of the prosecution, the courts have no option but to rely upon the confidence inspiring testimony of such witness for the purpose of holding the accused guilty or not.

https://indiankanoon.org/doc/172519995/; M.Srihari Rao Srihari vs The State Of Andhra Pradesh on 8 April, 2022; Crl R C No.246 of 2022; 8.4.2022

It is now well settled law that an order passed under Section 311 of Cr.P.C is a pure and simple interlocutory order, which clearly attracts the bar under Section 397(2) of Cr.P.C and that a revision filed under Section 397(1) ofCr.P.C is not maintainable. The Apex Court in the case of Sethuraman v. Rajamanickam[(2009) 5 SCC 153] clearly held that an order passed under Section 311 of Cr.P.C is pure and simple interlocutory order which clearly attracts the bar under Section 397(2) of Cr.P.C and that the revision is not maintainable.

https://indiankanoon.org/doc/198954994/, B.Subba Reddy, vs The Government Of Andhra Pradesh ; WP Nos.4736, 4845, 5984 & 5985 of 2022; 08.04.2022

The department sought the petitioners to pay the Compounding fee for MV rules violation, at the new rates, as the fine paid earlier was at old rates, prior to amendment.
It is the contention of the petitioners that if they had been informed of the correct figure that is to be paid as compounding fee, they would have the option of either buying peace or disputing the said allegation made by the authorities of the Transport Department. This contention of the petitioners cannot be accepted as a valid reason for non-payment of the balance compounding fee. Once they have accepted the fact that there has been an infraction of the provisions of the Act or Rules, it would not be open to the petitioners to retract from such a stand. The mistake committed by the authorities of the Transport Department in this regard will not obviate the liability of the petitioners to pay the correct compounding fee.

2022 0 Supreme(SC) 260; State of Uttar Pradesh Vs. Subhash @ Pappu; Criminal Appeal No. 436 of 2022; Decided On : 01-04-2022

In the case of Laxman Vs. State of Maharashtra, (2002) 6 SCC 710., there is no absolute proposition of law laid down by this Court that, in a case when at the time when the dying declaration was recorded, there was no emergency and/or any danger to the life, the dying declaration should be discarded as a whole

mere non-framing of a charge under Section 149 on face of charges framed against appellant would not vitiate the conviction in the absence of any prejudice caused to them. Considering Section 464 Cr.P.C. it is observed and held that mere defect in language, or in narration or in the form of charge would not render conviction unsustainable, provided the accused is not prejudiced thereby. It is further observed that if ingredients of the section are obvious or implicit in the charge framed then conviction in regard thereto can be sustained, irrespective of the fact that said section has not been mentioned.

Merely because the weapon used is not recovered cannot be a ground not to rely upon the dying declaration, which was recorded before the Executive Magistrate, which has been proved by the prosecution.

it is true that the prosecution has not established and proved, who actually inflicted the knife blow. However, from the medical evidence on record and even from the deposition of the doctors, it has been established and proved by the prosecution that the deceased sustained an injury by knife blow, which is inflicted by one of the six to seven persons, who participated in commission of the offence. From the dying declaration it has been established and proved that the respondent – accused Subhash @ Pappu was part of the unlawful assembly, who participated in the commission of the offence. Pappu s/o Baijnath – respondent herein was specifically named by the deceased in the dying declaration. Therefore, even if the role attributed to the respondent -accused was that of hitting the deceased by a hockey stick, in that case also for the act of other persons, who were part of the unlawful assembly of inflicting the knife blow, the respondent accused can be held guilty of having committed the murder of deceased Bengali, with the aid of Section 149 IPC.

Merely because three persons were chargesheeted/charged/tried and even out of three tried, two persons came to be acquitted cannot be a ground to not to convict the respondent accused under Section 148 IPC.

2022 0 Supreme(SC) 306; Sarepalli Sreenivas and Others Vs. State of Andhra Pradesh; Criminal Appeal No. 1630 of 2018; Decided On : 06-04-2022

The medical evidence on record is quite clear that the deceased was strangulated first and after the life was extinguished, the body was subjected to post-mortem burn injuries.

2022 0 Supreme(SC) 271; Som Dutt & Ors. Vs. The State of Himachal Pradesh; Criminal Appeal No. 549 of 2022 (Arising Out of SLP (Crl) NO. 7831 of 2021; Decided On : 04-04-2022

Section 3 and 4 of the Probation of Offenders Act empower the courts to release the offenders on probation of good conduct in the cases and circumstances mentioned therein. Similarly, Sections 360 and 361 of the Cr.P.C also empower the courts to release the offenders on probation of good conduct in the cases and circumstances mentioned therein. Hence, having regard to sentence imposed by the courts below on the appellants for the offence under Section 379 read with Section 34 of IPC, and having regard to the fact there are no criminal antecedents against the appellants, the court is inclined to give them the benefit of releasing them on probation of good conduct. In that view of the matter, while maintaining the conviction and sentence imposed on the appellants, it is directed that the appellants shall be released on probation of good conduct, on each of the appellants furnishing a personal bond of Rs. 25,000/- with surety of the like amount, and on further furnishing an undertaking to keep the peace and good behaviour for a period of three years, to the satisfaction of the concerned trial court. It is further directed that if the appellants failed to comply with the said directions or commit breach of the undertaking given by them, they shall be called upon to undergo the sentence imposed by the trial court.

2022 0 Supreme(SC) 312; State of Rajasthan Vs Banwari Lal and another : Criminal Appeal No. 579 of 2022 (Arising out of Special Leave Petition (Criminal) No. of 2022 Arising out of Diary No. 21596/2020): Decided on : 08-04-2022

Merely because a long period has lapsed by the time the appeal is decided cannot be a ground to award the punishment which is disproportionate and inadequate. The High Court has not at all adverted to the relevant factors which were required to be while imposing appropriate/suitable punishment/sentence. As observed hereinabove, the High Court has dealt with and disposed of the appeal in a most cavalier manner. The High Court has disposed of the appeal by adopting shortcuts. The manner in which the High Court has dealt with and disposed of the appeal is highly deprecated. We have come across a number of judgments of different High Courts and it is found that in many cases the criminal appeals are disposed of in a cursory manner and by adopting truncated methods.

the State ought not to have preferred the present appeal against the accused Mohan Lal, when his appeal before the High Court came to be dismissed and the conviction came to be confirmed. If the State was aggrieved against granting the benefit of probation, in that case, in the first instance, the State ought to have preferred an appeal before the High Court.

2022 0 Supreme(SC) 323; Kamatchi Vs. Lakshmi Narayanan ; Criminal Appeal No. 627 of 2022, Special Leave to Appeal (Crl.) No. 2514 of 2021; 13-04-2022

Criminal Procedure Code, which is a procedural law and it is well settled that procedural laws must be liberally construed to serve as handmaid of justice and not as its mistress.

It is thus clear that the High Court wrongly equated filing of an application under Section 12 of the Act to lodging of a complaint or initiation of prosecution. In our considered view, the High Court was in error in observing that the application under Section 12 of the Act ought to have been filed within a period of one year of the alleged acts of domestic violence.

21. It is, however, true that as noted by the Protection Officer in his Domestic Inspection Report dated 2.08.2018, there appears to be a period of almost 10 years after 16.09.2008, when nothing was alleged by the appellant against the husband. But that is a matter which will certainly be considered by the Magistrate after response is received from the husband and the rival contentions are considered. That is an exercise which has to be undertaken by the Magistrate after considering all the factual aspects presented before him, including whether the allegations constitute a continuing wrong.

2022 0 Supreme(SC) 327; Manisha Vs. State of Rajasthan and Anr.; Criminal Appeal No. 649 of 2022 (Arising out of SLP (Crl.) No. 7893 of 2021); Decided On : 19-04-2022

The grant of bail requires the consideration of various factors which ultimately depends upon the specific facts and circumstances of the case before the Court. There is no strait jacket formula which can ever be prescribed as to what the relevant factors could be. However, certain important factors that are always considered, inter-alia, relate to prima facie involvement of the accused, nature and gravity of the charge, severity of the punishment, and the character, position and standing of the accused

The impugned order passed by the High Court is cryptic, and does not suggest any application of mind. There is a recent trend of passing such orders granting or refusing to grant bail, where the Courts make a general observation that “the facts and the circumstances” have been considered. No specific reasons are indicated which precipitated the passing of the order by the Court. Such a situation continues despite various judgments of this Court wherein this Court has disapproved of such a practice.

2022 0 Supreme(SC) 331; Indrajeet Yadav vs Santosh Singh and Another; Criminal Appeal No. 577 of 2022; WITH Indrajeet Yadav vs Avdhesh Singh @ Chhunnu Singh and Another; Criminal Appeal No. 578 of 2022; Decided On : 19-04-2022

Despite the strong observations made by this Court as far as back in the year 1984 and thereafter repeatedly reiterated, still the practice of pronouncing only the operative portion of the judgment without a reasoned judgment and to pass a reasoned judgment subsequently has been continued. Such a practice of pronouncing the final orders without a reasoned judgment has to be stopped and discouraged.

2022 0 Supreme(SC) 337; Devender Singh & Ors.Vs. The State of Uttarakhand; CRLA NO. 383 OF 2018; Decided On : 21-04-2022 (THREE JUDGE BENCH)

Section 304B IPC read along with Section 113B of the Indian Evidence Act, 1872 makes it clear that once the prosecution has succeeded in demonstrating that a woman has been subjected to cruelty or harassment for or in connection with any demand for dowry soon after her death, a presumption shall be drawn against the said persons that they have caused dowry death as contemplated under Section 304B IPC. The said presumption comes with a rider inasmuch as this presumption can be rebutted by the accused on demonstrating during the trial that all the ingredients of Section 304B IPC have not been satisfied.

Though, the appellants have attempted to set up a story that the deceased had gone to hills to cut grass, as rightly noted by the High Court, she could not have gone alone. Be that as it may, except for a bald statement, the appellants have not brought any material on record to demonstrate that it was a normal practice for the deceased to go to the hills for cutting grass more so in circumstances where she was less than six months at her matrimonial home, pregnant and also during that very period, she had been going to her parental house for continuing her education, as has been contended by the appellants themselves. Therefore, in such a situation, we have no hesitation in observing that the appellants have miserably failed to rebut the presumption drawn against them under Section 113B of the Evidence Act, in a matter relating to an offence under Section 304B of IPC.

2022 0 Supreme(SC) 326; Jagjeet Singh and Others Vs. Ashish Mishra @ Monu and Another ; Criminal Appeal No. 632 of 2022, Special Leave Petition (Crl.) No. 2640 of 2022; Decided On : 18-04-2022 (THREE JUDGE BENCH)

It cannot be gainsaid that the right of a victim under the amended Cr.P.C. are substantive, enforceable, and are another facet of human rights. The victim's right, therefore, cannot be termed or construed restrictively like a brutum fulmen. We reiterate that these rights are totally independent, incomparable, and are not accessory or auxiliary to those of the State under the Cr.P.C. The presence of

‘State’ in the proceedings, therefore, does not tantamount to according a hearing to a ‘victim’ of the crime.

A ‘victim’ within the meaning of Cr.P.C. cannot be asked to await the commencement of trial for asserting his/her right to participate in the proceedings. He/She has a legally vested right to be heard at every step post the occurrence of an offence. Such a ‘victim’ has unbridled participatory rights from the stage of investigation till the culmination of the proceedings in an appeal or revision. We may hasten to clarify that ‘victim’ and ‘complainant/informant’ are two distinct connotations in criminal jurisprudence. It is not always necessary that the complainant/informant is also a ‘victim’ for even a stranger to the act of crime can be an ‘informant’ and similarly, a ‘victim’ need not be the complainant or informant of a felony.

The above stated enunciations are not to be conflated with certain statutory provisions, such as those present in Special Acts like the Scheduled Cast and Scheduled Tribes (Prevention of Atrocities) Act, 1989, where there is a legal obligation to hear the victim at the time of granting bail. Instead, what must be taken note of is that; First, the Indian jurisprudence is constantly evolving, whereby, the right of victims to be heard, especially in cases involving heinous crimes, is increasingly being acknowledged; Second, where the victims themselves have come forward to participate in a criminal proceeding, they must be accorded with an opportunity of a fair and effective hearing. If the right to file an appeal against acquittal, is not accompanied with the right to be heard at the time of deciding a bail application, the same may result in grave miscarriage of justice. Victims certainly cannot be expected to be sitting on the fence and watching the proceedings from afar, especially when they may have legitimate grievances. It is the solemn duty of a court to deliver justice before the memory of an injustice eclipses.

in the case of Kanwar Singh Meena vs. State of Rajasthan, (2012) 12 SCC 180 wherein this Court set aside the bail granted to the accused on the premise that relevant considerations and prima facie material against the accused were ignored. It was held that:

> “10.....Each criminal case presents its own peculiar factual scenario and, therefore, certain grounds peculiar to a particular case may have to be taken into account by the court. The court has to only opine as to whether there is prima facie case against the accused. The court must not undertake meticulous examination of the evidence collected by the police and comment on the same. Such assessment of evidence and premature comments are likely to deprive the accused of a fair trial.....**The High Court or the Sessions Court can cancel the bail even in cases where the order granting bail suffers from serious infirmities resulting in miscarriage of justice. If the court granting bail ignores relevant materials indicating prima facie involvement of the accused or takes into account irrelevant material, which has no relevance to the question of grant of bail to the accused, the High Court or the Sessions Court would be justified in cancelling the bail. Such orders are against the well-recognised principles underlying the power to grant bail. Such orders are legally infirm and vulnerable leading to miscarriage of justice and**

absence of supervening circumstances such as the propensity of the accused to tamper with the evidence, to flee from justice, etc. would not deter the court from cancelling the bail. The High Court or the Sessions Court is bound to cancel such bail orders particularly when they are passed releasing the accused involved in heinous crimes because they ultimately result in weakening the prosecution case and have adverse impact on the society. Needless to say that though the powers of this Court are much wider, this Court is equally guided by the above principles in the matter of grant or cancellation of bail."

We are, thus, of the view that this Court on account of the factors like: (i) irrelevant considerations having impacted the impugned order granting bail; (ii) the High Court exceeding its jurisdiction by touching upon the merits of the case; (iii) denial of victims' right to participate in the proceedings and (iv) the tearing hurry shown by the High Court in entertaining or granting bail to the respondent/accused; can rightfully cancel the bail, without depriving the Respondent-Accused of his legitimate right to seek enlargement on bail on relevant considerations.

https://indiankanoon.org/doc/175762054/; D.Ashok vs The State Of Andhra Pradesh on 22 April, 2022; CRIMINAL REVISION CASE No.288 OF 2022

The question of furnishing the sureties arises only when the petitioner is taken into custody and thereafter he was granted bail on furnishing sureties. As it is only a petition filed under Section 70(2) Cr.P.C for recall of NBW, the question of furnishing sureties does not arise to dispose of the said petition. Therefore, the impugned order of the trial Court is erroneous. Further, it is brought to the notice of this Court by the learned counsel for the petitioner that already the petitioner has furnished one surety earlier and he is not yet discharged.

https://indiankanoon.org/doc/30464201/; P.Krishna Praveen vs The State Of Telangana on 22 April, 2022; CRIMINAL REVISION CASE NO.314 OF 2022

this Criminal Revision Case is disposed of, granting liberty to the petitioner herein to submit fresh application (FOR THE INTERIM CUSTODY OF VEHICLE SEIZED AS BEING INVOLVED IN NDPS CASE) with the District Drug Disposal Committee, Khammam, in terms of Section 52-A of N.D.P.S. Act and on receipt of the said petition, the Committee is directed to dispose of the same, in accordance with law, within one week thereafter

Cancellation of Bail

In Raghubir Singh v. State of Bihar (1986) 4 SCC 481, the Hon'ble Apex Court considered the following factors for cancellation of bail:

i) the accused misuses his liberty by indulging in similar criminal activity;
ii) interferes with the course of investigation;
iii) attempts to tamper with evidence or witnesses;
iv) threatens witnesses or investigation;
v) there is likelihood of his fleeing to another country;
vi)attempts to make himself scarce by going underground or becoming unavailable to the investigating agency; and
vii) attempts to place himself beyond the reach of his surety etc.

Multiple 161 CrPC statements

In the reported case of the Delhi High Court - S.J. Choudhary State, (1984 Crl LJ 864), a view is taken that if the statements of the witnesses are recorded more than once, then all such statements will have to be supplied to the accused, as the accused may be able to use those statements, if they are contradictory. It has been held that the prosecution cannot choose a particular statement to be supplied and leaving out the other statements. The Delhi High Court has further taken a view that the prosecution would be bound to supply all the statements, even if recorded more than once of such witnesses as contemplated under Section 161(3), whether recorded in a police diary or otherwise, and thereby the valuable right, which has been conferred upon the accused person, would be preserved and the same cannot be denied to him. Reliance also can be placed on another reported decision of the Kerala High Court reported in State of Kerala v. Raghavan (1974 Crl LJ 1373), wherein the Kerala High Court has held that the prosecution cannot pick and choose and refuse to supply to the accused the copies of the statements which are contradictory to the prosecution case on the ground that the prosecution is not going to rely on the statements of those witnesses. Otherwise, it would be in deviation from the mandatory provisions of Criminal Law and to deny the accused the just and fair trial.

Sec 162 CrPC

In the case of State of U.P. V. M.K.Anthony 1985, it has been ruled by the Supreme Court that S.162 does not provide that evidence of a witness in the court becomes inadmissible if it is established that the statement of the witness recorded during investigation was signed by him at the instance of the police officer. The bar created by S.162 Cr.P.C. in respect of the use of any statement recorded by the police during the course of investigation is applicable only where such statement is sought to be used at any inquiry or trial in respect of any offence under investigation at the time when such statement was made.

Attempt Vs Preparation:

In state of M.P vs Mahendra Alias Golu 2021 SCC OnLine SC 965 , the Hon'ble judges held

"11. It is a settled preposition of Criminal Jurisprudence that in every crime, there is first, Mens Rea (intention to commit), secondly, preparation to commit it, and thirdly, attempt to commit it. If the third stage, that is, „attempt" is successful, then the crime is complete. If

the attempt fails, the crime is not complete, but law still punishes the person for attempting the said act. „Attempt" is punishable because even an unsuccessful commission of offence is preceded by mens rea, moral guilt, and its depraving impact on the societal values is no less than the actual commission.

12. There is a visible distinction between „preparation" and „attempt" to commit an offence and it all depends on the statutory edict coupled with the nature of evidence produced in a case. The stage of „preparation" consists of deliberation, devising or arranging the means or measures, which would be necessary for the commission o f the offence. Whereas, an „attempt" to commit the offence, starts immediately after the completion of preparation. „Attempt" is the execution of mens rea after preparation. `Attempt" starts where `preparation" comes to an end, though it Page | 9 falls short of actual commission of the crime.

13. However, if the attributes are unambiguously beyond the stage of preparation, then the misdemeanours shall qualify to be termed as an „attempt" to commit the principal offence and such „attempt" in itself is a punishable offence in view of Section 511 IPC. The „preparation" or „attempt" to commit the offence will be predominantly determined on evaluation of the act and conduct of an accused; and as to whether or not the incident tantamounts to transgressing the thin space between `preparation" and „attempt". If no overt act is attributed to the accused to commit the offence and only elementary exercise was undertaken and if such preparatory acts cause a strong inference of the likelihood of commission of the actual offence, the accused will be guilty of preparation to commit the crime, which may or may not be punishable, depending upon the intent and import of the penal laws.

14. Section 511 IPC is a general provision dealing with attempts to commit offences which are not made punishable by other specific sections of the Code and it provides, inter alia, that, "whoever attempts to commit an offence punishable by this Code with imprisonment for life or imprisonment, or to cause such an offence to be committed, and in such attempt does any act towards the commission of the offence, shall, where no express provision is made by this Code for the punishment of such attempt, be punished with imprisonment of any description provided for the offence, for a term which may extend to one half of the imprisonment for life or, as the case may be, one half of the longest term of imprisonment provided for that offence, or with such fine as is provided for the offence, or with both".

Extra-Judicial confession:

in the case of Sahadevan and another vs. State of Tamil Nadu, (2012) 6 SCC 403, after surveying various judgments on the issue, Supreme Court has laid down the following principles:

"The principles

16. Upon a proper analysis of the above-referred judgments of this Court, it will be appropriate to state the principles which would make an extrajudicial confession an admissible piece of evidence capable of forming the basis of conviction of an accused. These precepts would guide the judicial mind while dealing with the veracity of cases where the prosecution heavily relies upon an extrajudicial confession alleged to have been made by the accused:

(i) The extrajudicial confession is a weak evidence by itself. It has to be examined by the court with greater care and caution.

(ii) It should be made voluntarily and should be truthful.
(iii) It should inspire confidence.
(iv) An extrajudicial confession attains greater credibility and evidentiary value if it is supported by a chain of cogent circumstances and is further corroborated by other prosecution evidence.
(v) For an extrajudicial confession to be the basis of conviction, it should not suffer from any material discrepancies and inherent improbabilities.
(vi) Such statement essentially has to be proved like any other fact and in accordance with law."

Testimonial Compulsion:

The State of Bombay vs. Kathi Kalu Oghad and others (supra). It will be relevant to refer to the following observations of this Court in the said case:

"(1) An accused person cannot be said to have been compelled to be a witness against himself simply because he made a statement while in police custody, without anything more. In other words, the mere fact of being in police custody at the time when the statement in question was made would not, by itself, as a proposition of law, lend itself to the inference that the accused was compelled to make the statement, though that fact, in conjunction with other circumstances disclosed in evidence in a particular case, would be a relevant consideration in an enquiry whether or not the accused person had been compelled to make the impugned statement."

LIMITATION

A Constitution Bench of this Court in Sarah Mathew vs. Institute of Cardio Vascular Diseases and Others (supra) framed the questions for its consideration as under:

"3. No specific questions have been referred to us. But, in our opinion, the following questions arise for our consideration:

3.1. (i) Whether for the purposes of computing the period of limitation under Section 468 Cr.P.C. the relevant date is the date of filing of the complaint or the date of institution of the prosecution or whether the relevant date is the date on which a Magistrate takes cognizance of the offence?

3.2. (ii) Which of the two cases i.e. Krishna Pillai (supra) or Bharat Kale (supra) (which is followed in Japani Sahoo (supra), lays down the correct law?"

After noticing the 42nd Law Commission's Report and the relevant provisions and scheme of Chapter XXXVI of the Code, the Constitution Bench stated:

"37. We are inclined to take this view also because there has to be some amount of certainty or definiteness in matters of limitation relating to criminal offences. If, as stated by this Court, taking cognizance is application of mind by the Magistrate to the suspected offence, the subjective element comes in. Whether a Magistrate has taken cognizance or not will depend on facts and circumstances of each case. A diligent complainant or the prosecuting agency which promptly files the complaint or initiates prosecution would be severely prejudiced if it is held that the relevant point for computing limitation would be the date on which the Magistrate takes cognizance. The complainant or the prosecuting agency would be entirely left at the mercy of the Magistrate, who may take cognizance after the limitation period because of several reasons; systemic or otherwise. It cannot be the intention of the legislature to throw a diligent complainant out of the court in this

manner. Besides, it must be noted that the complainant approaches the court for redressal of his grievance. He wants action to be taken against the perpetrators of crime. The courts functioning under the criminal justice system are created for this purpose. It would be unreasonable to take a view that delay caused by the court in taking cognizance of a case would deny justice to a diligent complainant. Such an interpretation of Section 468 Cr.P.C. would be unsustainable and would render it unconstitutional. It is well settled that a court of law would interpret a provision which would help sustaining the validity of the law by applying the doctrine of reasonable construction rather than applying a doctrine which would make the provision unsustainable and ultra-vires the Constitution. [U.P. Power Corporation Ltd. vs. Ayodhya Prasad Mishra, (2008) 10 SCC 139 : (2008) 2 SCC (L&S) 1000].

Bail-order cannot be cryptic

In the case of Mahipal v. Rajesh Kumar, (2020) 2 SCC 118 this Court observed as follows :

"25. Merely recording "having perused the record" and "on the facts and circumstances of the case" does not subserve the purpose of a reasoned judicial order. It is a fundamental premise of open justice, to which our judicial system is committed, that factors which have weighed in the mind of the Judge in the rejection or the grant of bail are recorded in the order passed. Open justice is premised on the notion that justice should not only be done, but should manifestly and undoubtedly be seen to be done. The duty of Judges to give reasoned decisions lies at the heart of this commitment. Questions of the grant of bail concern both liberty of individuals undergoing criminal prosecution as well as the interests of the criminal justice system in ensuring that those who commit crimes are not afforded the opportunity to obstruct justice. **Judges are duty-bound to explain the basis on which they have arrived at a conclusion."**

NEWS

- The Criminal Procedure (Identification) Act, 2022 passed. Full text notified 18.4.2022. effective date yet to be notified. https://egazette.nic.in/WriteReadData/2022/235184.pdf;
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ON A LIGHTER VEIN

After Exam Result

If pass

Teacher – I taught him well.
Mom - all because of my prayers
Dad – He is my Son.
Friends – Come lets have a beer.

If Fail

Teacher – never concentrates in class. Good for nothing.
Mom – Never listens to anyone. Always Lazy.
Dad – He is your Son.
Friends – come lets have a beer.

True Friends never change

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June, 2022

Aano Bhadra Kratvo Yantu Viswatah (Rig Ved)

Let all Noble thoughts come to us from all directions

CITATIONS

Sk. Shamir vs The State Of Andhra Pradesh on 12 May, 2022; https://indiankanoon.org/doc/128593476/;
the need for liberal interpretation in areas of social justice, individual freedom and indigent's rights, holding that bail covers both-release on one's own bond, with or without sureties. When sureties should be demanded and what sum should insisted on are dependent on variables.

https://indiankanoon.org/doc/116246060/; **Chawa Gopala Reddy vs The State Of Andhra Pradesh on 26 May, 2022;** CRIMINAL PETITION No.3535 2022
Anticipatory bail granted to the petitioners facing investigation under Sections 147, 148, 506, 307 read with 149 of the Indian Penal Code, 1860 and under Section 3(1)(r) and 3 (1) (s) of the Scheduled Castes and the Scheduled Tribes (Prevention Of Atrocities) Act, 1989.on the submission of the counsel for petitioners **" that none of the offences do not attract to the petitioners as they would not present at the scene of offence."**

https://indiankanoon.org/doc/134553738/; Kum. C.Rohini Roy vs The State Of Andhra Pradesh on 26 May, 2022; CRIMINAL PETITION No.3802 OF 2022
Petitioner granted anticipatory bail, after service of 41A CrPC notice and filing of Charge sheet.

https://indiankanoon.org/doc/7906863/; Bobbanpalli Chandu vs The State Of Andhra Pradesh on 26 May, 2022; CRIMINAL PETITION No.3813 OF 2022
https://indiankanoon.org/doc/77383634/; Kandula John Babu vs The State Of Andhra Pradesh on 26 May, 2022: CRIMINAL PETITION No.3817 OF 2022
Anticipatory bail granted in bailable offence(Sec 324 IPC).

2022 0 Supreme(SC) 485; Sabitri Samantaray Vs. State of Odisha ; Criminal Appeal No. 988 of 2017 WITH Bidyadhar Praharaj Vs State of Odisha ; Criminal Appeal No. 860 of 2022, S.L.P. (Crl.) No. 3881 of 2017 Decided On : 20-05-2022 (Three Judge Bench)

Section 106 of the Evidence Act postulates that the burden of proving things which are within the special knowledge of an individual is on that individual. Although the Section in no way exonerates the prosecution from discharging its burden of proof beyond reasonable doubt, it merely prescribes that when an individual has done an act, with an intention other than that which the circumstances indicate, the onus of proving that specific intention falls onto the individual and not on the prosecution. If the accused had a different intention than the facts are specially within his knowledge which he must prove.

Thus, although Section 106 is in no way aimed at relieving the prosecution from its burden to establish the guilt of an accused, it applies to cases where chain of events has been successfully established by the prosecution, from which a reasonable inference is made out against the accused. Moreover, in a case based on circumstantial evidence, whenever an incriminating question is posed to the accused and he or she either evades response, or offers a response which is not true, then such a response in itself becomes an additional link in the chain of events. [See: Trimukh Maroti Kirkan vs. State of Maharashtra, (2006) 10 SCC 681]

2022 0 Supreme(SC) 486; Deepak Yadav Vs. State of U.P. and Another ; Criminal Appeal No. 861 of 2022, S.L.P. (Crl.) No. 9655 of 2021; Decided On : 20-05-2022(THREE JUDGE BENCH)

The grounds for grant of bail ; for cancellation of bail, the requirements for reasons to be mentioned in bail orders, are reiterated.

2022 0 Supreme(SC) 491; M/s Knit Pro International Vs. The State of NCT of Delhi and Another; Criminal Appeal No. 807 of 2022; Decided On : 20-05-2022

offence under Section 63 of the Copyright Act is a cognizable and non-bailable offence.

2022 0 Supreme(SC) 495; Abhishek Vs. State of Maharashtra & Ors. : Criminal Appeal No. 869 of 2022 Arising Out of SLP (CRL.) no. 1157 of 2022 (@ Diary No. 2575 of 2022); Decided On : 20-05-2022;

in the case relating to Crime No. 13 of 2012, the appellant and the co-accused person were acquitted by the Trial Court for the only private witnesses examined in the matter turning hostile and all other witnesses including the complainant and the injured person not turning up at all. The enactment in question, i.e., MCOCA, essentially intends to deal with the criminal activities by an organised crime syndicate or gangs; and protection of witnesses is also one of the avowed objectives of this enactment. It has rightly been contended on behalf of the respondents that MCOCA seeks to curb such menace, where a criminal case cannot be taken to its logical conclusion because of the witnesses either turning hostile or not turning up at all. The provision for witness protection, as contained in Section 19 of MCOCA is one of those steps. Having examined the judgment of the Sessions Court dated 09.05.2017, as placed on record on behalf of the appellant, we could only say that the very reason of acquittal in the said case rather fortifies the requirements of invocation of MCOCA against the appellant, of course, when other requirements of Sections 2(1)(d), (e) and (f) are fulfilled. They are indeed fulfilled, as noticed above.

2022 0 Supreme(SC) 497; S.P. Velumani Vs. Arappor Iyakkam and Ors. ; Criminal Appeal No. 867 of 2022 (Arising out of SLP (Crl.) No. 9161 of 2021); Decided On : 20-05-2022

We may note that the contention of the State may be appropriate under normal circumstances wherein the accused is entitled to all the documents relied upon by the prosecution after the Magistrate takes cognizance in terms of Section 207 of CrPC. However, this case is easily distinguishable on its facts. Initiation of the FIR in the present case stems from the writ proceedings before the High Court, wherein the State has opted to reexamine the issue in contradiction of their own affidavit and the preliminary report submitted earlier before the High

Court stating that commission of cognizable offence had not been made out. It is in this background we hold that the mandate of Section 207 of CrPC cannot be read as a provision etched in stone to cause serious violation of the rights of the appellant-accused as well as to the principles of natural justice.
Viewed from a different angle, it must be emphasized that prosecution by the State ought to be carried out in a manner consistent with the right to fair trial, as enshrined under Article 21 of the Constitution.
When the State has not pleaded any specific privilege which bars disclosure of material utilized in the earlier preliminary investigation, there is no good reason for the High Court to have permitted the report to have remained shrouded in a sealed cover.

2022 0 Supreme(SC) 500; Manoj & Ors Vs. State of Madhya Pradesh; Criminal Appeal Nos. 248-250 of 2015; Decided On : 20-05-2022 (THREE JUDGE BENCH)
Practical guidelines to collect mitigating circumstances
213. There is urgent need to ensure that mitigating circumstances are considered at the trial stage, to avoid slipping into a retributive response to the brutality of the crime, as is noticeably the situation in a majority of cases reaching the appellate stage.
214. To do this, the trial court must elicit information from the accused and the state, both. The state, must - for an offence carrying capital punishment - at the appropriate stage, produce material which is preferably collected beforehand, before the Sessions Court disclosing psychiatric and psychological evaluation of the accused. This will help establish proximity (in terms of timeline), to the accused person's frame of mind (or mental illness, if any) at the time of committing the crime and offer guidance on mitigating factors (1), (5), (6) and (7) spelled out in Bachan Singh. Even for the other factors of (3) and (4) - an onus placed squarely on the state – conducting this form of psychiatric and psychological evaluation close on the heels of commission of the offence, will provide a baseline for the appellate courts to use for comparison, i.e., to evaluate the progress of the accused towards reformation, achieved during the incarceration period.
Next, the State, must in a time-bound manner, collect additional information pertaining to the accused. An illustrative, but not exhaustive list is as follows:

a) Age
b) Early family background (siblings, protection of parents, any history of violence or neglect)
c) Present family background (surviving family members, whether married, has children, etc.)
d) Type and level of education
e) Socio-economic background (including conditions of poverty or deprivation, if any)
f) Criminal antecedents (details of offence and whether convicted, sentence served, if any)
g) Income and the kind of employment (whether none, or temporary or permanent etc);
h) Other factors such as history of unstable social behaviour, or mental or psychological ailment(s), alienation of the individual (with reasons, if any) etc.

This information should mandatorily be available to the trial court, at the sentencing stage. The accused too, should be given the same opportunity to produce evidence in rebuttal, towards establishing all mitigating circumstances.
Lastly, information regarding the accused's jail conduct and behaviour, work done (if any), activities the accused has involved themselves in, and other related details should be called for in the form of a report from the relevant jail authorities (i.e., probation and welfare officer, superintendent of jail, etc.). If the appeal is heard after a long hiatus from the trial court's conviction, or High Court's confirmation, as the case may be – a fresh report (rather than the one used by the previous court) from the jail authorities is recommended, for an more exact and complete understanding of the contemporaneous progress made by the accused, in the time elapsed. The jail authorities must also include a fresh psychiatric and psychological report which will further evidence the reformative progress, and reveal post-conviction mental illness, if any.
217. It is pertinent to point out that this court, in Anil v. State of Maharashtra, (2014) 4 SCC 69 has in fact directed criminal courts, to call for additional material:

"Many a times, while determining the sentence, the courts take it for granted, looking into the facts of a particular case, that the accused would be a menace to the society and there is no possibility of reformation and rehabilitation, while it is the duty of the court to ascertain those factors, and the State is obliged to furnish materials for and against the possibility of reformation and rehabilitation of the accused. The facts, which the courts deal with, in a given case, cannot be the foundation for reaching such a conclusion, which, as already stated, calls for additional materials. We, therefore, direct that the criminal courts, while dealing with the offences like Section 302 IPC, after conviction, may, in appropriate cases, call for a report to determine, whether the accused could be reformed or rehabilitated, which depends upon the facts and circumstances of each case."(emphasis supplied)

We hereby fully endorse and direct that this should be implemented uniformly, as further elaborated above, for conviction of offences that carry the possibility of death sentence.

it must be remembered that public opinion has categorically been held to be neither an objective circumstance relating to crime, nor the criminal, and the courts must exercise judicial restraint and play a balancing role.[123][Chhannu Lal Verma (para 25), Santosh Bariyar (para 80-89), M.A Antony @ Antappan v. State of Kerala, (2020) 17 SCC 751, Bachan Singh (para 126).]

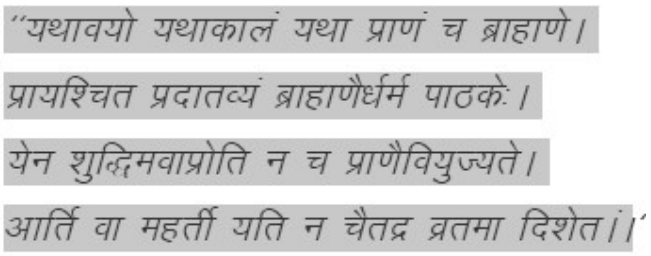
2022 0 Supreme(SC) 475; Mohammad Azam Khan Vs. The State Of Uttar Pradesh; I.A. No.71580 of 2022 in/and M.A. No.766 of 2022 In Writ Petition (Criminal) No.39, 188 of 2022; Decided on : 19-05-2022 (THREE JUDGE BENCH)

The least that could be said is that this Court has repeatedly held that while deciding bail application, the Court should not embark upon detailed enquiry with regard to the merits of the matter. The learned Single Judge of the Allahabad High Court rightly observed that bail is right of any accused and jail is an exception and therefore, on humanitarian grounds and keeping in view the applicant's/petitioner's deteriorating health, old age and the period undergone in jail, considered it just to grant bail by imposing stringent conditions.

2022 0 Supreme(SC) 505; Jaswinder Singh (Dead) Through Legal Representative Vs Navjot Singh Sidhu & Ors.; Review Petition (Crl.) No.477, 478, 479 of 2018 in CRL.A. No.58, 59, 60 of 2007; Decided on : 19-05-2022

Thus, a disproportionately light punishment humiliates and frustrates a victim of crime when the offender goes unpunished or is let off with a relatively minor punishment as the system pays no attention to the injured's feelings. Indifference to the rights of the victim of crime is fast eroding the faith of the society in general and the victim of crime in particular in the criminal justice system. [24][Shri P. Babulu Reddy Foundation Lecture, Victims of Crime – The Unseen Side by Dr. Justice A.S. Anand, Judge, Supreme Court of India (as he then was) (1998) 1 SCC (Jour) 3. Delivered at Hyderabad on 28th September 1997.]

In a nutshell, the aspects of sentencing and victimology are reflected in the following ancient wisdom:



It means: The person dispensing justice as per Dharmashastra should prescribe a penance appropriate to the age, the time and strength of the sinner, the penance being such that he may not lose his life and yet he may be purified. A penance causing distress should not be prescribed.

While a disproportionately severe sentence ought not to be passed, simultaneously it also does not clothe the law courts to award a sentence which would be manifestly inadequate, having due

regard to the nature of the offence, since an inadequate sentence would fail to produce a deterrent effect on the society at large. Punishments are awarded not because of the fact that it has to be an eye for an eye or a tooth for a tooth, rather having its due impact on the society; while undue harshness is not required but inadequate punishment may lead to sufferance of the community at large.[9][Jai Kumar v. State of Madhya Pradesh (1999) 5 SCC 1.]

An important aspect to be kept in mind is that any undue sympathy to impose inadequate sentence would do more harm to justice system and undermine the public confidence in the efficacy of law. The society can not long endure under serious threats and if the courts do not protect the injured, the injured would then resort to private vengeance and, therefore, it is the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed. [10][Sumer Singh v. Surajbhan Singh (2014) 7 SCC 323.] It has, thus, been observed that the punishment to be awarded for a crime must not be irrelevant but it should conform to and be consistent with the atrocity and brutality with which the crime has been perpetrated. [11][Ravji v. State of Rajasthan (1996) 2 SCC 175]

Criminal jurisprudence with the passage of time has laid emphasis on victimology, which fundamentally is a perception of a trial from the viewpoint of the criminal as well as the victim. Both are viewed in the social context and, thus, victim's rights have to be equally protected[14][Rattiram v. State of M.P. (2012) 4 SCC 516].

2022 0 Supreme(SC) 452; Surendran vs State of Kerala; Criminal Appeal No. 1080 of 2019; Decided on : 13-05-2022 (Three Judge Bench)

the wordings of Section 32(1) of the Evidence Act, it appears that the test for admissibility under the said section is not that the evidence to be admitted should directly relate to a charge pertaining to the death of the individual, or that the charge relating to death could not be proved. Rather, the test appears to be that the cause of death must come into question in that case, regardless of the nature of the proceeding, and that the purpose for which such evidence is being sought to be admitted should be a part of the 'circumstances of the transaction' relating to the death.

2022 0 Supreme(SC) 411; MS. P. Vs. The State Of Madhya Pradesh & Anr.: Criminal Appeal No. 740 of 2022 [Arising out of SLP (Crl.) No.3564 of 2022]; Decided On : 05-05-2022 (THREE JUDGE BENCH)

the conditions stipulated under Section 437(1)(i) Cr.P.C. ought to be taken into consideration for granting bail even under Section 439 of the Cr.P.C.

As can be discerned from the above decisions, for cancelling bail once granted, the Court must consider whether any supervening circumstances have arisen or the conduct of the accused post grant of bail demonstrates that it is no longer conducive to a fair trial to permit him to retain his freedom by enjoying the concession of bail during trial[24][Refer 1995 (1) SCC 349 (Daulat Ram and Others vs. State of Haryana)]. To put it differently, in ordinary circumstances, this Court would be loath to interfere with an order passed by the Court below granting bail but if such an order is found to be illegal or perverse or premised on material that is irrelevant, then such an order is susceptible to scrutiny and interference by the Appellate Court. Some of the circumstances where bail granted to the accused under Section 439 (1) of the Cr.P.C. can be cancelled are enumerated below:

(a) If he misuses his liberty by indulging in similar/other criminal activity;
(b) If he interferes with the course of investigation;
(c) If he attempts to tamper with the evidence;
(d) If he attempts to influence/threaten the witnesses;
(e) If he evades or attempts to evade court proceedings;
(f) If he indulges in activities which would hamper smooth investigation;
(g) If he is likely to flee from the country;
(h) If he attempts to make himself scarce by going underground and/or becoming unavailable to the investigating agency;

(i) If he attempts to place himself beyond the reach of his surety.
(j) If any facts may emerge after the grant of bail which are considered unconducive to a fair trial.

We may clarify that the aforesaid list is only illustrative in nature and not exhaustive.

2022 0 Supreme(SC) 451; Veerendra Vs. State Of Madhya Pradesh; Criminal Appeal Nos.5 & 6 of 2018; Decided on : 13-05-2022 (THREE JUDGE BENCH)

Intention is a subjective element and every sane person must be presumed to intend the result that his action normally produces.

Hence, constriction of the neck of a girl child aged about 8 years by fingers or palm by a young man aged 25 years, with such force to cause the injuries mentioned hereinbefore cannot be said to be sans intention to take her life. If the said act was subsequent to commission of rape in the diabolic and gruesome manner revealed from the grave injuries sustained on her private parts, causing death alone can be inferred from the circumstances. If the act of constricting the neck with such force resulting in the stated injuries preceded the offence of rape, then, the manner by which she was ravished should be taken only as an act done knowingly that it is so imminently dangerous that it must in all probability cause death or such bodily injury as is likely to cause death. Thus, viewing in any angle the homicidal death would fall either Clause 1 or Clause 4 of Section 300 IPC.

It is to be noted, once it is found that the act falls under any one of the 4 clauses under Section 300 IPC, to bring it out of its purview it must be proved that it falls under any one of the five exceptions to Section 300 IPC.

A failure by the serologist to detect the origin of the blood due to disintegration of the serum does not mean that the blood stuck on the axe could not have been human blood at all. Sometimes it is possible, either because the stain is insufficient in itself, or due to haematological changes and plasmatic coagulation, that a serologist may fail to detect the origin of the blood in question. However, in such a case, unless the doubt is of a reasonable dimension, which a judicially conscientious mind may entertain with some objectivity, no benefit can be claimed by the accused in this regard. Once the recovery is made in pursuance of a disclosure statement made by the accused, the matching or non-matching of blood group(s) loses significance.

Murders are not committed with previous notice to witnesses; soliciting their presence. If murder is committed in a dwelling house, the inmates of the house are natural witnesses. If murder is committed in a street, only passerby will be witnesses. Their evidence cannot be brushed aside or viewed with suspicion on the ground that they are mere ‘chance witnesses’. The expression ‘chance witness’ is borrowed from countries where every man’s home is considered his castle and everyone must have an explanation for his presence elsewhere or in another man’s castle. It is quite unsuitable an expression in a country where people are less formal and more casual.

The trial court made a fallacious conclusion regarding the death of the deceased on the premise that the Public Prosecutor did not elicit from the doctor as to whether the injuries were sufficient in the ordinary course of nature to cause death. The Sessions Judge concluded that on the said issue:

“There being no evidence on record to show that the injuries were sufficient in the ordinary course of nature to cause death, it cannot be said that the injuries noticed by the autopsy surgeon (PW30) were responsible for causing the death of the deceased Mahesh.”

23. No doubt it would have been of advantage to the court if the Public Prosecutor had put the said question to the doctor when he was examined. But mere omission to put that question is not enough for the court to reach wrong conclusion. Though not an expert as PW30, the Sessions Judge himself would have been an experienced judicial officer looking at the injuries he himself could have deduced whether those injuries were sufficient in the ordinary course of nature to cause death. No sensible man with some idea regarding the features of homicidal cases would come to a different conclusion from the injuries indicated above, the details of which have been stated by the doctor (PW30) in his evidence. (Emphasis added)

2022 0 Supreme(SC) 452; Surendran vs State of Kerala; Criminal Appeal No. 1080 of 2019; Decided on : 13-05-2022; (THREE JUDGE BENCH)

A reading of the above pronouncements makes it clear that, in some circumstances, the evidence of a deceased wife with respect to cruelty could be admissible in a trial for a charge under Section 498A of the IPC under Section 32(1) of the Evidence Act. There are, however, certain necessary preconditions that must be met before the evidence is admitted.

21. The first condition is that her cause of death must come into question in the matter. This would include, for instance, matters where along with the charge under Section 498A of the IPC, the prosecution has also charged the accused under Sections 302, 306 or 304B of the IPC. It must be noted however that as long as the cause of her death has come into question, whether the charge relating to death is proved or not is immaterial with respect to admissibility.

22. The second condition is that the prosecution will have to show that the evidence that is sought to be admitted with respect to Section 498A of the IPC must also relate to the circumstances of the transaction of the death. How far back the evidence can be, and how connected the evidence is to the cause of death of the deceased would necessarily depend on the facts and circumstances of each case. No specific straitjacket formula or rule can be given with respect to this.

It is a settled principle of law that the evidence tendered by the related or interested witness cannot be discarded on that ground alone. However, as a rule of prudence, the Court may scrutinize the evidence of such related or interested witness more carefully.

2022 0 Supreme(SC) 426; S.G. Vombatkere Vs Union of India; Writ Petition(C) No.682, 552, 773, 1181 & 1381 of 2021 With Writ Petition (Crl.) No.304, 307, 498 & 106 of 2021; Decided On : 11-05-2022 (THREE JUDGE BENCH)

We hope and expect that the State and Central Governments will restrain from registering any FIR, continuing any investigation or taking any coercive measures by invoking Section 124A of IPC while the aforesaid provision of law is under consideration.

c. If any fresh case is registered under Section 124A of IPC, the affected parties are at liberty to approach the concerned Courts for appropriate relief. The Courts are requested to examine the reliefs sought, taking into account the present order passed as well as the clear stand taken by the Union of India.

d. All pending trials, appeals and proceedings with respect to the charge framed under Section 124A of IPC be kept in abeyance. Adjudication with respect to other Sections, if any, could proceed if the Courts are of the opinion that no prejudice would be caused to the accused.

e. In addition to the above, the Union of India shall be at liberty to issue the Directive as proposed and placed before us, to the State Governments/Union Territories to prevent any misuse of Section 124A of IPC.

f. The above directions may continue till further orders are passed.

CRIMINAL APPEAL NO. 807 of 2022; May 20, 2022; M/s Knit Pro International Versus The State of NCT of Delhi & Anr.

Section 63 of the Copyright Act is a cognizable and non-bailable offence.

CIVIL REVISION PETITION No.67 of 2022;

“No time limit could be fixed for filing applications under Section 45 of the Indian Evidence Act for sending the disputed signature or writings to the handwriting expert for comparison and opinion and same shall be left open to the discretion of the Court; for exercising such discretion when exigencies so demand, depending upon the facts and circumstances of each case

In the well considered view of this Court, the defendants signatures on the Vakalat and the Written Statement cannot be considered as signatures of comparable and assured standard as according to the plaintiff even by the date of the filing of the vakalat the defendant is clear in his mind about his stand in regard to the denial of his signatures on the suit promissory note and the endorsement thereon and as the contention of the plaintiff that the defendant might have designedly disguised

his signatures on the Vakalat and the Written Statement cannot be ruled out prima facie. The view point being projected by the plaintiff that if the defendant is called upon to furnish his signatures in open Court, he might designedly disguise his signatures while making his signatures on papers in open court is also having considerable force and merit. Unless the defendant makes available to the Court below any documents, with his signatures, of authentic and reliable nature more or less of a contemporaneous period, and unless such documents are in turn made available to the expert along with the suit promissory note, the expert will not be in a position to furnish an assured opinion, in the well considered view of this Court. ……...There is no point in sending to an expert the documents of doubtful nature and character and add one more piece of unreliable evidence and burden the record by wasting the time and money of the parties.

https://main.sci.gov.in/supremecourt/2007/37388/37388_2007_5_20_35996_Order_19-May-2022.pdf; Criminal Appeal No(s).135/2010; BUDHADEV KARMASKAR Vs. THE STATE OF WEST BENGAL & ORS

In view of the aforementioned, Aadhar Cards shall be issued to sex workers on the basis of a proforma certificate which is issued by UIDAI and submitted by the Gazetted Officer at NACO or the Project Director of the State Aids Control Society, along with Aadhar enrolment form/application. There shall be no breach of confidentiality in the process, including assignment of any code in the Aadhar enrolment numbers that identify the card holder as a sex worker.

CRIMINAL PETITION No.4438 of 2016; 30.04.2022; M.SHYAMA SUNDAR NAIDU & 2 OTRS.,Vs THE STATE OF AP.,

while referring the matter to police under Section 156(3) of Cr.P.C., the Magistrate has to apply mind; but in the instant case, though there is delay of nearly 8 months, without applying its mind, learned Magistrate has simply referred the matter to police for investigation. The Apex court has clearly observed that summoning or referring the matter or for prosecuting any criminal case is a serious matter and criminal law cannot be set into the motion as a matter of course. The order of the Magistrate should reflect that he has applied his mind to the facts of the case and the law applicable to and it has to examine the nature of allegations made in the complaint and the documentary evidence in support thereon. But in the instant case, without applying its mind, simply on the basis of complaint, on the same day it has been referred to the police for investigation.

CRIMINAL APPEAL NO.796 OF 2022 (@ Special Leave Petition (Crl.) No. 9698 of 2019) K DHANDAPANI Vs THE STATE BY THE INSPECTOR OF POLICE; 9 th May, 2022

Dr. Joseph Aristotle S., learned counsel appearing for the State, opposed the grant of any relief to the appellant on the ground that the prosecutrix was aged 14 years on the date of the offence and gave birth to the first child when she was 15 years and second child was born when she was 17 years. He argued that the marriage between the appellant and the prosecutrix is not legal. He expressed his apprehension that the said marriage might be only for the purpose of escaping punishment and there is no guarantee that the appellant will take care of the prosecutrix and the children after this Court grants relief to him. In the peculiar facts and circumstances of this case, we are of the considered view that the conviction and sentence of the appellant who is maternal uncle of the prosecutrix deserves to be set aside in view of the subsequent events that have been brought to the notice of this Court. This Court cannot shut its eyes to the ground reality and disturb the happy family life of the appellant and the prosecutrix. We have been informed about the custom in Tamilnadu of the marriage of a girl with the maternal uncle.

https://indiankanoon.org/doc/128152480/; Podduturi Hemalatha vs The State Of Telangana on 19 May, 2022; WRIT PETITION No.23802 OF 2022

Petitioner directed to approach the District Collector for release of rice alleged to be PDS rice which was seized by police, pending adjudication under Sec 6-A of EC Act.

https://indiankanoon.org/doc/41950271/; Mr.Mohd Waseem Ahmed vs The State Of Telangana on 19 May, 2022; CRIMINAL PETITION No.4469 of 2022

Mere pendency of criminal proceedings shall not disentitle the petitioner/A1 to go to abroad

(The CRLP was filed assailing the dismissal of petition for return of passport by the trial court, the Hon'ble High court has set-aside the said order and permitted the petitioner to travel abroad for a period of Six months on conditions by ordering the LOC to be kept in abeyance)

https://indiankanoon.org/doc/175017779/; Ramlal Gilda And 10 Others vs The State Of Telangana And Another on 19 May, 2022; CRIMINAL PETITION No.4398 OF 2022

In the judgment of Rajulapati Ankababu (Crl.P.No.7468 of 2017 https://indiankanoon.org/doc/198506207/), it was held that the provisions of Cr.P.C. are applicable to the Special Acts so far as the investigation, inquiry and trial are concerned, unless there is specific provisions under the Special Act. Even under the amended Act, there is no provision which specifically excludes the application of Section 41-A of Cr.P.C in respect of offences committed under the SC/ST Act.

https://indiankanoon.org/doc/99327702/; Kanukuntla Swamidas vs The State Of Telangana on 12 May, 2022; CRIMINAL PETITION NO.4361 of 2022

the petitioner herein is directed to appear before the Police, Godavarikhani II-Town Police Station on 22-05-2022 and the Station House Officer, Godavarikhani II-Town Police Station shall comply with Section 41-A of Cr.P.C., and release the petitioner, forthwith.

(Order in the nature of anticipatory bail without conditions)

https://indiankanoon.org/doc/169006600/; Sk.Havez vs The State Of Andhra Pradesh on 12 May, 2022; CRIMINAL PETITION No.3444 of 2022;
https://indiankanoon.org/doc/128593476/; Sk. Shamir vs The State Of Andhra Pradesh on 12 May, 2022; CRIMINAL PETITION No.3445 of 2022;
https://indiankanoon.org/doc/52253701/; Sk.Imran vs The State Of Andhra Pradesh on 12 May, 2022; CRIMINAL PETITION No.3465 of 2022

Bearing in mind, the need for liberal interpretation in areas of social justice, individual freedom and indigent's rights, holding that bail covers both-release on one's own bond, with or without sureties. When sureties should be demanded and what sum should be insisted on are dependent on variables.

NOSTALGIA

Disposal of Property seized from accused as theft property. Truck seized from Accused and sold in auction. Criminal Proceedings ended in favour of Accused and Truck was directed to be returned to accused from whom it was seized. Auction purchaser cannot have a right to retain vehicle. He is only entitled to have return of money deposited by him as sale consideration. Naiz Ahmed Vs. State of U.P. 1994 SCC Criminal 1730.

Criminal Court has no jurisdiction to decide the question of rights of parties mainly concerned with right to possession of property. Rights over property can only be adjudicated by a competent civil court. Makkena Subbanaidu Vs. State of A.P. 2002 (2) ALT Criminal 44.

Difference between Bail on sureties and on Bond

As per decision of Hon'ble Supreme Court of India in the case of Moti Ram and Others Vs. State of Madhya Pradesh(MANU/SC/0132/1978 = AIR 1978 SC 1594, 1978 (4) SCC 47) wherein it was held as follows:

23. Primarily Chapter XXXIII is the nidus of the law of bail. Section 436 of the Colde speaks of bail but the provision makes a contradistinction between 'bail' and 'own bond without sureties'. Even here there is an ambiguity, because even the proviso comes in only if, as indicated in the substantive part, the accused in a bailable offence is prepared to give bail'. Here, 'bail' suggests 'with or without sureties'. And, 'bail bond' in Section 436(2) covers own bond. Section 437(2) blandly speaks of bail but speaks of release on bail of persons below 16 years of age, sick or infirm people and women. It cannot be that a small boy or sinking invalid or pardanashin should be refused release and suffer stress and distress in prison unless sureties are haled into a far-off court with obligation for frequent appearance. 'Bail' there suggests release, the accent being on undertaking to appear when directed, not on the production of sureties. But Section 437(2) distinguishes between bail and bond without sureties.

24. Section 445 suggests, especially read with the marginal note, that deposit of money will do duty for bond' with or without sureties'. Section 441(1) of the Code may appear to be a stumbling block in the way of the liberal interpretation of bail as covering own bond with and without sureties. Superficially viewed, it uses the words 'bail' and 'own bond' as antithetical, if the reading is literal. Incisively understood, Section 441(1) provides for both the bond of the accused and the undertaking of the surety being conditioned in the manner mentioned in the sub-section. To read 'bail' as including only cases of release with sureties will stultify the sub-section; for then, an accused released on his own bond without bail, i.e surety, cannot be conditioned to attend at the appointed place. Section 441(2) uses the word 'bail' to include 'own bond' loosely as meaning one or the other or both. More over, an accused in judicial custody, actual or potential, may be released by the court to further the ends of justice and nothing in Section 441(1) compels a contrary meaning.

Burden of proof on accused

in the case of Ashok vs. State of Maharashtra, (2015) 4 SCC 393, the Hon'ble Apex court had observed:

"12. From the study of above stated judgments and many others delivered by this Court over a period of years, the rule can be summarised as that the initial burden of proof is on the prosecution to bring sufficient evidence pointing towards guilt of the accused. However, in case of last seen together, the prosecution is exempted to prove exact happening of the incident as the accused himself would have special knowledge of the incident and thus, would have burden of proof as per Section 106 of the Evidence Act. Therefore, last seen together itself is not a conclusive proof but along with other circumstances surrounding the incident, like relations between the accused and the deceased, enmity between them, previous history of hostility, recovery of weapon from the accused, etc. non-explanation of death of the deceased, may lead to a presumption of guilt."

Defective Investigation:

In the decision in Mir Mohammad Omar's case (supra), this Court held :-

"In our perception it is almost impossible to come across a single case wherein the investigation was conducted completely flawless or absolutely foolproof. The function of the criminal courts should not be wasted in picking out the lapses in investigation and by expressing unsavoury criticism against investigating officers. If offenders are acquitted only on account of flaws or defects in investigation, the cause of criminal justice becomes the victim. Effort should be made by courts to see that criminal justice is salvaged despite such defects in investigation." (Emphasis added)

ON A LIGHTER VEIN

"Son, if you really want something in this life, you have to work for it. Now quiet! They're about to announce the lottery numbers." — Homer Simpson

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A ONE DAY ONLINE SYMPOSIUM ON NARCOTICS AND PSYCHOTROPIC SUBSTANCES ACT, FOR POLICE OFFICERS, PROSECUTORS & JUDGES IS SCHEDULED ON 2ND JULY, 2022 BY RBVRR TELANGANA STATE POLICE ACADEMY. EXPERTS WOULD HANDLE THE SUBJECTS AND ANSWER YOUR QUERIES ON THE SUBJECT. ALL PARTICIPANTS WOULD BE AWARDED CERTIFICATES. FURTHER INFORMATION WILL BE POSTED ON OUR "PROSECUTIONREPLENISH" TELEGRAM CHANNEL AND OTHER WHATSAPP GROUPS. *ALL ARE REQUESTED TO UTILISE THE OPPORTUNITY*

Prosecution Replenish

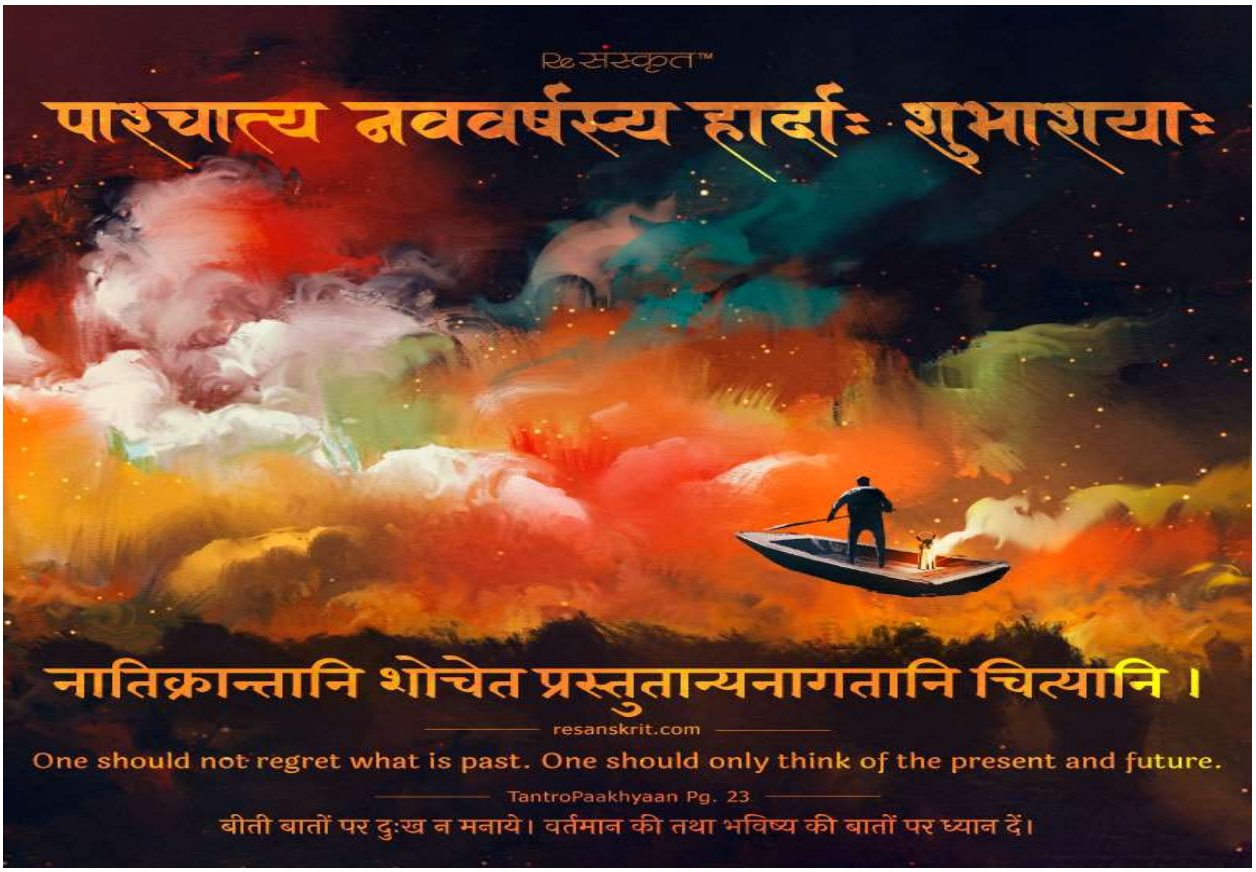
Vol- X

Part – 7

July, 2022

Aano Bhadra Kratvo Yantu Viswatah (Rig Ved)

Let all Noble thoughts come to us from all directions



CITATIONS

2022 0 Supreme(SC) 511; Guhan Versus State Represented By Inspector of Police; Criminal Appeal No. 884 OF 2022 (@ S.L.P.(Crl.) No. 5512 of 2022 @ Diary No. 10588 of 2020) With Criminal Appeal No. 885 OF 2022 (@S.L.P.(Crl.) No. 4615 of 2021); Decided On : 01-06-2022

Parties allowed to compound the offence under section 307 IPC as there is a marriage within the families of the injured and the accused. The appellants have already undergone sentence of more than 18 months.

2022 0 Supreme(SC) 516; Mahendra Singh and Others Versus State of M.P.; Criminal Appeal Nos. 764, 765 of 2021; Decided On : 03-06-2022

It could thus be seen that this Court has found that witnesses are of three types, viz. (a) wholly reliable; (b) wholly unreliable and (c) neither wholly reliable nor wholly unreliable. When the witness is “wholly reliable” the Court should not have any difficulty inasmuch as conviction or acquittal could be based on the testimony of such single witness. Equally, if the Court finds that the witness is “wholly unreliable” there would be no difficulty inasmuch as neither conviction nor acquittal can be based on the testimony of such witness. It is only in the third category of witnesses

that the Court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial.
It is a settled law that same treatment is required to be given to the defence witnesses as is to be given to the prosecution witnesses.
The medical evidence could only establish that the death was homicidal. However, it could not have been used to corroborate the version of Amol Singh (PW-6) that he has witnessed the incident.

2022 0 Supreme(SC) 522; Kattukandi Edathil Krishnan & Anr. Versus Kattukandi Edathil Valsan & Ors.; Civil Appeal No(S). 6406-6407 OF 2010 ; Decided On : 13-06-2022

It is well settled that if a man and a woman live together for long years as husband and wife, there would be a presumption in favour of wedlock. Such a presumption could be drawn under Section 114 of the Evidence Act. Although, the presumption is rebuttable, a heavy burden lies on him who seek to deprive the relationship of legal origin to prove that no marriage took place.

2022 0 Supreme(SC) 525; Ex. Ct. Mahadev Versus The Director General, Border Security Force & Ors.; Civil Appeal No. 2606 of 2012; Decided On : 14-06-2022

To sum up, the right of private defence is necessarily a defensive right which is available only when the circumstances so justify it. The circumstances are those that have been elaborated in the IPC. Such a right would be available to the accused when he or his property is faced with a danger and there is little scope of the State machinery coming to his aid. At the same time, the courts must keep in mind that the extent of the violence used by the accused for defending himself or his property should be in proportion to the injury apprehended. This is not to say that a step to step analysis of the injury that was apprehended and the violence used is required to be undertaken by the Court; nor is it feasible to prescribe specific parameters for determining whether the steps taken by the accused to invoke private self-defence and the extent of force used by him was proper or not. The Court's assessment would be guided by several circumstances including the position on the spot at the relevant point in time, the nature of apprehension in the mind of the accused, the kind of situation that the accused was seeking to ward off, the confusion created by the situation that had suddenly cropped up resulting the in knee jerk reaction of the accused, the nature of the overt acts of the party who had threatened the accused resulting in his resorting to immediate defensive action, etc. The underlying factor should be that such an act of private defence should have been done in good faith and without malice.

http://tshcstatus.nic.in/hcorders/2021/cc/cc_826_2021.pdf; **Jakka Vinod Kumar Reddy Vs. Mr. A.R. Srinivas, Dt.06.06.2022**

As issuance of LOC or NBWs against the petitioners without issuing any notice to them, without giving them an opportunity to prove their bonafides and without enquiring them, was in violation of the guidelines issued by the Hon'ble Apex Court, I hold that the respondents had wilfully disobeyed the judgment of the Hon'ble Apex Court and therefore, they are liable to be punished for contempt of court.

the contemnors were required to ensure serving of notices under Section 41-A Cr.P.C. within two weeks from the date of institution of the case on 07.10.2020, as per the guideline No.6, violation of which exposes for contempt as per Guideline No.7.

As the petitioners had also filed an SLP before the Hon'ble Apex Court and made available their address in the SLP, the Investigating Officer ought to have given notice to the petitioners before seeking issuance of LOC or NBWs against the petitioners. The respondents initiating coercive steps like obtaining NBW and issuance of LOC without issuing notice to the petitioners under Section 41-A Cr.P.C. is violative of the guidelines of the Hon'ble Apex Court in Arnesh Kumar's case. As such they are liable to be punished for contempt of court.

CRIMINAL PETITION No.3929 OF 2022=; 02.06.2022(APHC);

Section 41A CrPC notice ordered to be served on accused against whom a case is registered for the offences punishable under Sections 324, 323, 427 R/w 34 IPC and Sections 3(1)(r), 3(1)(s) and 3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act

CRIMINAL PETITION NO. 3906 OF 2022=; Bayyavarapu Sreenu Vs State of AP 02.06.2022(APHC);

Anticipatory bail application disposed directing police to issue 41A CrPC notice and release the Petitioner.

CRIMINAL PETITION No.4105 of 2022=; PRATTIPATI PULLA RAO Versus THE STATE OF ANDHRA PRADESH; 17.06.2022(APHC);

the Investigation Officer is directed to follow the procedure contemplated under Section 41-A of Cr.P.C against the petitioners in the above crime registered e under Sections 353, 509, 506, 323 read with Section 34 of the Indian Penal Code, 1860 (for short 'IPC') and Sections 3(1)(r), 3(1)(s), 3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'SCs&STs (POA) Act').

CRIMINAL PETITION No.4062 of 2022=; 16.06.2021(APHC)

the Investigation Officer is directed to consider the explanation submitted by the petitioner in response to the notice under Section 41-A of Cr.P.C, during the course of investigation of case under Section 306 IPC(imp for 10 years)

CRIMINAL PETITION No.4077 of 2022= Kamma Jagan @ M. Jagan Mohan Naidu, Versus The State of Andhra Pradesh; 16.06.2022 (APHC)

The High Court of Karnataka in the case of Sri Roopendra Singh v. State of Karnataka [Order, dated 20.01.2021, in Crl.P.No.312 of 2020, of the Karnataka High Court at Bengaluru] and this Court in Z.Lourdiah Naidu v. State of A.P.[2013 (2) ALD (Cri) 393 = 2014 (1) ALT (Cri) 322 (A.P.)] and Goenka Sajan Kumar v. the State of A.P[2014 (2) ALD (Cri) 264 = 2015 (1) ALT (Cri) 85 (A.P.)] held that prosecution against a customer, who only visited the brothel house for prostitution, is not maintainable and thereby quashed the criminal proceedings against them. Therefore, in view of the said settled law, the petitioner, who is similarly placed, is also entitled for quash of the criminal proceedings launched against him in the above case.

{It appears that the judgment of S.Naveen Kumar Vs State of Telangana, delivered by erstwhile united Hon'ble High Court of A.P. was not brought to the notice of the Hon'ble court during the hearing of this case, wherein it was held that Section 370A IPC should be charged against the customer}.

CRIMINAL PETITION No.3954 OF 2018 =; GOLLA SYAMALA Versus STATE OF AP.; 15.06.2022(APHC)

On an overall perusal of the judgments of the Hon'ble Apex court, the investigating agency has got power to investigate into the case after obtaining instructions or orders from the Court. But, no such power is available therefor to the Magistrate, once the Magistrate has taken cognizance on the basis of the earlier report and process has been issued and the accused entered into appearance in response thereto. At that stage, neither the Magistrate suo motu nor on an application filed by the complainant, further investigation can be ordered. Such a course of action would be open only on the request of the 8 investigating agency, and that too, in the circumstances warranting further investigation on the detection of material evidence only to secure fair investigation and trial

https://indiankanoon.org/doc/89701481/; Gopal Panda And 2 Others vs Station House Officer on 17 June, 2022; Crl.P No.4423/2022

In the event, the reasons to be recorded if the petitioners failed to comply with the conditions laid down under Section 41-A Cr.P.C., the police are at liberty to arrest the petitioners as mandate under Section 41-A Cr.P.C

(2022) 06 SC CK 0015; Criminal Appeal No. 903 Of 2022; P XXX Vs State Of Uttarakhand & Anr.: 16-06-2022

In view of the provisions aforesaid, without further elaboration, suffice it would be to observe that on the facts and in the circumstances of present case, even if respondent No. 2 is acquitted of charges under Sections 504 and 506, he could be tried by the jurisdictional Sessions Court in respect of alleged offence of rape under Section 376 IPC, because this offence could not have been tried by the Judicial Magistrate First Class. However, he cannot be sent to trial again for offences under Sections 504 and 506 IPC in any event. We need not say any more in this regard.

25. Upshot of the foregoing discussion is that on the facts and in the circumstances of this case, the alleged offence under Section 376 IPC and the other offences under Sections 504 and 506 IPC do not fall within the ambit of 'one series of acts so connected together as to form the same transaction' for the purpose of trial together in terms of Section 220 CrPC. Thus, the learned Sessions Judge, Chamoli had rightly discharged the accused-respondent No. 2 of the offence under Section 376 IPC for want of territorial jurisdiction.

https://indiankanoon.org/doc/198352715/; M. Vijay Kumar vs The State Acb on 15 June, 2022; CRL.R.C.No.1124 OF 2019

As per the provisions of Section 91 Cr.P.C., the accused is also entitled to file an application to call for any document for the purpose of trial and it cannot be restricted only to the documents on which the prosecution relies. It is mandatory that whoever files an application has to give the details of the document and has to explain the reasons and relevancy for disposal of the case before the court. The powers under Section 91 Cr.P.C are merely procedural in nature and the court may for reasons to be recorded can issue warrant for production of the documents.

https://indiankanoon.org/doc/149771659/; Dasaraju Suresh vs State Of Telangana on 15 June, 2022; Crl.Appeal No.216 of 2020; CRIMINAL APPEAL No. 216 OF 2020

As required under provision of Section 372 of Cr.P.C., order of acquittal has to be preferred and lies before the Court to which an appeal ordinarily lies against the order of conviction of such Court.

https://indiankanoon.org/doc/77589020/; Shaik Asif Mohammed Abdul Subhan vs The State Of Telangana on 14 June, 2022; WRIT PETITION No.24147 of 2022

As per Circular Instruction No.V.I/401/1/3/2014 dated 21.08.2018, issued by the Ministry of External Affairs, the applicant, who is facing criminal case, is required to submit permission of the concerned court, as well as an undertaking on a plain

paper, as provided in clause (d) of the notification dated 25.08.1993 under GSR.570(E).

https://indiankanoon.org/doc/145031314/; Kadamanda Balaiah vs The State Of Telangana on 14 June, 2022; Criminal Appeal No.295 OF 2020
In criminal cases, any substitution of an enactment is prospective in nature.

https://indiankanoon.org/doc/74960338/; Ramesh Vuppala Alias V.C.Ramesh vs The State Of Telanagana on 14 June, 2022; Crl.Petition No.4615 of 2022
Section 41A CrPC notice directed to be issued in case registered under Sections 406 and 420 of Indian Penal Code and Section 5 of TSPDFE Act.

2022 0 Supreme(SC) 542; Zakia Ahsan Jafri Versus State of Gujarat & Anr.; Criminal Appeal No. 912 of 2022 (arising out of SLP(Crl.) No. ……/2022 @ Diary No. 34207 of 2018); Decided On : 24-06-2022(THREE JUDGE BENCH)
The persons indulging in the gruesome activity were not arrested, much less stopped from doing so. Furthermore, when it came to investigation, 'A' Summary Report(s) came to be filed in most of the cases, which was a clear reflection on the failure of police administration, investigating such horrendous crime. Intriguingly, the persons who were arrested by the local police, were released on bail or interim bail obviously because of the (intentional) lackadaisical approach of the public prosecutor(s). Not only that, the investigating machinery opted to accept the version of the offender as a gospel truth and doubted the statements of the victims of crime. The malice not only pervaded in the local police, but also in the manner of investigation by the Court appointed SIT.
Section 304A means an act which is the immediate cause of death and not an act or omission which can be said to be a remote cause of death. It is necessary to show an immediate nexus between the wrongful act of an accused and the injuries received by another. In order to constitute the offence, the death should have been the direct result of a rash and negligent act that must be proximate cause without intervention of any third factor. Furthermore, in case of criminal negligence, it must be gross and not which is merely an error of judgment or arises because of defect of intelligence.
It is significant to note that the Ld. Amicus Curiae has admitted that:"I am conscious of the fact that though Shri Bhatt has been contending that he would speak only when under a legal obligation to do so, his conduct after making his statement u/s 161 Cr.PC has not been that of a detached police officer, who is content with giving his version. I am left with no doubt that he is actively "strategising" and is in touch with those, who would benefit or gain mileage from his testimony."

2022 0 Supreme(SC) 543; Manoj Pratap Singh Versus The State Of Rajasthan; Criminal Appeal No(S) 910 & 911 of 2022 (Arising Out Of SLP (Crl.) No(s). 7899-7900 of 2015) Decided On : 24-06-2022 (THREE JUDGE BENCH)

The chronology of the events and steps in the investigation leave nothing to doubt that the Investigating Officers of this case (the SHO PW-20 Ganesh Nath and the Circle Officer PW-25 Umesh Ojha) and other police officers have indeed methodically discharged their duties. Rather than finding faults or shortcomings in the investigation, we could only appreciate the thoroughness of investigation, where every step was appropriately and punctually taken and all the relevant processes were methodically documented; and where the charge-sheet was swiftly presented to the Court with all relevant particulars.

The doctors of the Medical Board were rather under bounden duty to state their opinion, particularly as regards the nature and duration of injuries and the cause of death.

https://indiankanoon.org/doc/121050703/; Dokka Anil Kumar Alias Anil, vs The State Sub Inspector Of Police on 20 June, 2022: CRIMINAL PETITION NO. 3978 OF 2022

A perusal of the material on record discloses that earlier crime No.174 of 2021 is registered for the offences punishable under Sections 354(A)(D) and 506 of IPC and Section 12 read with 11 of POCSO Act on the allegation of his misbehaving with the victim girl and charge sheet was also filed. Now going by the averments in the complaint, the complaint was lodged on 12.02.2022 by referring to the incidents which occurred on 14.01.2022, 16.01.2022, 20.01.2022 and 27.01.2022. No prudent person would keep quite without lodging a complaint, when a person attacks or misbehaves on several occasions. Therefore, prima facie it creates doubt with regard to occurrence of the incident. Further, according to the learned counsel for the petitioner, the petitioner"s family was shifted after the incident and they are residing elsewhere. BAIL GRANTED.

https://indiankanoon.org/doc/137719875/; Ravula Venkateswarlu vs The State Of Andhra Pradesh on 20 June, 2022; CRIMINAL PETITION No.4157 of 2022

It is now well settled law that an order taking cognizance of the case is amenable to revisional jurisdiction under Section 397(1) Cr.P.C. Therefore, revision lies against the said order under Section 397 Cr.P.C. It is well settled law that when specific remedy is available to the petitioner, the petitioner cannot invoke the inherent powers of this Court under Section 482 Cr.P.C.

https://indiankanoon.org/doc/198035584/; R.Thirumalesh Another vs The State Of A.P., Rep By P.P ... on 15 June, 2022; CRIMINAL PETITION No.7453 of 2017

Even though there is no limitation to bring to the notice of the prosecution about the commission of a cognizable offence, the circumstances and evidence should reveal the reasons for lodging the same with such delay. The case in hand missed the material and circumstantial evidence for lodging the complaint with such enormous delay.

https://indiankanoon.org/doc/64947164/; The Drugs Inspector vs S.Nagireddy And Another on 22 June, 2022; CRIMINAL APPEAL No. 94 of 2020

In the back ground of P.W.1 Drug Inspector (i) failing to prove his authority to file complaint and also inspect and seize the drugs,(ii) non furnishing of analysis report to the respondents/accused are fatal to the prosecution case and for the said two reasons, the prosecution fails and accordingly, the appeal filed by the State is liable to be dismissed.

https://indiankanoon.org/doc/139318560/; Gudala Rajesham vs State Of Telangana on 22 June, 2022; CRIMINAL PETITION No.4526 OF 2021

The offences alleged against them are under Sections 342, 290, 323, 506 read with 34 of IPC and Section 3 (1) (r), (s) and 3 (2) (va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015 (for short, 'the Act').

the Investigating Officer in Cr.No.204 of 2021 pending on the file of Jagtial Town Police Station, Jagtial District, to follow the procedure laid down under Section 41-A of Cr.P.C., and also the guidelines issued by the Apex Court in Arnesh Kumar v. State of Bihar and another

https://indiankanoon.org/doc/86862367/; Mohd. Ali Iqbal Miya Mohammed ... vs State Of Telangana on 21 June, 2022; CRIMINAL APPEAL No. 200 of 2022

The age of the victim girl/P.W.2 is alleged to be 17 years and it was argued by the learned Assistant Public Prosecutor that though from the facts it can be said that P.W.2 had voluntarily gone with the appellant but the consent to involve in sexual intercourse is not a consent recognized as per law. The consent of a minor in the facts of the case is of no consequence. The only evidence placed before the Court to say that the age of the victim girl is under 18 years is the certificate of the school, which was marked through investigating Officer and cannot be taken into consideration for the reason of proving its contents. However, the certificate Ex.P15 is birth certificate dated 18.06.2021, which is on the basis of affidavit issued by the concerned. In the said circumstances, when there is no positive evidence regarding

the age of the victim girl/P.W.2 showing less than 18 years, no credibility can be attached to EX.P15.

https://indiankanoon.org/doc/112695092/; Kavali Naresh Nallaiah vs The State Of Telangana on 21 June, 2022; CRIMINAL APPEAL Nos. 298 of 2020 & 107 of 2021

Though the discrepancies regarding the mode of attack and the instruments or weapons with which the accused were attacked is contradictory, however, the evidence regarding the attack on P.W.3 is consistent. In the said circumstances, when there were several persons involved and in the said melee, such discrepancies and contradictions are bound to occur and for the said reason, the entire case of the prosecution cannot be disbelieved. The principle of "falsus in uno, falsus in omnibus " (false in one thing, false in everything) is not applicable. Since some contradiction regarding scene or attack is shown to be wrong, it cannot be said that entire prosecution case has to be thrown out.

https://indiankanoon.org/doc/171173701/; Mr.Mohd Nayeem vs The State Of Telangana on 21 June, 2022; CRIMINAL APPEAL No. 244 of 2020

The contradictions and inconsistencies brought to the notice of this Court by the learned counsel for the appellant are trivial and inconsequential and have to be ignored. The said discrepancies and variations have no effect on the case of the prosecution. They are no way helpful for the reason that such inconsistencies or discrepancies are bound to occur during trial and such trivial issues cannot be made basis to acquit the accused/appellant when the evidence is clear and believable and there is no ambiguity.

Since the appellant is convicted and sentenced to undergo R.I for a period of five years under Section 10 of the POCSO Act, no separate sentence under Section 354 of IPC need to be imposed.

https://indiankanoon.org/doc/11531598/; Mohd. Afrid vs The State Of Telangana on 21 June, 2022; Crl.Petition No.4941 of 2022

The facts of the case are that, the de facto complainant had developed physical intimacy with this petitioner and were in such physical relation for a period of three years. Ultimately, the de facto complainant convinced this petitioner to get married and she had divorced her husband in the month of February-2022. At that point of time, the de facto complainant was pregnant and at the instance of this petitioner the de facto complainant took pills and there was miscarriage.

As seen from the complaint, **there was no force by this petitioner in consuming pills by the de facto complainant resulting abortion. In the said circumstances,**

the offence under Section 313 of IPC, prima facie is not attracted. For the said reason, since all the other alleged offences are below seven years, the respondent-Police are directed to carry out the investigation by following the procedure as contemplated under Section 41-A Cr.P.C and the guidelines formulated by the Hon'ble Supreme Court in Arnesh Kumar v. State of Bihar1scrupulously. It is needless to say, any deviation in this regard will be viewed seriously.

https://indiankanoon.org/doc/171671208/; Mekala Kanthaiah vs The State Of Ap., on 21 June, 2022; CRL.P.No.14759 OF 2013

As rightly contended by learned counsel for the petitioner and as accepted by learned Assistant Public Prosecutor, mere possession of either black jaggery or alum per se is not an offence attracting any of the provisions of the Excise Act.

https://indiankanoon.org/doc/166692983/; Manoj Kumar Chopra vs The State Of Telangana on 21 June, 2022; CRIMINAL PETITION No. 4967 of 2022

In the event, the reasons to be recorded if the petitioners failed to comply with the conditions laid down under Section 41-A Cr.P.C., the police are at liberty to arrest the petitioner as mandated under Section 41-A Cr.P.C.

https://indiankanoon.org/doc/116018342/; Bashetty Ashok vs The State Of Telangana on 21 June, 2022; CRIMINAL PETITION No. 4958 of 2022

when the disputes are before the concerned Civil Court and also all the transactions are subject matter of documents, the Police are directed to scrupulously follow the procedure as contemplated under Section 41-A Cr.P.C and the guidelines formulated by the Hon'ble Supreme Court in Arnesh Kumar v. State of Bihar scrupulously. It is needless to say, any deviation in this regard will be viewed seriously.

offences punishable under Sections 120b, 406, 409, 417, 418, 420, 423, read with 34 of the Indian Penal Code.

(Section 409 IPC is punishable with Imprisonment for life, or imprisonment for 10 years and fine.)

https://indiankanoon.org/doc/34458946/; Manoj Kumar Agarwal Rameka vs The State Of Telangana And ... on 21 June, 2022; CRIMINAL PETITION No.5196 OF 2022

There is not dispute that a petition to recall non-bailable warrants can be filed in the absence of the accused.

https://indiankanoon.org/doc/133054794/; Chinnem Nagaraju vs The State Of Andhra Pradesh on 23 June, 2022; WRIT PETITION No.9792 of 2022

The legal position in this regard whether a writ lies to direct the police to register a case or not is no more res integra and the same has been well settled. The Apex Court in the case of Sakiri Vasu v. State Of U.P1 held that writ is not maintainable seeking direction to the police to register a case when it is the grievance of the writ petitioner that the report lodged by him with the police was not registered relating to a cognizable offence. The Apex Court unequivocally held that in such a situation, the aggrieved party would have three remedies available under Cr.P.C. It is stated that if the Station House Officer refuses to register a case on the basis of the report lodged by the aggrieved party that the aggrieved party can approach the Superintendent of Police of the District under Section 154(3) Cr.P.C and he can also invoke Section 156(3) Cr.P.C and also Section 200 Cr.P.C by way of filing a private complaint.

https://indiankanoon.org/doc/135784420/; Chatla Venkata Subbaiah vs The State Of Andhra Pradesh on 23 June, 2022; CRIMINAL PETITION NO. 4094 OF 2022

it is the settled position of law that successive bail applications are permissible under the changed circumstances. The change of circumstances must be substantial one which has a direct impact on the earlier decision and not merely cosmetic changes which are of little or no consequence. Without the change in the circumstances, the subsequent bail application would be deemed to be seeking review of the earlier rejection order which is not permissible under criminal law. While entertaining such subsequent bail applications, the Court has a duty to consider the reasons and grounds on which the earlier bail application was rejected and what are the fresh grounds which persuade it warranting the evaluation and consideration of the bail application afresh and to take a view different from the one taken in the earlier application. There must be change in the fact situation or in law which requires the earlier view being interfered with or where the earlier finding has become obsolete.

https://indiankanoon.org/doc/25343025/; Medikonda Roopchand And 2 Others vs The State Of Telangana on 28 June, 2022; CRLP No. 4536 of 2022

Police directed to follow 41A CrPC and guidelines of Arnesh Kumar Vs State of Bihar, in an petition for Anticipatory Bail for offences registered under SC ST POA act.

https://indiankanoon.org/doc/116733950/; K.Venkatapathi Raju vs State Of Ap., on 27 June, 2022: CRL.P.No.14729 OF 2013

The third respondent herein filed a private complaint before the learned VI-Metropolitan Magistrate, Cyberabad, at Medchal against the petitioners/A-2 to A-6 and another (A-1) alleging offences punishable under Sections 498-A, 323, 506 read with Section 34 IPC and Sections 4 and 6 of the Dowry Prohibition Act and the learned Magistrate referred the said complaint to the police under Section 156(3) Cr.P.C for investigation and report. The police, in turn, registered a case in Cr.No.83 of 2013 for the above said offences and after completion of investigation filed charge sheet in C.C.No.635 of 2017.

Taking into consideration the submissions of learned counsel for the petitioners, copy of the order in O.P.No.17 of 2015 and the copy of the affidavit filed by the third respondent before the trial court stating that they have settled the matter out of court at the instance of elders and well-wishers and that she is not interested in prosecuting the case against the petitioners, this court considers it a fit case to invoke the inherent powers of this court under Section 482 Cr.P.C., and quash the proceedings against the petitioners/A-2 to A-6 to avoid the abuse of process of law.

Forgery:

In 1980 (4) SCC 552 between Bhausaheb Kalu Patil v. State of Maharashtra, his lordships was pleased to observe that forged certificates may not be valuable security as defined under Section 30 of the Indian Penal Code.

Quash of DVC Cases

This Court in Giduthuri Kesari Kumar and others vs. State of Telangana and others[2015(2) ALD (crl.) 470(AP)] held that since the remedies under the Act, 2005 are in civil nature and enquiry into the petition filed under the provisions of the said Act, 2005, is not a trial of criminal case, quash petitions would not be maintainable.

311 CrPC

In Ratanlal VS. Prahlad Jat{(2017) 9 SCC 340}, the Apex Court held that power under Section - 311 of Cr.P.C. must be exercised with caution and circumspection and only for strong and valid reasons. Recall of a witness already examined is not a matter of course and discretion given to Court in this regard has to be exercised judicially to prevent failure of justice. Reasons for exercising said power should be spelt out in order. Delay in filing application for recalling a witness is one of the important factors which has to be explained in the application.

NEWS

- Standard for public buildings as specified in the Harmonised Guidelines and Standards for Universal Accessibility in India – 2021,issued by the Government of India, Ministry of Housing and Urban Affairs vide letter no. 28012/09/2019-W3, dated the27th December, 2021, as amended from time to time and made available on https://drive.google.com/file/d/1d4dedBt2cw-JEvy_qqSodQ9ENfOyNfef/view; ".

- The Central Government appoints the named advocates as Special Public Prosecutors (SPPs), for conducting the cases on behalf of the National Investigation Agency before any Special Courts, NIA and High Courts established by law in the territory of the States and Union Territories indicated against their names for three years.

ON A LIGHTER VEIN

A man sued an airline company after it mislaid his luggage.
Sadly, he lost his case.

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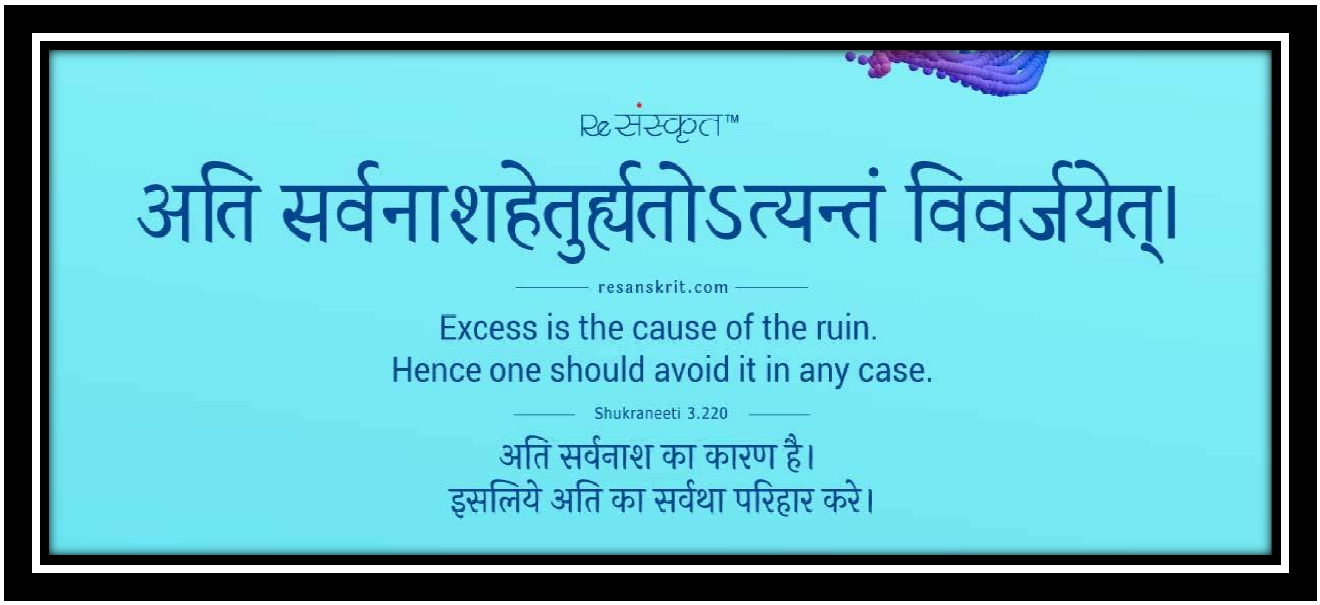
Vol- X Part – 8

August, 2022

Aano Bhadra Kratvo Yantu Viswatah (Rig Ved)

Let all Noble thoughts come to us from all directions



CITATIONS

2022 0 Supreme(AP) 219; Arigela Venkata Rama Rao Vs. The State of Andhra Pradesh; Criminal Petition Nos. 3981, 3982, 3983, 3984 of 2022; Decided On : 04-07-2022

As can be seen from the entire record prosecution identified accused basing on CC TV footage, social media videos and photos. Further except mentioning the names of accused, no specific overt acts were attributed against the petitioner or any other accused.

It is pertinent to mention here that name of the petitioner was mentioned in all the complaints. Witnesses also specifically stated about the presence of petitioner. Though there are no specific overt acts against petitioner, this court must keep in mind some of guide liens in the judgment of Apex Court Siddharam Satlingappa Mhetre vs. State of Maharashtra and Others

Thus, keeping the guidelines issued by the Apex Court, since the petitioner's involvement in the above cases has been stated in the complaint as well as by list of witnesses, petitioner is not entitled to pre-arrest bail, the custodial interrogation of petitioner is necessary.

2022 0 Supreme(SC) 549; Malkeet Singh Gill Vs. State of Chhattisgarh; Criminal Appeal No. 915 of 2022 (Arising Out of SLP (Crl.) No. 800 of 2021); Decided on : 05-07-2022

The High Court in criminal revision against conviction is not supposed to exercise the jurisdiction alike to the appellate Court and the scope of interference in revision is extremely narrow. Section 397 of Criminal Procedure Code (in short 'CrPC') vests jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior court. The object of the provision is to set right a patent defect or an error of jurisdiction or law. There has to be well-founded error which is to be determined on the merits of individual case. It is also well settled that while considering the same, the revisional Court does not dwell at length upon the facts and evidence of the case to reverse those findings.

Accordingly, we answer the reference by holding that Section 31 CrPC leaves full discretion with the court to order sentences for two or more offences at one trial to run concurrently, having regard to the nature of offences and attendant aggravating or mitigating circumstances. We do not find any reason to hold that normal rule is to order the sentence to be consecutive and exception is to make the sentences concurrent. Of course, if the court does not order the sentence to be concurrent, one sentence may run after the other, in such order as the court may direct. We also do not find any conflict in the earlier judgment in Mohd. Akhtar Hussain and Section 31 CrPC.

2022 0 Supreme(SC) 558; Amrik Singh Vs. State of Punjab; Criminal Appeal No.993 of 2012; Subhash Chander Vs. State of Punjab; Criminal Appeal No.992 of 2012; Decided On : 11-07-2022

Now so far as the conviction of the accused on the PW1 – eye-witness identifying the accused in the Court Room and non-conducting the TIP is concerned, while appreciating the said aspect the averments in the FIR which was given by PW1eye-witnesses are required to be referred to. It may be true that as per the settled position of law the FIR cannot be encyclopedia. However, at the same time when no TIP was conducted the first version of the complainant reflected in the FIR would play an important role. It is required to be considered whether in the FIR and/or in the first version the eye-witness either disclosed the identity and/or description of the accused on the basis of which he can recollect at the time of deposition and identify the accused for the first time in the Court Room?

it can be seen that as such there are some contradictions in the first statement of the complainant recorded in the form of FIR and in the deposition before the Court. In the deposition before the Court, he has tried to improve the case by deposing that he had seen the accused in the city on one or two occasions. The aforesaid was not disclosed in the FIR. Even in the cross-examination as admitted by PW1 he did not disclose any description of the accused. At this stage it is to be noted that PW1 has specifically and categorically admitted in the cross-examination that it is incorrect that the accused were known earlier. He disclosed only the age of the accused. In that view of the matter conducting of TIP was necessitated and, therefore in the facts and circumstances of the case, it is not safe to convict the accused solely on their identification by PW1 for the first time in the Court.

2022 0 Supreme(SC) 559; Shishpal @ Shishu Vs State of NCT of Delhi; Criminal Appeal No. 1053 of 2015; Roshan Vs. State (NCT of Delhi); Criminal Appeal No. 81 of 2018; Decided On : 11-07-2022

Both the appellants have been charged only based upon the rule of evidence available under Section 34 of the IPC. Section 34 does not constitute an offence by itself, but creates a constructive liability. The foundational facts will have to be proved by the prosecution. Not only the occurrence, but the common intention, has to be proved beyond reasonable doubt.

Both the Courts made reliance upon the non-cooperation on the part of the accused to undergo the test identification parade by drawing an adverse inference. Unfortunately, the evidence available on record was not looked into as the witnesses had already been exposed to the accused in the police station. After all, the test identification parade is only a part of an investigation, and therefore, nothing more can be attached to it. It is the duty of the prosecution to prove its case beyond reasonable doubt. Both the Courts have fixed the onus on the accused.

There has to be adequate material to fasten the appellants on the basis of constructive liability as Section 34 IPC is nothing but a rule of evidence.

2022 0 Supreme(SC) 560; Ravi Sharma Vs. State (Government of NCT of Delhi) and Anr.: Criminal Appeal Nos. 410-411 of 2015; Decided On : 11-07-2022

Much reliance has been made on the recoveries made. When the observation Mahazar was prepared along with the sketch and the inquest conducted, admittedly, scores of persons were present. No independent witness was made to sign and the evidence on behalf of the prosecution that they did not volunteer to do so, cannot be accepted. A witness may not come forward to adduce evidence at times when asked to act as an eyewitness. However, when a large number of persons were available near the dead body, it is incomprehensible as to how all of them refused to sign the documents prepared by the police.

The report of the Ballistic Expert is obviously a scientific evidence in the nature of an opinion. It is required to use this evidence along with the other substantive piece of evidence available. The

report is inconclusive with respect to the firearm belonging to the appellant being used for committing the offence.

2022 0 Supreme(SC) 564; Ajmal Vs. State Of Kerala; Criminal Appeal No. 1838 to 840 of 2019; Decided on : 12-07-2022

Considering the statutory provisions laid down in IPC and the law on the point, we find that the present case falls into the category of a culpable homicide not amounting to murder falling under section 304 Part-II IPC for the following reasons:

(i) There was no premeditation of mind to commit murder.

(ii) All the accused were admittedly not armed when they stopped the vehicle of the deceased and his friends and compelled them to alight from the same.

(iii) It was during the verbal altercation at that stage that the three accused picked up the weapon of assault namely, sticks of casuarina tree and a brick from the road side.

(iv) Single blow was given to the deceased by the accused nos.1 and 2.

(v) The case set up for exhortation to kill the deceased has not been found to be proved.

(vi) Both the groups consisted of young men.

(vii) The High Court found that there was no unlawful assembly formed with a common object and accordingly had acquitted three other accused and also the present appellants from the charge of unlawful assembly under section 149 IPC.

(viii) The appellants have been convicted with the aid of section 34 IPC.

2022 0 Supreme(SC) 588; Satender Kumar Antil Vs. Central Bureau of Investigation and Another; Miscellaneous Application No. 1849 of 2021, Miscellaneous Application Diary No. 29164 of 2021, Special Leave Petition (Crl.) No. 5191 of 2021; Decided On : 11-07-2022

Categories/Types of Offences

(A) Offences punishable with imprisonment of 7 years or less not falling in category B and D.

(B) Offences punishable with death, imprisonment for life, or imprisonment for more than 7 years.

(C) Offences punishable under Special Acts containing stringent provisions for bail like NDPS (S.37), PMLA (S.45), UAPA (S.43D(5), Companies Act, 212(6), etc.

(D) Economic offences not covered by Special Acts.

REQUISITE CONDITIONS

(1) Not arrested during investigation.

(2) Cooperated throughout in the investigation including appearing before Investigating Officer whenever called.

(No need to forward such an accused along with the charge-sheet (Siddharth vs. State of U.P. 2021 SCC Online SC 615)

CATEGORY A

After filing of charge-sheet/complaint taking of cognizance

(a) Ordinary summons at the 1st instance/including permitting appearance through Lawyer.

(b) If such an accused does not appear despite service of summons, then Bailable Warrant for physical appearance may be issued.

(c) NBW on failure to failure to appear despite issuance of Bailable Warrant.

(d) NBW may be cancelled or converted into a Bailable Warrant/Summons without insisting physical appearance of accused, if such an application is moved on behalf of the accused before execution of the NBW on an undertaking of the accused to appear physically on the next date/s of hearing.

(e) Bail applications of such accused on appearance may be decided w/o the accused being taken in physical custody or by granting interim bail till the bail application is decided.

CATEGORY B/D

On appearance of the accused in Court pursuant to process issued bail application to be decided on merits.

CATEGORY C

Same as Category B and D with the additional condition of compliance of the provisions of Bail under NDPS S.37, 45 PMLA, 212(6) Companies Act 43 d(5) of UAPA, POSCO etc."

Needless to say that the category A deals with both police cases and complaint cases.

The trial Courts and the High Courts will keep in mind the aforesaid guidelines while considering bail applications. The caveat which has been put by learned ASG is that where the accused have not cooperated in the investigation nor appeared before the Investigating Officers, nor answered summons when the Court feels that judicial custody of the accused is necessary for the completion of the trial, where further investigation including a possible recovery is needed, the aforesaid approach cannot give them benefit, something we agree with.

In conclusion, we would like to issue certain directions. These directions are meant for the investigating agencies and also for the courts. Accordingly, we deem it appropriate to issue the following directions, which may be subject to State amendments:

(a) The Government of India may consider the introduction of a separate enactment in the nature of a Bail Act so as to streamline the grant of bails.

(b) The investigating agencies and their officers are duty-bound to comply with the mandate of Section 41 and 41A of the Code and the directions issued by this Court in Arnesh Kumar (supra). Any dereliction on their part has to be brought to the notice of the higher authorities by the court followed by appropriate action.

(c) The courts will have to satisfy themselves on the compliance of Section 41 and 41A of the Code. Any non-compliance would entitle the accused for grant of bail.

(d) All the State Governments and the Union Territories are directed to facilitate standing orders for the procedure to be followed under Section 41 and 41A of the Code while taking note of the order of the High Court of Delhi dated 07.02.2018 in Writ Petition (C) No. 7608 of 2018 and the standing order issued by the Delhi Police i.e. Standing Order No. 109 of 2020, to comply with the mandate of Section 41A of the Code.

(e) There need not be any insistence of a bail application while considering the application under Section 88, 170, 204 and 209 of the Code.

(f) There needs to be a strict compliance of the mandate laid down in the judgment of this court in Siddharth (supra).

(g) The State and Central Governments will have to comply with the directions issued by this Court from time to time with respect to constitution of special courts. The High Court in consultation with the State Governments will have to undertake an exercise on the need for the special courts. The vacancies in the position of Presiding Officers of the special courts will have to be filled up expeditiously.

(h) The High Courts are directed to undertake the exercise of finding out the under-trial prisoners who are not able to comply with the bail conditions. After doing so, appropriate action will have to be taken in light of Section 440 of the Code, facilitating the release.

(i) While insisting upon sureties the mandate of Section 440 of the Code has to be kept in mind.

(j) An exercise will have to be done in a similar manner to comply with the mandate of Section 436A of the Code both at the district judiciary level and the High Court as earlier directed by this Court in Bhim Singh (supra), followed by appropriate orders.

(k) Bail applications ought to be disposed of within a period of two weeks except if the provisions mandate otherwise, with the exception being an intervening application. Applications for anticipatory bail are expected to be disposed of within a period of six weeks with the exception of any intervening application.

(l) All State Governments, Union Territories and High Courts are directed to file affidavits/ status reports within a period of four months.

2022 0 Supreme(SC) 568; Barun Chandra Thakur Vs Master Bholu & Anr. ; Criminal Appeal No.950 of 2022(arising out of SLP(Crl.) No.10123 of 2018) With CBI Vs. Bholu; Criminal Appeal No.951 of 2022 (arising out of SLP(Crl.) No. 6347 of 2022 @Diary No.25451 of 2019) Decided on : 13-07-2022

There is a timeline provided for the inquiry, submission of the SIR, preliminary assessment and the investigation under the Act, 2015 and the Model Rules:

i. The inquiry by the Board under section 14(1) is to be completed within a period of four months from the date of first production of the child before the Board, and it could be extended by a period of two more months by the Board for the reasons to be recorded as per section 14(2).

ii. Section 14(3) provides that a preliminary assessment under section 15 should be disposed of by the Board within a period of three months from the date of first production of the child before the Board.

iii. Under section 14(4) it is provided that if the inquiry by the Board under section 15 for petty offences remains inconclusive even after the extended period, the proceedings shall stand terminated.

iv. Under the proviso to section 14(4) dealing with the serious or heinous offences, in case the Board requires further period of time for completion of inquiry, the same may be granted by the Chief Judicial Magistrate or, as the case may be, the Chief Metropolitan Magistrate, for reasons to be recorded.

v. Under section 8(3)(e), SIR is to be submitted by the Probation Officer or the Child Welfare Officer or a social worker within a period of fifteen days from the date of first production of the child before the Board.

vi. In rule 10(5) of the Model Rules, in case of heinous offences committed by a child between the age of 16 to 18 years, the Child Welfare Police Officer shall produce the statement of witnesses recorded by him and other documents prepared during the course of investigation within a period of one month from the date of first production of the child before the Board.

the purpose of the Act, 2015 and its legislative intent, particularly to ensure the protection of best interest of the child, the expression “may” in the proviso to Section 15(1) thereof and the requirement of taking assistance of experienced psychologists or psychosocial workers or other experts would operate as mandatory unless the Board itself comprises of at least one member who is a practicing professional with a degree in child psychology or child psychiatry.

We are conscious of the fact that the power to make the preliminary assessment is vested in the Board and also the Children’s Court under sections 15 and 19 respectively. The Children’s Court, on its own, upon a matter being referred to under section 18(3), would still examine whether the child is to be tried as an adult or not, and if it would come to the conclusion that the child was not to be tried as an adult then it would itself conduct an inquiry as a Board and pass appropriate orders under section 18. Thus, the power to carry out the preliminary assessment rests with the Board and the Children’s Court. This Court cannot delve upon the exercise of preliminary assessment. This Court will only examine as to whether the preliminary assessment has been carried out as required under law or not. Even the High Court, exercising revisionary power under section 102, would test the decision of the Board or the Children’s Court with respect to its legality or propriety only. In the present case, the High Court has, after considering limited material on record, arrived at a conclusion that the matter required reconsideration and for which, it has remanded the matter to the Board with further directions to take additional evidence and also to afford adequate opportunity to the child before taking a fresh decision.

the task of preliminary assessment under section 15 of the Act, 2015 is a delicate task with requirement of expertise and has its own implications as regards trial of the case. In this view of the matter, it appears expedient that appropriate and specific guidelines in this regard are put in place. Without much elaboration, we leave it open for the Central Government and the National Commission for Protection of Child Rights and the State Commission for Protection of Child Rights to consider issuing guidelines or directions in this regard which may assist and facilitate the Board in making the preliminary assessment under section 15 of the Act, 2015.

2022 0 Supreme(SC) 569; Shahaja @ Shahajan Ismail Mohd. Shaikh Vs STATE OF MAHARASHTRA; Criminal Appeal No. 739 of 2017; Decided on : 14-07-2022

The appreciation of ocular evidence is a hard task. There is no fixed or straight-jacket formula for appreciation of the ocular evidence. The judicially evolved principles for appreciation of ocular evidence in a criminal case can be enumerated as under:

I. While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the Court to scrutinize the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief.

II. If the Court before whom the witness gives evidence had the opportunity to form the opinion about the general tenor of evidence given by the witness, the appellate court which had not this benefit will have to attach due weight to the appreciation of evidence by the trial court and unless there are reasons weighty and formidable it would not be proper to reject the evidence on the ground of minor variations or infirmities in the matter of trivial details.

III. When eye-witness is examined at length it is quite possible for him to make some discrepancies. But courts should bear in mind that it is only when discrepancies in the evidence of a witness are so incompatible with the credibility of his version that the court is justified in jettisoning his evidence.

IV. Minor discrepancies on trivial matters not touching the core of the case, hyper technical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole.

V. Too serious a view to be adopted on mere variations falling in the narration of an incident (either as between the evidence of two witnesses or as between two statements of the same witness) is an unrealistic approach for judicial scrutiny.

VI. By and large a witness cannot be expected to possess a photographic memory and to recall the details of an incident. It is not as if a video tape is replayed on the mental screen.

VII. Ordinarily it so happens that a witness is overtaken by events. The witness could not have anticipated the occurrence which so often has an element of surprise. The mental faculties therefore cannot be expected to be attuned to absorb the details.

VIII. The powers of observation differ from person to person. What one may notice, another may not. An object or movement might emboss its image on one person's mind whereas it might go unnoticed on the part of another.

IX. By and large people cannot accurately recall a conversation and reproduce the very words used by them or heard by them. They can only recall the main purport of the conversation. It is unrealistic to expect a witness to be a human tape recorder.

X. In regard to exact time of an incident, or the time duration of an occurrence, usually, people make their estimates by guess work on the spur of the moment at the time of interrogation. And one cannot expect people to make very precise or reliable estimates in such matters. Again, it depends on the time-sense of individuals which varies from person to person.

XI. Ordinarily a witness cannot be expected to recall accurately the sequence of events which take place in rapid succession or in a short time span. A witness is liable to get confused, or mixed up when interrogated later on.

XII. A witness, though wholly truthful, is liable to be overawed by the court atmosphere and the piercing cross examination by counsel and out of nervousness mix up facts, get confused regarding sequence of events, or fill up details from imagination on the spur of the moment. The subconscious mind of the witness sometimes so operates on account of the fear of looking foolish or being disbelieved though the witness is giving a truthful and honest account of the occurrence witnessed by him.

XIII. A former statement though seemingly inconsistent with the evidence need not necessarily be sufficient to amount to contradiction. Unless the former statement has the potency to discredit the later statement, even if the later statement is at variance with the former to some extent it would not be helpful to contradict that witness.

[See Bharwada Bhoginbhai Hirjibhai v. State of Gujarat, 1983 Cri LJ 1096 : AIR 1983 SC 753, Leela Ram v. State of Haryana, AIR 1999 SC 3717, and Tahsildar Singh v. State of UP, AIR 1959 SC 1012]

To put it simply, in assessing the value of the evidence of the eye-witnesses, two principal considerations are whether, in the circumstances of the case, it is possible to believe their presence at the scene of occurrence or in such situations as would make it possible for them to witness the facts deposed to by them and secondly, whether there is anything inherently improbable or unreliable in their evidence. In respect of both these considerations, the circumstances either elicited from those witnesses themselves or established by other evidence tending to improbabilise their presence or to discredit the veracity of their statements, will have a bearing upon the value which a Court would attach to their evidence. Although in cases where the plea of the accused is a mere denial, yet the evidence of the prosecution witnesses has to be examined on its own merits, where the accused raise a definite plea or puts forward a positive case which is inconsistent with that of the prosecution, the nature of such plea or case and the probabilities in respect of it will also have to be taken into account while assessing the value of the prosecution evidence.

Few contradictions in the form of omissions here or there is not sufficient to discard the entire evidence of the eye-witnesses.

This Court has time and again impressed upon the necessity of reading over the panchnama which can be used as a piece of corroborative evidence. In spite of this, it is regrettable that the learned trial judge did not take the pains to see that the panchnama was read over to the panch before it was exhibited. A panchnama which can be used only to corroborate the panch has to be read over to the panch and only thereafter it can be exhibited. If the panch has omitted to state something which is found in the panchnama, then after reading over the panchnama the panch has to be asked whether that portion of the panchnama is correct or not and whatever reply he gives has to be recorded. If he replies in the affirmative, then only that portion of the panchnama can be read into evidence to corroborate the substantive evidence of the panch. If he replies in the negative, then that part of the panchnama cannot be read in evidence for want of substantive evidence on record. It is, therefore, necessary that care is taken by the public prosecutor who conducts the trial that such a procedure is followed while examining the panch at the trial. It is also necessary that the learned trial judge also sees that the panchnama is read over the panch and thereafter the panchnama is exhibited after following the procedure as indicated above.

the conduct of the accused alone, though may be relevant under Section 8 of the Act, cannot form the basis of conviction.

2022 0 Supreme(SC) 572; Mekala Sivaiah Vs. State Of Andhra Pradesh; Criminal Appeal No. 2016 of 2013; Decided On : 15-07-2022

When there is ample ocular evidence corroborated by medical evidence, mere non-recovery of weapon from the appellant would not materially affect the case of the prosecution.

If the testimony of an eye witness is otherwise found trustworthy and reliable, the same cannot be disbelieved and rejected merely because certain insignificant, normal or natural contradictions have appeared into his testimony.

2022 0 Supreme(SC) 580; Mohammad Irfan Vs. State Of Karnataka; Criminal Appeal Nos. 201-202, 203-204, 205-207, 208-209 of 2018; Decided On : 11-07-2022

The law on the point is clear that even if a witness is declared hostile, the evidence of such witness cannot be rejected in toto but the correct approach is to accept it to the extent his version is found to be dependable on a careful scrutiny thereof

The recoveries of books and literature were completely supported by the concerned Panch witnesses and the Panchanamas on record. The books and literature did carry inflammatory content and messages. The translations of the original versions in Urdu were placed on record by the Prosecution. The voluntary statements which led to such recoveries and the recoveries themselves were also proved by the Prosecution.
Section 120-B of the IPC would apply only when “no express provision is made in this regard for the punishment of such a conspiracy”. Since an express provision for particular kind of conspiracy is dealt with specifically in Section 121A of the IPC, the provision contained in Section 120-B of the IPC would have no application.

2022 0 Supreme(SC) 581; In Re: Perry Kansagra - Alleged Contemnor; Suo-Motu Contempt Petition (Civil) No.3 of 2021;Decided On : 11-07-2022
It is thus well settled that a person who makes a false statement before the Court and makes an attempt to deceive the Court, interferes with the administration of justice and is guilty of contempt of Court. The extracted portion above clearly shows that in such circumstances, the Court not only has the inherent power but it would be failing in its duty if the alleged contemnor is not dealt with in contempt jurisdiction for abusing the process of the Court.
Making a false statement on oath is an offence punishable under Section 181 of the IPC while furnishing false information with intent to cause public servant to use his lawful power to the injury of another person is punishable under Section 182 IPC. These offences by virtue of Section 195(1)(a)(i) of the Code can be taken cognizance of by any court only upon a proper complaint in writing as stated in said section. In respect of matters coming under Section 195(1)(b)(i) of the Code, in [Pushpadevi M. Jatia v. M.L. Wadhawan, (1987) 3 SCC 367 : 1987 SCC (Cri) 526] prosecution was directed to be launched after prima facie satisfaction was recorded by this Court

2022 0 Supreme(SC) 589; State of Kerala Vs M. Karunakaran; Criminal Appeal No.(s) 924-925 of 2022 (@SLP (Crl) No.(s) 6241-6242 of 2022 @ D. No. 6034 of 2020); Decided on : 11-07-2022
It is brought to our notice that having found conflict with the decisions of two and three judge benches of this Court in the cases of B. Jayaraj Vs. State of Andhra Pradesh; (2014) 13 SCC 55 and P. Satyanarayana Murthy Vs. District Inspector of Police, State of Andhra Pradesh and Another; (2015) 10 SCC 152 with that of an earlier three judge bench decision of this Court in the case of M. Narsinga Rao (supra) regarding nature and quality of proof necessary to sustain conviction for the offences under Sections 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 when the primary evidence is unavailable, subsequently the three judge bench of this Court in the case of Neeraj Dutta Vs. State (Govt. of NCT of Delhi); Criminal Appeal No. 1669/2009, has referred the following question of law for determination by a larger bench:

> “whether in the absence of evidence of complainant/direct or primary evidence of demand of illegal gratification, is it not permissible to draw inferential deduction of culpability/guilt of a public servant under Section 7 and Section 13(1)(d) read with Section 13(2) of Prevention of Corruption Act, 1988 based on other evidence adduced by the prosecution?”

It is reported that the said reference is pending and the aforesaid question of law is yet to be determined and/or considered by a larger bench.
The issue arising in the present appeal is somewhat similar and the decision of a larger bench may have a direct effect on the decision of the present appeal(s). Therefore, we are of the opinion that the decision in the present appeal(s) be deferred till the question of law, which is referred to a larger bench, referred to hereinabove, in Criminal Appeal No. 1669/2009, is decided by the larger bench.

2022 0 Supreme(SC) 598; State of Uttar Pradesh & Anr. Vs Akhil Sharda & Ors.; Criminal Appeal No. 840 of 2022 With Sanjeet Jaiswal vs State of Uttar Pradesh & Ors.; Criminal Appeal No. 841 of 2022; Decided On : 11-07-2022

The High Court has quashed the criminal proceedings by observing that there was no loss to the Excise Department. However, the High Court has not at all appreciated the allegations of the larger conspiracy. The FIR need not be an encyclopedia (See Satpal vs. Haryana, (2018) 6 SCC 110, Para 7).

Even otherwise, it is required to be noted that the allegation of missing of two trucks was the beginning of the investigation and when during the investigation it was alleged that earlier also a number of trucks were missing transporting contraband goods, the FIR should not have been restricted to missing of the two trucks only and return of on the goods thereafter. The High Court has not at all appreciated and/or considered the allegation of the larger conspiracy and that both the FIRs/criminal cases are interconnected and part of the main conspiracy which is very serious if found to be true.

2022 0 Supreme(SC) 599; Malti Sahu Vs Rahul & Anr.; Criminal Appeal No. 471 of 2022 With State of U.T., Chandigarh Vs Rahul ; Criminal Appeal No. 472 of 2022; Decided On : 11-07-2022

As per the settled position of law, even the evidence of a hostile witness can be considered to the extent, it supports the case of the prosecution. Therefore, prosecution has established and proved the motive to that extent.

The next link in the chain of evidence is the recovery of Loi having blood stains of the deceased Kavita as well as of the accused, which Loi was recovered on the basis of the disclosure statement made by the accused himself. Though, Panchas to the recovery panchnama/disclosure panchnama had turned hostile, still the prosecution has proved the same through the I.O. However, unfortunately, the High Court has doubted the DNA/CFSL report on grounds, which are not germane, namely, the human hair in the hands of Kavita was not examined; blood stains were not properly presented. However, the High Court has not gone in the detailed discussion of the CFSL Report on record.

Having gone through the CFSL Report as well as the depositions of the witnesses from the CFSL, we are of the opinion that the blood on the Loi was found to be matching with that of Kavita and the accused.

The accused has failed to explain the injury on him. On the contrary, he has come out with a false case that the injury was caused by some iron bar, which has not been established and proved.

2022 0 Supreme(SC) 609; Jarnail Singh & Anr. Vs State of Punjab; Criminal Appeal No. 634 of 2010 With Balkar Singh Vs State of Punjab & Ors.; Criminal Appeal No. 633 of 2010 Decided On : 12-07-2022

The prosecution did not make that effort to prove the existence of the original and loss thereof in order to take an order for leading secondary evidence. Thus, no reliance could be placed upon the enquiry report and even the High Court has recorded that enquiry report was not a piece of evidence.

2022 0 Supreme(SC) 592; State of West Bengal Vs Rakesh Singh @ Rakesh Kumar Singh; Criminal Appeal No. 923 of 2022, SLP (Crl.) No. 9470 of 2021; Decided On : 11-07-2022

We are conscious about the salutary object of the NDPS Act and we have given due regard to the decision of the Hon'ble Apex Court in the case of State of Kerala vs. Rajesh, (Supra). There cannot be any doubt that persons indulging in illegal trafficking in contraband drugs and psychotropic substances must be dealt with, with iron hands. The activities of such persons have a widespread deleterious effect on the society at large. Countless members of the society, often of tender age, fall prey to the heinous and nefarious activities of drug peddlers. However, the

decision in each case must depend on the facts of the case and no principle of law can be applied blindly to a given set of facts.
there being otherwise no recovery from the respondent and the quantity in question being also intermediate quantity, the rigours of Section 37 NDPS Act do not apply to the present case.

2022 0 Supreme(SC) 616; Himanshu Kumar & Ors. Vs. State Of Chhattisgarh & Ors.: Writ Petition (Criminal) No. 103 of 2009: Decided on : 14-07-2022

When examining the question whether there is any proceeding in any court, there are three situations that can be envisaged. One is that there may be no proceeding in any court at all. The second is that a proceeding in a court may actually be pending at the point of time when cognizance is sought to be taken of the offence under Section 211 IPC. The third is that, though there may be no proceeding pending in any court in which, or in relation, to which the offence under Section 211 IPC could have been committed, there may have been a proceeding which had already concluded and the offence under Section 211 may be alleged to have been committed in, or in relation to, that proceeding. It seems to us that in both the latter two circumstances envisaged above, the bar to taking cognizance under Section 195(1)(b) would come into operation. If there be a proceeding actually pending in any court and the offence under Section 211 IPC is alleged to have been committed in relation to that proceeding, Section 195(1)(b) would clearly apply. Even if there be a case where there was, at one stage, a proceeding in any Court which may have concluded by the time the question of applying the provisions of Section 195(1)(b) arises, the bar under that provision would apply if it is alleged that the offence under Section 211 IPC, was committed in relation to that proceeding. The fact that the proceeding had concluded would be immaterial because Section 195(1)(b) does not require that the proceeding in any court must actually be pending at the time applying this bar arises."

2022 0 Supreme(SC) 619; Narcotics Control Bureau vs. Mohit Aggarwal; Criminal Appeal Nos. 1001-1002 of 2022 Arising out of Petitions for Special Leave To Appeal (Crl.) No. 6128-29 of 2021; Decided on : 19-07-2022 (THREE JUDGE BENCH)

the appellant-NCB could not have relied on the confessional statements of the respondent and the other co-accused recorded under Section 67 of the NDPS Act in the light of law laid down by a Three Judges Bench of this Court in Tofan Singh (2020 SCC Online SC 882), wherein as per the majority decision, a confessional statement recorded under Section 67 of the NDPS Act has been held to be inadmissible in the trial of an offence under the NDPS Act. Therefore, the admissions made by the respondent while in custody to the effect that he had illegally traded in narcotic drugs, will have to be kept aside.
In our opinion the narrow parameters of bail available under Section 37 of the Act, have not been satisfied in the facts of the instant case. At this stage, it is not safe to conclude that the respondent has successfully demonstrated that there are reasonable grounds to believe that he is not guilty of the offence alleged against him, for him to have been admitted to bail. The length of the period of his custody or the fact that the charge-sheet has been filed and the trial has commenced are by themselves not considerations that can be treated as persuasive grounds for granting relief to the respondent under Section 37 of the NDPS Act.

2022 0 Supreme(SC) 621; X Vs. The Principal Secretary Health and Family Welfare Department; Special Leave Petition (Civil) No. 12612 of 2022; Decided On : 21-07-2022 (THREE JUDGE BENCH)

A comparison between the two provisions before and after the 2021 amendment is tabulated below:

MTP, 1971	**MTP Amendment 2021**
Explanation 2: Where any pregnancy occurs as a result of failure of any device or method used by any **married woman or her husband for the purpose of limiting the number of children**, the anguish caused by such unwanted pregnancy may be presumed to constitute a grave injury to the mental health of the pregnant woman.	Explanation 1: For the purposes of clause (a), where any pregnancy occurs as a result of failure of any device or method used by **any - woman or her partner for the purpose of limiting the number of children or preventing - pregnancy**, the anguish caused by such pregnancy may be presumed to constitute a grave injury to the mental health of the pregnant woman.

The above table shows that the phrase 'married woman' was replaced by 'any woman' and the word 'husband' was replaced by 'partner'. But evidently, there is a gap in the law: while Section 3 travels beyond conventional relationships based on marriage, Rule 3B of the MTP Rules does not envisage a situation involving unmarried women, but recognizes other categories of women such as divorcees, widows, minors, disabled and mentally ill women and survivors of sexual assault or rape. There is no basis to deny unmarried women the right to medically terminate the pregnancy, when the same choice is available to other categories of women.

A woman's right to reproductive choice is an inseparable part of her personal liberty under Article 21 of Constitution. She has a sacrosanct right to bodily integrity. In Suchita Srivastava vs. Chandigarh Administration, (2009) 9 SCC 1 this Court has recognized that a woman's right to reproductive autonomy is a dimension of Article 21 of the Constitution

Denying an unmarried woman the right to a safe abortion violates her personal autonomy and freedom. Live-in relationships have been recognized by this Court. In S. Khusboo vs. Kanniammal, (2010) 5 SCC 600 this Court observed that criminal law should not be we aponized to interfere with the domain of personal autonomy. It was observed:

> "46. While there can be no doubt that in India, marriage is an important social institution, we must also keep our minds open to the fact that there are certain individuals or groups who do not hold the same view. To be sure, there are some indigenous groups within our country wherein sexual relations outside the marital setting are accepted as a normal occurrence. **Even in the societal mainstream, there are a significant number of people who see nothing wrong in engaging in premarital sex. Notions of social morality are inherently subjective and the criminal law cannot be used as a means to unduly interfere with the domain of personal autonomy. Morality and criminality are not co-extensive."**
>
> (Emphasis Supplied)

2022 0 Supreme(SC) 622; Ghulam Hassan Beigh Vs. Mohammad Maqbool Magrey & Ors.; Criminal Appeal No. 1041 of 2022 (Arising Out of S.L.P. (Criminal) No. 4599 Of 2021) Decided On : 26-07-2022 (THREE JUDGE BENCH)

Whether the case falls under Section 302 or 304 Part II, IPC could have been decided by the trial court only after the evaluation of the entire oral evidence that may be led by the prosecution as well as by the defence, if any, comes on record. Ultimately, upon appreciation of the entire evidence on record at the end of the trial, the trial court may take one view or the other i.e. whether it is a case of murder or case of culpable homicide. But at the stage of framing of the charge, the trial court could not have reached to such a conclusion merely relying upon the port

mortem report on record. The High Court also overlooked such fundamental infirmity in the order passed by the trial court and proceeded to affirm the same.

32. We may now proceed to consider the issue on hand from a different angle. It is a settled position of law that in a criminal trial, the prosecution can lead evidence only in accordance with the charge framed by the trial court. Where a higher charge is not framed for which there is evidence, the accused is entitled to assume that he is called upon to defend himself only with regard to the lesser offence for which he has been charged. It is not necessary then for him to meet evidence relating to the offences with which he has not been charged. He is merely to answer the charge as framed. The Code does not require him to meet all evidence led by prosecution. He has only to rebut evidence bearing on the charge. The prosecution case is necessarily limited by the charge. It forms the foundation of the trial which starts with it and the accused can justifiably concentrate on meeting the subject-matter of the charge against him. He need not cross-examine witnesses with regard to offences he is not charged with nor need he give any evidence in defence in respect of such charges.

33. Once the trial court decides to discharge an accused person from the offence punishable under Section 302 of the IPC and proceeds to frame the lesser charge for the offence punishable under Section 304 Part II of the IPC, the prosecution thereafter would not be in a position to lead any evidence beyond the charge as framed. To put it otherwise, the prosecution will be thereafter compelled to proceed as if it has now to establish only the case of culpable homicide and not murder. On the other hand, even if the trial court proceeds to frame charge under Section 302 IPC in accordance with the case put up by the prosecution still it would be open for the accused to persuade the Court at the end of the trial that the case falls only within the ambit of culpable homicide punishable under Section 304 of IPC. In such circumstances, in the facts of the present case, it would be more prudent to permit the prosecution to lead appropriate evidence whatever it is worth in accordance with its original case as put up in the charg-esheet. Such approach of the trial court at times may prove to be more rationale and prudent.

Post mortem report, by itself, does not constitute substantive evidence.

B Sridevi versus State of Andhra Pradesh; Case No.: Crl Petition No.: 4976/2022; :14.07.2022;

Going by the complaint due to the pressure put by higher officers, deceased committed suicide and nothing is made out from the complaint with regard to abetment or instigation made by the petitioner. In view of the law laid down by the Hon"ble Apex Court and as prima facie case is not made out against the petitioner since the complaint does not indicate about abetment or instigation made by her, this Court is inclined to grant bail to the petitioner.

SLP (CRL) NO. 4634 OF 2014 Vijay Madanlal Choudhary Vs UOI and batch; 27.07.2022; https://lawtrend.in/wp-content/uploads/2022/07/df0a003b9aee5ebb935b9a56d70d0b22.pdf;

The reasons which weighed with this Court in Nikesh Tarachand Shah {(2018) 11 SCC 1} for declaring the twin conditions in Section 45(1) of the 2002 Act, as it stood at the relevant time, as unconstitutional in no way obliterated the provision from the statute book; and it was open to the Parliament to cure the defect noted by this Court so as to revive the same provision in the existing form.

https://indiankanoon.org/doc/177851559/; Korma Suresh vs The State Of Andhra Pradesh on 26 July, 2022; CRIMINAL PETITION No.5248 of 2022

The case of the prosecution, in brief, is that the accused is a relative of the de facto complainant and they were in love for the last 10 years. On 04.07.2017, the accused took the de facto complainant to his house and on the pretext that he would marry her, he had performed sexual intercourse with her against her will and on 19.12.2021 the accused performed intercourse with the de facto complainant and since then the accused committed rape on her for several times. About 1 ½ years ago, the accused got employment and thereafter he neglected her and when the

de facto complainant and her parents placed the matter before elders, the accused refused to marry her. Thus, the accused cheated her. Basing on the complaint of the de facto complainant the present crime was registered. Perused the decisions relied on by the counsel. The decision Anurag Soni v. State of Chhattisgarh relied on by the learned Special Assistant Public Prosecutor is not applicable to the facts of the case on hand and the facts of the present case are somewhat similar to the facts of the decision Uday Vs State of Karnataka relied on by the learned counsel for the petitioner.
Taking into consideration the fact that there was consensual relationship between the petitioner and the de facto complainant and keeping in view the fact that the petitioner is a veterinary in Village Secretariat, this Court is inclined to grant anticipatory bail to the petitioner.

https://indiankanoon.org/doc/44618306/; Vunnam Naresh, vs The State Of Andhra Pradesh, on 29 July, 2022; CRIMINAL APPEAL No.1 OF 2013

The accused can be held guilty basing on the evidence but not on assumptions. The court could not assume that the complainant would not have consented for the sexual intercourse unless there was promise from A1, without any evidence in the said regard.
The complainant (PW.1) knowing fully well that her parents were against her marriage with A1, continued to live in a room with A1 and led sexual life with him. She is an educated woman, who did her B.Ed. and working as a Teacher in a private school. Knowing fully well that she and A1 belonged to separate castes or communities and knowing fully well that her parents are also against to her marriage with A1, she voluntarily cohabitated with him and continued her live in relationship with A1. Hence, it cannot be assumed that believing the assurance of A1 that he would marry her, she entered into sexual relationship with A1 and A1 cheated her and committed the offence under Section 415 IPC. Hence, this Court is of the view that the prosecution failed to prove the guilt of A1 for the offence under Section 415 IPC punishable under Section 417 IPC.

https://indiankanoon.org/doc/143647899/; Shaik Janimiya 3 Others vs The State Of A.P. Rep., By Its Pp ... on 28 July, 2022; CRL.P.No.15749 OF 2013

the second respondent made only bald allegations against A-2 and A-3, who are in-laws of the second respondent, that they demanded additional dowry and subjected her to harassment by confining her in a room and forced her to leave the matrimonial home. Undisputedly, there are no specific allegations against the parents of A-1 subjecting the second respondent to harassment for the alleged demand of additional dowry. Only general and omnibus allegations are leveled by the second respondent about the demand for additional dowry.
Even if the allegations contained in FIR/complaint are taken at their face value and accepted in their entirety, they do not prima facie constitute any of the ingredients of the offences alleged. Moreover, the allegations in the complaint/FIR do not constitute any of the cognizable offences and permitting the proceedings to continue would certainly amount to abuse of process of law.

https://indiankanoon.org/doc/130405289/; B.Jeevan Prasad vs The State Of Telangana on 28 July, 2022CRIMINAL PETITION No.6728 of 2022

Investigating Officer shall adhere to the requirement to follow Section 41-A Cr.P.C. except under the circumstances mentioned under Section 41(1) Cr.P.C. and Section 41-A (4) Cr.P.C.

https://indiankanoon.org/doc/108541796/; G. Maheswar Reddy, 3 Others, vs The State Of Ap Rep By Its Pp Hyd., on 26 July, 2022; CRL.P.No.11278 OF 2013

It is not in dispute that the agreement of sale dated 23.08.2007 was executed by A-5 in favour of A-1. It is also not in dispute that A-2, being an Advocate, while discharging his professional duty might have drafted the agreement, which was prepared in the presence of A-3. The second respondent entered into an agreement of sale on 02.08.2010 with A-1, who is the agreement holder in respect of subject plots original owned by A-5, who had executed agreement of sale in favour of A-1 on 23.08.2007 and A-1 is authorized to execute agreements of sale in respect of

subject plots. Though A-1 is an agreement holder of the plots in question, the fact remains that at the time of registration of plots, it is the original owner/A-5, who had executed the sale deeds in favour of second respondent. The allegation that there is difference in the contents of agreement of sale and sale deed and the same were included by way of deception to cause wrongful gain is without any basis. Interestingly, the sale consideration amount of Rs.11 lakhs was received by A-1 and the sale deed was executed by the original owner/A-5 by showing the sale consideration of Rs.5 lakhs which was already paid to the vendor. It appears that the said discrepancy has been portrayed as a mischief on the part of the accused and reason for suspicion about the entire transaction by the second respondent and her sister. Be that as it may, once the registered sale deed was executed in respect of the plots in question, the second respondent has acquired right and title over the said property. Apart from this, the learned counsel for the petitioners submits that the original owner is alleged to have cancelled GPA executed in favour of Mr.T.Mahender Singh by addressing letter dated 10.12.2000 to the Sub-Registrar and the same was duly acknowledged by them. Since the alleged GPA in favour of Mr.Mahender Singh was cancelled long ago and much prior to the present transaction on 16.08.2010 i.e., almost ten years after the cancellation of the GPA, it cannot be said that the accused have suppressed the said fact and entered into the present transaction and registered the plots in favour of second respondent and her sister. As rightly contended by learned counsel for the petitioners, the entire allegations make out a civil wrong and a civil remedy is available to the second respondent. Further, nowhere the allegations in the complaint, protest petition, contents of final report and the statement of second respondent disclose the offence of cheating. I do not find any material to show that from the very inception there was any intention on the part of the accused to cheat the second respondent, which is a condition precedent for an offence under Section 420 IPC. So also the allegations in the complaint do not prima facie disclose commission of the other offences alleged.

https://indiankanoon.org/doc/168147300/; Burela Padma vs The State Of Telangana on 26 July, 2022; CRIMINAL PETITION No.6639 OF 2022

The SHO to permit the accused or his counsel to submit documents in pursuance to 41A CrPC notice and take them into consideration and thereafter take steps as required under law with regard to submission of final report.

https://indiankanoon.org/doc/195547779/; Choudam Sumanth Vishnu Teja vs State Of Telangana on 26 July, 2022; CRIMINAL PETITION No.2349 of 2022

Though the Code of Criminal Procedure has not fixed any time limit for completion of investigation and filing of Final Report as contemplated under Section 173 Cr.P.C., yet, the investigation has to be completed within a reasonable time.

https://indiankanoon.org/doc/144948172/; Smt.N. Surekha And Another vs The State Of Telangana And Another on 25 July, 2022; CRIMINAL PETITION No.1303 OF 2021

The Investigating Officer has not recorded the statements of any independent witnesses and without consideration of the contents of the statements of the witnesses recorded under Section 161 of Cr.P.C, he has laid the charge sheet against the petitioners herein. Thus, the contents of the charge sheet lack the ingredients of the offences alleged against the petitioners herein. Continuation of proceedings in 3159 of 2020 is an abuse of process of law and it squarely falls in the parameters/guidelines laid by the Apex Court for exercise of power of this Court under Section 482 Cr.P.C.

https://indiankanoon.org/doc/4623881/; Potunuru Nagendra Rao vs The State Of Andhra Pradesh on 29 July, 2022; CRIMINAL PETITION No.5442 OF 2022;

As per the Mediators Report, the quantity recovered from the accused is 20 kgs each and hence, it is not commercial quantity.

https://indiankanoon.org/doc/26904597/; Nelaturi Sukumar, vs The State Of Andhra Pradesh, on 27 July, 2022; CRIMINAL PETITION No.5630 OF 2022;

The learned Judge in Padala Venkata Sai Rama Reddy while referring to the earlier decisions of this Court in Z.Lourdiah Naidu v. State of A.P., Goenka Sajan Kumar v. the State of A.P., as also 2013 (2) ALD (Cri) 393 = 2014(1) ALT (Cri) 322 (A.P.) the decision of Hon'ble High Court of Karnataka at Bengaluru in Sri Roopendra Singh v. State of Karnataka held that continuation of criminal proceedings against the petitioner therein, who was present in a brothel house at the time of raid by the Police as a customer, or fastening with any criminal liability in respect of any of the offences for which the charge sheet was filed, would amount to abuse of process of law.

(This judgment does not discuss the judgment of S. Naveen Kumar Vs. State of Telangana, wherein it was held that the customer to a brothel house should be charged under section 370A IPC)

https://indiankanoon.org/doc/36009076/; Seru Krishna Kishore Krishna, vs State Of Andhra Pradesh on 27 July, 2022; CRIMINAL PETITION No.4763 of 2022

since the petitioner is involved in heinous crimes and had criminal antecedents, mere filing of charge sheet is not at all a ground to grant bail to the petitioner. The contentions raised by the learned counsel for the petitioner regarding admissibility of the confession of the petitioner cannot be gone into at this stage while considering bail application.

Admissibility of Panchanama

Murli and another v. State of Rajasthan reported in (2009) 9 SCC 417: (2010) 1 SCC (Cri) 12. We got the relevant observations:

> "34. The contents of the panchnama are not the substantive evidence. The law is settled on that issue. What is substantive evidence is what has been stated by the panchas or the person concerned in the witness box."

Principles governing bail:

The Hon'ble Apex Court in Siddharam Satlingappa Mhetre vs. State of Maharashtra and Others, AIR 2011 SC 312 : MANU/SC/1021/2010 laid the following principles which are to be considered while granting bail:

(i) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made.

(ii) The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence.

(iii) The possibility of the applicant to flee from justice.

(iv) The possibility of the accused likelihood to repeat similar or the other offences.

(v) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her.

(vi) Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people.

(vii) The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which accused is implicated with the help of Sections 34 and 149 of the Indian Penal Code, the court should consider with even greater care and caution because over implication in the cases is a matter of common knowledge and concern.

(viii) While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused.

(ix) The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant.

(x) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.

Common Intention

In Jasdeep Singh alias Jassu v. State of Punjab, (2022) 2 SCC 545 this Court considered the scope of Section 34 IPC as follows:

"17. We shall first go back into the history to understand Section 34 IPC as it stood at the inception and as it exists now.

Old Section 34 IPC	New Section 34 IPC
34. Each of several persons liable for an act done by all, in like manner as if done by him alone.—When a criminal act is done by several persons, each of such persons is liable for that act in the same manner as if the act were done by him alone"	"34. Acts done by several persons in furtherance of common intention.—When a criminal act is done by several persons, in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone."

18. On a comparison, one could decipher that the phrase "in furtherance of the common intention" was added into the statute book subsequently. It was first coined by Barnes Peacock, C.J. presiding over a Bench of the Calcutta High Court, while delivering its decision in R. v. Gorachand Gope [R. v. Gorachand Gope, 1866 SCC OnLine Cal 16] which would have probably inspired and hastened the amendment to Section 34 IPC, made in 1870. The following passage may lend credence to the aforesaid possible view : (SCC OnLine Cal)

"It does not follow that, because they were present with the intention of taking him away, that they assisted by their presence in the beating of him to such an extent as to cause death. If the object and design of those who seized Amordi was merely to take him to the thannah on a charge of theft, and it was no part of the common design to beat him, they would not all be liable for the consequence of the beating merely because they were present. It is laid down that, when several persons are in company together engaged in one common purpose, lawful or unlawful, and one of them, without the knowledge or consent of the others, commits an offence, the others will not be involved in the guilt, unless the act done was in some manner in furtherance of the common intention. It is also said, although a man is present when a felony is committed, if he take no part in it, and do not act in concert with those who commit it, he will not be a principal merely because he did not endeavour to prevent it or to apprehend the felon. But if several persons go out together for the purpose of apprehending a man and taking him to the thannah on a charge of theft, and some of the party in the presence of the others beat and ill-treat the man in a cruel and violent manner, and the others stand by and look on without endeavouring to dissuade them from their cruel and violent conduct, it appears to me that those who have to deal with the facts might very properly infer that they were all assenting parties and acting in concert, and that the beating was in furtherance of a common design. I do not know what the evidence was, all that I wish to point out is, that all who are present do not necessarily assist by their presence every act that is done in their presence, nor are consequently liable to be punished as principals."

19. Before we deal further with Section 34 IPC, a peep at Section 33 IPC may give a better understanding. Section 33 IPC brings into its fold a series of acts as that of a single one.

Therefore, in order to attract Sections 34 to 39 IPC, a series of acts done by several persons would be related to a single act which constitutes a criminal offence. A similar meaning is also given to the word “omission”, meaning thereby, a series of omissions would also mean a single omission. This provision would thus make it clear that an act would mean and include other acts along with it.

20. Section 34 IPC creates a deeming fiction by infusing and importing a criminal act constituting an offence committed by one, into others, in pursuance to a common intention. Onus is on the prosecution to prove the common intention to the satisfaction of the court. The quality of evidence will have to be substantial, concrete, definite and clear. When a part of evidence produced by the prosecution to bring the accused within the fold of Section 34 IPC is disbelieved, the remaining part will have to be examined with adequate care and caution, as we are dealing with a case of vicarious liability fastened on the accused by treating him on a par with the one who actually committed the offence.

21. What is required is the proof of common intention. Thus, there may be an offence without common intention, in which case Section 34 IPC does not get attracted.

22. It is a team effort akin to a game of football involving several positions manned by many, such as defender, mid-fielder, striker, and a keeper. A striker may hit the target, while a keeper may stop an attack. The consequence of the match, either a win or a loss, is borne by all the players, though they may have their distinct roles. A goal scored or saved may be the final act, but the result is what matters. As against the specific individuals who had impacted more, the result is shared between the players. The same logic is the foundation of Section 34 IPC which creates shared liability on those who shared the common intention to commit the crime.

23. The intendment of Section 34 IPC is to remove the difficulties in distinguishing the acts of individual members of a party, acting in furtherance of a common intention. There has to be a simultaneous conscious mind of the persons participating in the criminal action of bringing about a particular result. A common intention qua its existence is a question of fact and also requires an act “in furtherance of the said intention”. One need not search for a concrete evidence, as it is for the court to come to a conclusion on a cumulative assessment. It is only a rule of evidence and thus does not create any substantive offence.

24. Normally, in an offence committed physically, the presence of an accused charged under Section 34 IPC is required, especially in a case where the act attributed to the accused is one of instigation/exhortation. However, there are exceptions, in particular, when an offence consists of diverse acts done at different times and places. Therefore, it has to be seen on a case-to-case basis.

25. The word “furtherance” indicates the existence of aid or assistance in producing an effect in future. Thus, it has to be construed as an advancement or promotion.

26. There may be cases where all acts, in general, would not come under the purview of Section 34 IPC, but only those done in furtherance of the common intention having adequate connectivity. When we speak of intention it has to be one of criminality with adequacy of knowledge of any existing fact necessary for the proposed offence. Such an intention is meant to assist, encourage, promote and facilitate the commission of a crime with the requisite knowledge as aforesaid.

27. The existence of common intention is obviously the duty of the prosecution to prove. However, a court has to analyse and assess the evidence before implicating a person under Section 34 IPC. A mere common intention per se may not attract Section 34 IPC, sans an action in furtherance. There may also be cases where a person despite being an active participant in forming a common intention to commit a crime, may actually withdraw from it later. Of course, this is also one of the facts for the consideration of the court. Further, the fact that all accused charged with an offence read with Section 34 IPC are present at the commission of the crime, without dissuading themselves or others might well be a relevant circumstance, provided a prior common intention is duly proved. Once again, this is an aspect which is required to be looked into by the court on the evidence placed before it. It may not be required on the part of the

defence to specifically raise such a plea in a case where adequate evidence is available before the court."

MOTIVE

This also occurred few days before the date of occurrence. When we deal with a case of circumstantial evidence, as aforesaid, motive assumes significance. Though, the motive may pale into insignificance in a case involving eyewitnesses, it may not be so when an accused is implicated based upon the circumstantial evidence. This position of law has been dealt with by this Court in the case of Tarsem Kumar v. Delhi Administration (1994) Supp 3 SCC 367 in the following terms:

"8. Normally, there is a motive behind every criminal act and that is why investigating agency as well as the court while examining the complicity of an accused try to ascertain as to what was the motive on the part of the accused to commit the crime in question. It has been repeatedly pointed out by this Court that where the case of the prosecution has been proved beyond all reasonable doubts on basis of the materials produced before the court, the motive loses its importance. But in a case which is based on circumstantial evidence, motive for committing the crime on the part of the accused assumes greater importance. Of course, if each of the circumstances proved on behalf of the prosecution is accepted by the court for purpose of recording a finding that it was the accused who committed the crime in question, even in absence of proof of a motive for commission of such a crime, the accused can be convicted. But the investigating agency as well as the court should ascertain as far as possible as to what was the immediate impelling motive on the part of the accused which led him to commit the crime in question. ……."

Anticipatory Bail

In yet another recent Constitution Bench judgment in the case of Sushila Aggarwal and Others vs. State (NCT of Delhi) and Another, (2020) 5 SCC 1, in paragraph 85 of the report Justice Ravindra Bhatt laid down the guiding principles in dealing with applications under Section 438.

Justice M.R. Shah had authored a separate opinion. Justice Arun Misra, Justice Indira Banerjee and Justice Vineet Saran agreed with both the opinions. The concluding guiding factors stated in paragraphs 92, 92.1 to 92.9 are reproduced hereunder:

"92. This Court, in the light of the above discussion in the two judgments, and in the light of the answers to the reference, hereby clarifies that the following need to be kept in mind by courts, dealing with applications under Section 438 CrPC.

92.1. Consistent with the judgment in Shri Gurbaksh Singh Sibbia and others v. State of Punjab, (1980) 2 SCC 565, when a person complains of apprehension of arrest and approaches for order, the application should be based on concrete facts (and not vague or general allegations) relatable to one or other specific offence. The application seeking anticipatory bail should contain bare essential facts relating to the offence, and why the applicant reasonably apprehends arrest, as well as his side of the story. These are essential for the court which should consider his application, to evaluate the threat or apprehension, its gravity or seriousness and the appropriateness of any condition that may have to be imposed. It is not essential that an application should be moved only after an FIR is filed; it can be moved earlier, so long as the facts are clear and there is reasonable basis for apprehending arrest.

92.2. It may be advisable for the court, which is approached with an application under Section 438, depending on the seriousness of the threat (of arrest) to issue notice to the public prosecutor and obtain facts, even while granting limited interim anticipatory bail.

92.3. Nothing in Section 438 Cr. PC, compels or obliges courts to impose conditions limiting relief in terms of time, or upon filing of FIR, or recording of statement of any witness, by the police, during investigation or inquiry, etc. While considering an application (for grant of anticipatory bail) the court has to consider the nature of the offence, the role of the person, the likelihood of his influencing the course of investigation, or tampering with evidence (including

intimidating witnesses), likelihood of fleeing justice (such as leaving the country), etc. The courts would be justified – and ought to impose conditions spelt out in Section 437 (3), Cr.P.C. [by virtue of Section 438 (2)]. The need to impose other restrictive conditions, would have to be judged on a case by case basis, and depending upon the materials produced by the state or the investigating agency. Such special or other restrictive conditions may be imposed if the case or cases warrant, but should not be imposed in a routine manner, in all cases. Likewise, conditions which limit the grant of anticipatory bail may be granted, if they are required in the facts of any case or cases; however, such limiting conditions may not be invariably imposed.

92.4. Courts ought to be generally guided by considerations such as the nature and gravity of the offences, the role attributed to the applicant, and the facts of the case, while considering whether to grant anticipatory bail, or refuse it. Whether to grant or not is a matter of discretion; equally whether and if so, what kind of special conditions are to be imposed (or not imposed) are dependent on facts of the case, and subject to the discretion of the court.

92.5. Anticipatory bail granted can, depending on the conduct and behaviour of the accused, continue after filing of the chargesheet till end of trial.

92.6. An order of anticipatory bail should not be "blanket" in the sense that it should not enable the accused to commit further offences and claim relief of indefinite protection from arrest. It should be confined to the offence or incident, for which apprehension of arrest is sought, in relation to a specific incident. It cannot operate in respect of a future incident that involves commission of an offence.

92.7. An order of anticipatory bail does not in any manner limit or restrict the rights or duties of the police or investigating agency, to investigate into the charges against the person who seeks and is granted prearrest bail.

92.8. The observations in Sibbia regarding "limited custody" or "deemed custody" to facilitate the requirements of the investigative authority, would be sufficient for the purpose of fulfilling the provisions of Section 27, in the event of recovery of an article, or discovery of a fact, which is relatable to a statement made during such event (i.e deemed custody). In such event, there is no question (or necessity) of asking the accused to separately surrender and seek regular bail. Sibbia (supra) had observed that

"if and when the occasion arises, it may be possible for the prosecution to claim the benefit of Section 27 of the Evidence Act in regard to a discovery of facts made in pursuance of information supplied by a person released on bail by invoking the principle stated by this Court in State of U.P. v Deoman Upadhyaya, AIR 1960 SC 1125."

92.9. It is open to the police or the investigating agency to move the court concerned, which grants anticipatory bail, for a direction under Section 439 (2) to arrest the accused, in the event of violation of any term, such as absconding, non cooperating during investigation, evasion, intimidation or inducement to witnesses with a view to influence outcome of the investigation or trial, etc."

MAY OR SHALL

in Dhampur Sugar Mills Ltd. v. State of U.P., (2007) 8 SCC 338 [Para 78], held:

"36. ….In our judgment, mere use of word "may" or "shall" is not conclusive. The question whether a particular provision of a statute is directory or mandatory cannot be resolved by laying down any general rule of universal application. Such controversy has to be decided by ascertaining the intention of the legislature and not by looking at the language in which the provision is clothed. And for finding out the legislative intent, the court must examine the scheme of the Act, purpose and object underlying the provision, consequences likely to ensue or inconvenience likely to result if the provision is read one way or the other and many more considerations relevant to the issue."

Sec 27 & 8 IEA

Even while discarding the evidence in the form of discovery panchnama the conduct of the appellant herein would be relevant under Section 8 of the Act. The evidence of discovery would be admissible as conduct under Section 8 of the Act quite apart from the admissibility of the disclosure statement under Section 27, as this Court observed in A.N. Venkatesh v. State of Karnataka, (2005) 7 SCC 714,:

"By virtue of Section 8 of the Evidence Act, the conduct of the accused person is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact. The evidence of the circumstance, simpliciter, that the accused pointed out to the police officer, the place where the dead body of the kidnapped boy was found and on their pointing out the body was exhumed, would be admissible as conduct under Section 8 irrespective of the fact whether the statement made by the accused contemporaneously with or antecedent to such conduct falls within the purview of Section 27 or not as held by this Court in Prakash Chand Vs. State (Delhi Admn.) [(1979) 3 SC 90]. Even if we hold that the disclosure statement made by the accused appellants (Ex. P14 and P15) is not admissible under Section 27 of the Evidence Act, still it is relevant under Section 8."

NEWS

- Amends the notification of the Ministry of Home Affairs, CTCR Division, vide number S.O. 2711 (E) dated the 7th June, 2022, published in the Gazette of India, Extraordinary, Part-II, Section 3, sub-section (ii), dated the 13th June, 2022, appointing the Spl PP for High Court of Telangana as Spl PP for NIA too.

- Amendments to the Foreign Contribution (Regulation) Amendment Rules, 2022.

- Officers competent to compound FCRA offences notified S.O. 3025(E) 1st July, 2022.

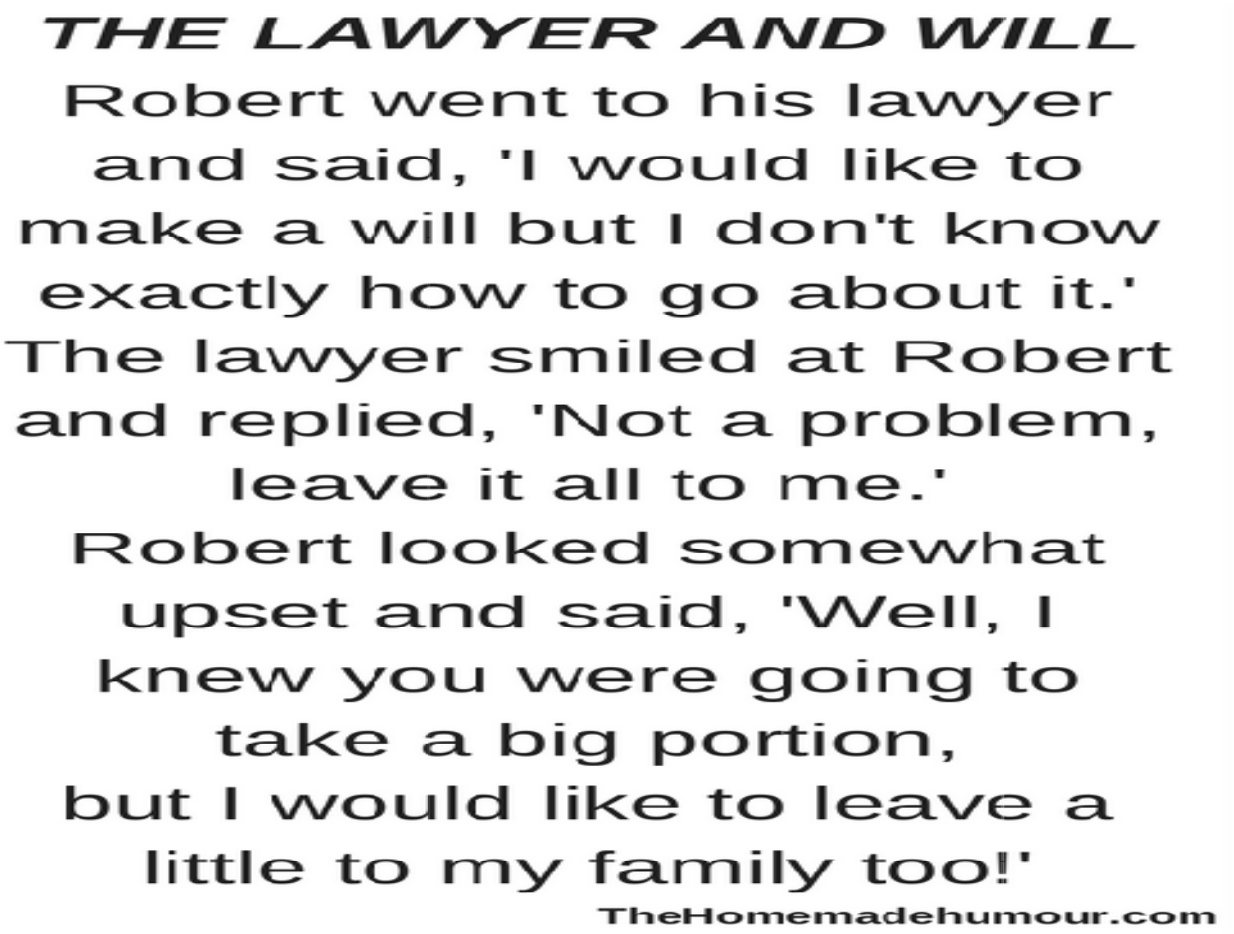
- The Surrogacy (Regulation) Act, 2021 (Act No.47 Of 2021) - Constitution Of State Assisted Reproductive Technology And Surrogacy Board; State Appropriate Authority For The Purposes Of The Said Act; And District Appropriate Authority For Surrogacy For Implementation Of The Act In The State. [G.O.Ms.No.181, Health, Medical And Family Welfare (E2), 8th July, 2022.]

- AP- Public Services - Employees Welfare Scheme - Andhra Pradesh State Employees Group In Insurance Scheme - 1984 - Revised Rate of Interest (7.1% p.a) w.e.f. 01.01.2022 to 31.03.2022 on accumulated Savings Fund - Communication of Tables of Benefits for Savings Fund for the Period from 01.01.2022 to 31.03.2022 - Revised Tables - Orders - Issued (G.O.Ms.No.177, from Finance (Admn-III-DA, DSA) Department).

- AP- Government Employees Revised Pay Scales 2022 - Comprehensive Orders - Amendment - Orders - Issued (G.O.Ms.No.175, from (PC-TA) Department, dated:15.07.2022).

- High Court Of Andhra Pradesh - Rules For Online Electronic Filing (E-Filing), 2022. [G.O.Ms.No.104, Law (L and LA &J - Home - Courts.A), 8th July, 2022.]

ON A LIGHTER VEIN



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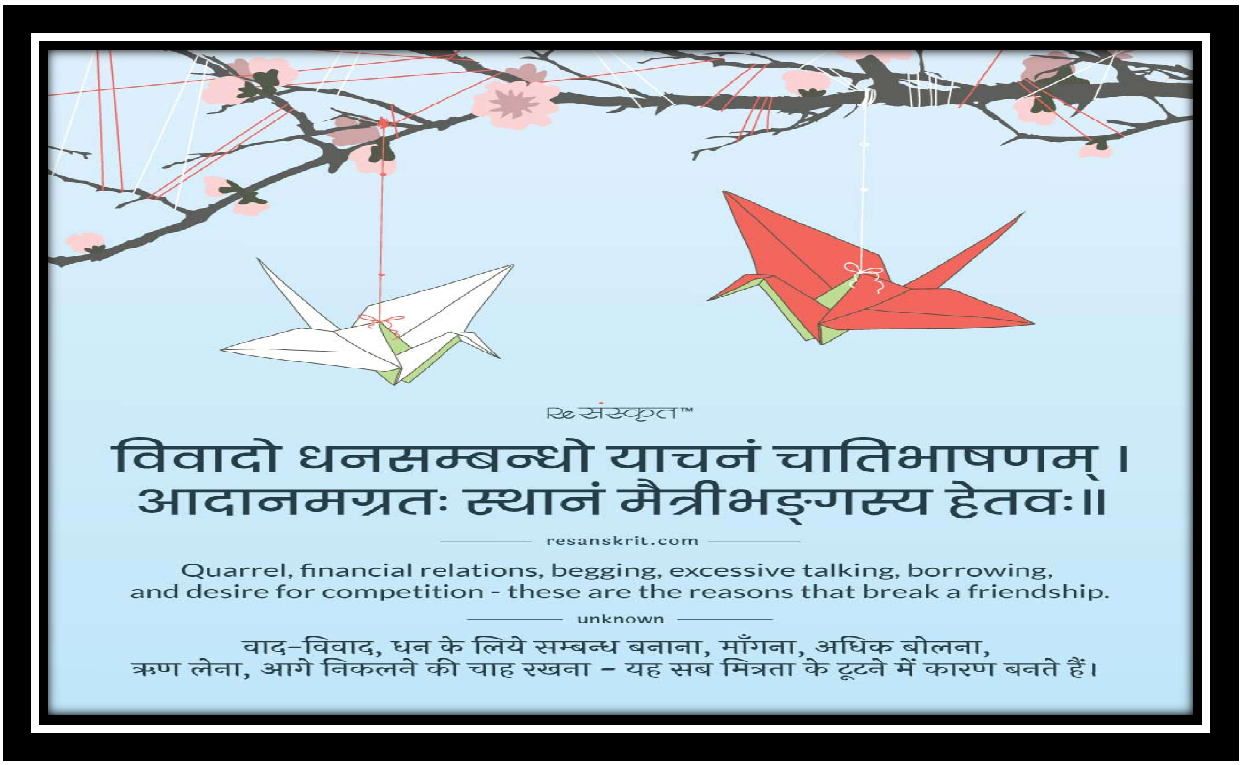
September, 2022

Aano Bhadra Kratvo Yantu Viswatah (Rig Ved)

Let all Noble thoughts come to us from all directions



CITATIONS

2022 0 Supreme(SC) 649; Reliance Industries Limited Vs. Securities And Exchange Board Of India & Ors.; Criminal Appeal No. 1167 of 2022 [@ Special Leave Petition (Crl) NO. 3417 of 2022]; Decided On : 05-08-2022 (THREE JUDGE BENCH)

Initiation of criminal action in commercial transactions, should take place with a lot of circumspection and the Courts ought to act as gate keepers for the same. Initiating frivolous criminal actions against large corporations, would give rise to adverse economic consequences for the country in the long run.

2022 0 Supreme(SC) 652; Varsha Garg vs. The State of Madhya Pradesh and Others; Criminal Appeal No. 1021 of 2022, M.A. No. 1144 of 2022, SLP (Crl) No. 2239 of 2022; Decided On : 08-08-2022

The summons to produce a document or other thing under Section 91 can be issued where the Court finds that the production of the document or thing “is necessary or desirable for the purpose of any investigation, trial or other proceeding” under the Cr.P.C. As already noted earlier, the power under Section 311 to summon a witness is conditioned by the requirement that the evidence of the person who is sought to be summoned appears to the Court to be essential to the just decision of the case.
Court is vested with a broad and wholesome power, in terms of Section 311 of the Cr.P.C. to summon and examine or recall and re-examine any material witness at any stage and the closing of prosecution evidence is not an absolute bar.

2022 0 Supreme(SC) 657; Dauvaram Nirmalkar Vs. State Of Chhattisgarh; Criminal Appeal No. 1124 of 2022 (Arising Out Of Special Leave Petition (Criminal) No. 2481 of 2022); Decided on : 02-08-2022

The question of loss of self-control by grave and sudden provocation is a question of fact. Act of provocation and loss of self-control, must be actual and reasonable. The law attaches great importance to two things when defence of provocation is taken under Exception 1 to Section 300 of the IPC. First, whether there was an intervening period for the passion to cool and for the accused to regain dominance and control over his mind. Secondly, the mode of resentment should bear some relationship to the sort of provocation that has been given. The retaliation should be proportionate to the provocation. [12][See the opinion expressed by Goddar, CJ. in R v. Duffy (supra).] The first part lays emphasis on whether the accused acting as a reasonable man had time to reflect and cool down. The offender is presumed to possess the general power of self-control of an ordinary or reasonable man, belonging to the same class of society as the accused, placed in the same situation in which the accused is placed, to temporarily lose the power of self-control. The second part emphasises that the offender's reaction to the provocation is to be judged on the basis of whether the provocation was sufficient to bring about a loss of self-control in the fact situation. Here again, the court would have to apply the test of a reasonable person in the circumstances. While examining these questions, we should not be short-sighted, and must take into account the whole of the events, including the events on the day of the fatality, as these are relevant for deciding whether the accused was acting under the cumulative and continuing stress of provocation. Gravity of provocation turns upon the whole of the victim's abusive behaviour towards the accused. Gravity does not hinge upon a single or last act of provocation deemed sufficient by itself to trigger the punitive action. Last provocation has to be considered in light of the previous provocative acts or words, serious enough to cause the accused to lose his self-control. The cumulative or sustained provocation test would be satisfied when the accused's retaliation was immediately preceded and precipitated by some sort of provocative conduct, which would satisfy the requirement of sudden or immediate provocation.

For clarity, it must be stated that the prosecution must prove the guilt of the accused, that is, it must establish all ingredients of the offence with which the accused is charged, but this burden should not be mixed with the burden on the accused of proving that the case falls within an exception. However, to discharge this burden the accused may rely upon the case of the prosecution and the evidence adduced by the prosecution in the court.

2022 0 Supreme(SC) 661; Ramabora @ Ramaboraiah & Anr. Vs. State Of Karnataka: Criminal Appeal No.1697 of 2011; Decided on : 10-08-2022

It is true that the principle "falsus in uno falsus in omnibus" may not have unadulterated application to criminal jurisprudence. The Courts have always preferred to do what Hamsa, the mythological Swan, is believed to do, namely, to separate milk and water from a mixture of the two[1][The idiom "sifting the chaff from the grain" has become very old and worn out and requires replacement].

2022 0 Supreme(SC) 662; Budhiyarin Bai Vs State of Chattisgarh; Criminal Appeal No (S). 1218 of 2022 (Arising out of SLP (Criminal) No(s). 4935 of 2022); Decided On : 10-08-2022

We are of the considered view that the offences under the NDPS Act are very serious in nature and against the society at large and no discretion is to be exercised in favour of such accused who are indulged in such offences under the Act. It is a menace to the society, no leniency should be shown to the accused persons who are found guilty under the NDPS Act. But while upholding the same, this Court cannot be oblivious of the other facts and circumstances as projected in the present case that the old illiterate lady from rural background, who was senior citizen at the time of alleged incident, was residing in that house along with her husband and two grown up children who may be into illegal trade but that the prosecution failed to examine and taking note of the procedural compliance as contemplated under Sections 42, 50 and 55 of the NDPS Act, held the appellant guilty for the reason that she was residing in that house but at the same time, this fact was completely ignored that the other co-accused were also residing in the same house and what was their trade, and who were those persons who were involved into the illegal trade providing supplies of psychotropic substances, prosecution has never cared to examine.

2022 0 Supreme(SC) 712; Makhan Singh Vs. State of Haryana; Criminal Appeal No. 1290 of 2010; Decided On : 16-08-2022

the Court is required to examine as to whether the dying declaration is true and reliable; as to whether it has been recorded by a person at a time when the deceased was fit physically and mentally to make the declaration; as to whether it has been made under any tutoring/duress/prompting. The dying declaration can be the sole basis for recording conviction and if it is found reliable and trustworthy, no corroboration is required. In case there are multiple dying declarations and there are inconsistencies between them, the dying declaration recorded by the higher officer like a Magistrate can be relied upon. However, this is with the condition that there is no circumstance giving rise to any suspicion about its truthfulness. In case there are circumstances wherein the declaration has not been found to be made voluntarily and is not supported by any other evidence, the Court is required to scrutinize the facts of an individual case very carefully and take a decision as to which of the declarations is worth reliance.

In the present case, we are faced with two dying declarations, which are totally inconsistent and contradictory to each other. Both are recorded by Judicial Magistrates. A difficult question that we have to answer is which one of the dying declarations is to be believed.

the second dying declaration (Ex. PE) which was recorded by another Judicial Magistrate Ms. Kanchan Nariala (PW-6) after 3 days is concerned, it was recorded without there being examination by a doctor with regard to the fitness of the deceased Manjit Kaur to make the statement. Though the statement is recorded in L.N.J.P. Hospital and though doctors were available, Ms. Kanchan Nariala (PW-6)

did not find it necessary to get the medical condition of the deceased examined from the doctors available in the hospital. It is further to be noted that Ms. Kanchan Nariala (PW-6) herself has admitted that Bhan Singh (PW-13) and Kamlesh Kaur (PW-11), father and sister of deceased Manjit Kaur were present in the hospital. The possibility of the second dying declaration (Ex. PE) being given after tutoring by her relatives cannot therefore be ruled out.

2022 0 Supreme(SC) 747; Pushpendra Kumar Sinha Vs. State Of Jharkhand; Criminal Appeal No.1333 of 2022 [Arising Out Of SLP (Crl.) No.3440 of 2021]; Decided on : 24-08-2022

an offence of conspiracy cannot be deemed to have been established on mere suspicion and surmises or inference which are not supported by cogent and acceptable evidence. This proposition of law has been laid down by the Hon'ble Supreme Court in a case of Central Bureau of Investigation, Hyderabad Vs. K. Narayana Rao {(2012) 9 SCC 512}.

It is a well settled law that at the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing of charge the Court must apply it's judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible. Indeed, the Court has limited scope of enquiry and has to see whether any prima-facie case against the accused is made out or not. At the same time, the Court is also not expected to mirror the prosecution story, but to consider the broad probabilities of the case, weight of prima-facie evidence, documents produced and any basic infirmities etc. In this regard the judgment of "Union of India Vs. Prafulla Kumar Samal, (1979) 3 SCC 4" can be profitably referred for ready reference.

2022 0 Supreme(SC) 813; Parvez Parwaz and Another VS State of Uttar Pradesh and Others; Criminal Appeal No. 1343 of 2022, SLP (Crl.) No. 6190 of 2018; Decided On : 26-08-2022

The words "No Court shall take cognizance" employed in Section 196 of the Code of Criminal Procedure (for short 'Cr.P.C.') and the consequential bar created under the said provision would undoubtedly show that the bar is against 'taking of cognizance by the Court'. In other words, it creates no bar against registration of a crime or investigation by the police agency or submission of a report by the police on completion of investigation as contemplated under Section 173, Cr.P.C. [Refer: State of Karnataka vs. Pastor P. Raju, (2006) 6 SCC 728].

2022 0 Supreme(SC) 862; Sanju And Others Vs. State Of Uttar Pradesh; Criminal Appeal No. 1981 of 2014; Decided on : 29-08-2022

there was a time gap between the actual occurrence and the visit of the police to the place of incident. By that time, the villagers had collected at the spot, a factum which has been deposed to by Rakesh Kumar (PW- 1), wherein he has stated that the villagers saw the police taking the dead body 2 hours after the incident. This was not controverted and challenged in the cross-examination. Disappearance of the empty

cartridges can be explained, as a number of villagers had gathered on the spot and had access to the place of occurrence. Further, the place of occurrence cannot be challenged on this ground. There is overwhelming evidence to establish that the place of incident was outside the residence of the deceased Chandrapal Singh and his brother Rakesh Kumar (PW-1).

https://indiankanoon.org/doc/194730296/; Mr. Y.S. Jagan Mohan Reddy vs Central Bureau Of Investigation on 26 August, 2022; CRLP No.607 OF 2020

as per sub-section (1) of Section 205, whenever a Magistrate issues a summons, he may dispense with the personal attendance of the accused and permit him to appear by his pleader, if he sees reason so to do. However, as per sub-section (2), at any stage of the proceedings, the trying Magistrate may direct personal attendance of the accused and if necessary, enforce such attendance in the manner provided. Therefore, the Magistrate has the discretion to dispense with the personal attendance of the accused and to permit him to appear by his pleader, if he sees reason so to do. The expression reason so to do is not qualified to the extent that the reason should be good or sufficient. The requirement of the law is that if the Magistrate sees reason, he may dispense with the personal attendance of the accused. Of course, he is empowered thereafter to direct the personal attendance of the accused at any stage of the proceedings.

https://indiankanoon.org/doc/86036347/; Kommera Ramesh vs The State Of Telangana on 26 August, 2022; CRIMINAL REVISION CASE No.192 OF 2015

The non examination of the Investigating Officer is not fatal to the prosecution case, as he reported to be died. The trial court also observed that no important omissions and contradictions were elicited in the evidence of the witnesses to confront the same to the investigating officer so as to consider that it resulted in prejudice to the accused.

No defence of contributory negligence was taken by the accused during the trial. It was not even suggested to the witnesses that the deceased suddenly crossed the road or that he was negligent and contributed to the accident. No defence witnesses were examined by the accused to prove the said fact.

https://indiankanoon.org/doc/97594006/; Mohammed Ghouse, Hyd 2 Othrs vs State Of Telangana on 25 August, 2022; CRLR CASE No.54 OF 2015

the common intention can develop on the spot and the observations of the appellate court that on observing the manner of incident, the accused might have developed common intention at the spur of the moment at the scene of offence is not contrary to law.

the other injuries might be a result of fall of PW.6 on a rough surface, is considered as not proper as the suggestion given to a doctor could at the most be considered as a defence but not as an evidence to come to a conclusion that the injuries were the result of a fall of PW.6 on a rough surface.

Conducting of test identification parade is only for the satisfaction of the Investigating Officer to know whether he arrested the right persons or not and

whether the investigation was proceeding in a proper manner. Non-conducting of test identification parade could not be viewed with suspicion when the witness identified his assaulters during trial.
The maxim falsus in uno, falsus in omnibus is not recognized in our criminal law. When a witness speaks false in one thing it need not be considered that he would speak false on all other aspects. It is the duty of the courts to separate chaff from the grains.

https://indiankanoon.org/doc/74426486/; Marepally Venkanna, Nalgonda vs State Of A.P., on 25 August, 2022; CRIMINAL APPEAL No.1209 OF 2009
The allegation of rape in the present case is against P.W.1 who is the daughter of the appellant. No daughter would under any circumstance implicate the father in such heinous offence.
When the father himself was the perpetrator, the victim daughter in all probability would have informed her friend, for the reason of the others being family members and may have apphrended that they would support the appellant.
The medical evidence also suggesting that there was no semen and spermatozoa found, cannot be a ground to brush aside the case of the complainant. The Doctor, P.W.6 not finding any external injuries on P.W.1 is of no consequence in the present facts of the case. The case is one of raping daughter by her own father, over a period of time. It is not the case of P.W.1 that immediately after she was raped, she went to the police station.

https://indiankanoon.org/doc/50553224/; Baseer Ahmed, Hyd vs P.P., Hyd on 23 August, 2022; I.A. No.3 of 2021 in Crl.A. No.1224 of 2015;
354 IPC compounded as the offence was prior to the 2013 amendment

https://indiankanoon.org/doc/181041043/; Shaik Tajuddin Balu vs The State Of Andhra Pradesh on 11 August, 2022; CRLA Nos.1197 OF 2009 and 485 of 2010
The act of trying to remove the clothes will not amount to an offence under Section 376 r/w 511 of IPC. However, the allegation that A1 removed his clothes and tried to pull the clothes of P.W.2 will amount to an offence of outraging the modesty of woman punishable under Section 354 of IPC.

https://indiankanoon.org/doc/96283053/; M.Yadagiri, vs The State Of A.P., on 11 August, 2022; CRIMINAL APPEAL No.773 OF 2009
It cannot be said that the appellant had no intention to outrage the modesty of victim girl. The act of lying on the victim girl itself would attract the offence under Section 354 of IPC.

https://indiankanoon.org/doc/96896951/; Mohd. Ahmed Mobin And Another vs State Of Telangana on 11 August, 2022; Crl.Petition No.7035 of 2022
Police directed to follow the procedure as contemplated under Section 41-A Cr.P.C and the guidelines formulated by the Hon'ble Crl.Petition No.7035 of 2022 Supreme Court in Arnesh Kumar v. State of Bihar1scrupulously. It is needless to say, any

deviation in this regard will be viewed seriously in offence registered under Secton 370A(2) IPC (Punishable with 20 years to life)

https://indiankanoon.org/doc/60773884/: Nandagiri Praveen vs The State Of Telangana And Another on 11 August, 2022; Crl.Petition No.7061 of 2022
Police directed to follow the procedure as contemplated under Section 41-A Cr.P.C and the guidelines formulated by the Hon'ble Supreme Court in Arnesh Kumar v. State of Bihar scrupulously in a case registered for the offences punishable under Sections 448, 509 and 506 read with Section 34 of Indian Penal Code and Section 3(1)(r)(s) and 3(ii)(Va) of SC/STs (POA) Amendment Act - 2015.

https://indiankanoon.org/doc/93713084/; Sri C. Hemachandra Murthy vs State on 10 August, 2022; CRIMINAL APPEAL No.1451 OF 2008
As held by the Hon'ble Supreme Court, in P.Satyanarayana Murthy v. District Inspector of Police, State of Andhra Pradesh ((2015) 10 Supreme Court Cases 152 and N.Vijay Kumar v. State of Tamil Nadu (2021) 3 Supreme Court Cases 687, that unless demand is proved, though there is recovery, it is of no consequence and once the demand is not proved, Section 7 of the Act of 1988 is not attracted.

https://indiankanoon.org/doc/186506658/; Md. Sadiq vs The State Of A.P. on 4 August, 2022; CRIMINAL APPEAL No.387 of 2009
Mere demand without any harassment such as beating, abusing or sending her away to her parents house would not amount to an offence under Section 304-B of IPC. However, the fact that there was demand for two tulas of gold would go to show that the deceased was treated with cruelty for which reason, the appellant is found guilty and convicted for the offence under Section 498-A of IPC.

https://indiankanoon.org/doc/141667449/; Vishwanatharn Pedda Kondaiah vs The Station House Officer, on 26 August, 2022; W.P.No.23073 of 2022
the order granting police aid in I.A.No.507 of 2021 also co-terminates along with the order setting aside the temporary injunction order. So, it cannot be said that the order of granting police aid by the trial Court is in force.
it is now evident that as per the finding recorded by the Division Bench of this Court, the 6th respondent has been in possession of the said property as a lessee and running a ginning mill in the said property. When that be the clear finding of the Court, the petitioner is not entitled to any police aid.

Siddharth Mukesh Bhandari vs State of Gujarat 2022 LiveLaw (SC) 653; CrA 1044-1046 of 2022; 2 August 2022;
It appears from the impugned order passed by the High Court that the learned Single Judge has not properly appreciated and/or considered our earlier judgment and order passed in M/s. Neeharika Infrastructure Pvt. Ltd. (AIR 2021 SC 1918). Even the learned Single Judge has also not properly understood the ratio of the decision of this Court in the case of M/s. Neeharika Infrastructure Pvt. Ltd. It appears that the learned Single Judge seems to be of the opinion that after giving

reasons, the High Court can grant an interim stay of further investigation in a petition seeking quashing of the criminal complaint filed under Article 226 of the Constitution read with Section 482 Cr.P.C. The High Court has not properly appreciated the principles and the law laid down by this Court in the case of M/s. Neeharika Infrastructure Pvt. Ltd. What is emphasized by this Court in the case of M/s. Neeharika Infrastructure Pvt. Ltd. is that grant of any stay of investigation and/or any interim relief while exercising powers under Section 482 Cr.P.C. would be only in the rarest of rare cases. This Court has also emphasized the right of the Investigating Officer to investigate the criminal proceedings. In our earlier judgment and order, in fact, we abstracted the principles laid down by this Court in the case of M/s. Neeharika Infrastructure Pvt. Ltd. in paragraph 4.

Criminal Appeal No(s). 442/2022; 27th JULY, 2022 MANDAR DEEPAK PAWAR versus THE STATE OF MAHARASHTRA & ANR. 2022 LiveLaw (SC) 649

The parties chose to have physical relationship without marriage for a considerable period of time. For some reason, the parties fell apart. It can happen both before or after marriage. Thereafter also three years passed when respondent No.2 decided to register a FIR.- FIR Quashed.

We are fortified to adopt this course of action by the judicial view in (2019) 9 SCC 608 titled “Pramod Suryabhan Pawar Vs. State of Maharashtra & Anr.” where in the factual scenario where complainant was aware that there existed obstacles in marrying the accused and still continued to engage in sexual relations, the Supreme Court quashed the FIR. A distinction was made between a false promise to marriage which is given on understanding by the maker that it will be broken and a breach of promise which is made in good faith but subsequently not fulfilled. This was in the context of Section 375 Explanation 2 and Section 90 of the IPC, 1860.

Criminal Appeal No 1273 of 2022; (Arising out of SLP (Crl) No 9509 of 2019); M N G Bharateesh Reddy Vs. Ramesh Ranganathan and Another; 18.8.2022

an alleged breach of the contractual terms does not ipso facto constitute the offence of the criminal breach of trust without there being a clear case of entrustment.

http://tshcstatus.nic.in/hcaporders/2022/202100043902022_2.pdf; CRLP No. 4390 of 2022; Seva Swarna Kumari @ Kumaramma and others Vs. State of Andhra Pradesh; 18.08.2022;

This Court is of the considered opinion that the above said decision aptly applies to the facts of the present case. At this juncture, it may be appropriate to refer to some of the principles laid down by the Hon’ble Supreme Court in AG v. Shiv Kumar Yadav and Others3 which are to be kept in mind for exercising power under Section 311 Cr.P.C., and the relevant to the present context are: a) The exercise of widest discretionary power Under Section 311 Code of Criminal Procedure should ensure that the judgment should not be rendered on inchoate, inconclusive and speculative presentation of facts, as thereby the ends of justice would be defeated; b) The wide discretionary power should be exercised judiciously and not arbitrarily; c) The object

of Section 311 of Code of Civil Procedure simultaneously imposes a duty on the court to determine the truth and to render a just decision.

Criminal Appeal No 1184 of 2022 (Arising out of SLP(Crl) No 1674 of 2022) Anusha Deepak Tyagi Vs State of Madhya Pradesh & Ors; 5.8.2022

This Court, too, has had its role to play in ensuring that justice does not remain inaccessible. In State of Maharashtra v. Bandu @ Daulat, {(2018) 11 SCC 163} this Court directed that special centres be set up in each state in order to facilitate depositions by vulnerable witnesses, including victims of sexual offences. In Smruti Tukaram Badade v. State of Maharashtra,{ 2022 SCC OnLine SC 78} a two judge bench of this Court (of which one of us, Dr. DY Chandrachud, J. was a part) supplemented the directions issued in Bandu @ Daulat (supra) with respect to setting up such special centres. 35. It is the duty and responsibility of trial courts to deal with the aggrieved persons before them in an appropriate manner, by: a. Allowing proceedings to be conducted in camera, where appropriate, either under Section 327 CrPC or when the case otherwise involves the aggrieved person (or other witness) testifying as to their experience of sexual harassment / violence; b. Allowing the installation of a screen to ensure that the aggrieved woman does not have to see the accused while testifying or in the alternative, directing the accused to leave the room while the aggrieved woman's testimony is being recorded; c. Ensuring that the counsel for the accused conducts the cross-examination of the aggrieved woman in a respectful fashion and without asking inappropriate questions, especially regarding the sexual history of the aggrieved woman. Cross-examination may also be conducted such that the counsel for the accused submits her questions to the court, who then poses them to the aggrieved woman; d. Completing cross-examination in one sitting, as far as possible.

NOSTALGIA

Interested Witness

it is an established principle of law that a close relative cannot automatically be characterized as an "interested" witness. However, it is trite that even related witness statements need to be scrutinized more carefully. [See Bhaskarrao v. State of Maharashtra, (2018) 6 SCC 591; State of Rajasthan v. Madan, (2019) 13 SCC 653]

Discharge:

it will be apposite to take note of the legal principles applicable seeking discharge, for which we may refer to a judgment of this Court in P. Vijayan vs. State of Kerala and Another, (2010) 2 SCC 398 which has been further reiterated by this Court in the recent judgment in M.E. Shivalingamurthy vs. Central Bureau of Investigation, Bengaluru, (2020) 2 SCC 768 and discerned the following principles:

"17.1. If two views are possible and one of them gives rise to suspicion only as distinguished from grave suspicion, the trial Judge would be empowered to discharge the accused.

17.2. The trial Judge is not a mere post office to frame the charge at the instance of the prosecution.

17.3. The Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding. Evidence would consist of the statements recorded by the police or the documents produced before the Court.

17.4. If the evidence, which the Prosecutor proposes to adduce to prove the guilt of the accused, even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, "cannot show that the accused committed offence, then, there will be no sufficient ground for proceeding with the trial."

17.5. It is open to the accused to explain away the materials giving rise to the grave suspicion.

17.6. The court has to consider the broad probabilities, the total effect of the evidence and the documents produced before the court, any basic infirmities appearing in the case and so on. This, however, would not entitle the court to make a roving inquiry into the pros and cons.

17.7. At the time of framing of the charges, the probative value of the material on record cannot be gone into, and the material brought on record by the prosecution, has to be accepted as true.

17.8. There must exist some materials for entertaining the strong suspicion which can form the basis for drawing up a charge and refusing to discharge the accused."

Falsehood

In Arvind Kumar @ Nemichand & Ors. vs. State of Rajasthan, 2021 SCC Online SC 1099, M.M. Sundresh J. speaking for the bench crystallized this principle as follows:

"49. The principle that when a witness deposes falsehood, the evidence in its entirety has to be eschewed may not have strict application to the criminal jurisprudence in our country. The principle governing sifting the chaff from the grain has to be applied. However, when the evidence is inseparable and such an attempt would either be impossible or would make the evidence unacceptable, the natural consequence would be one of avoidance. The said principle has not assumed the status of law but continues only as a rule of caution. One has to see the nature of discrepancy in a given case. When the discrepancies are very material shaking the very credibility of the witness leading to a conclusion in the mind of the court that is neither possible to separate it nor to rely upon, it is for the said court to either accept or reject."

MOB Psychology

Kishori v. State of Delhi [(1999) 1 SCC 148], this Court observed :

"12. It is no doubt true that the high ideals of the Constitution have to be borne in mind, but when normal life breaks down and groups of people go berserk losing balance of mind, the rationale that the ideals of the Constitution should be upheld or followed, may not appeal to them in such circumstances, nor can we expect such loose heterogeneous group of persons like a mob to be alive to such high ideals. Therefore, to import the ideas of idealism to a mob in such a situation may not be realistic. It is no doubt true that courts must be alive and in tune with the notions prevalent in the society and punishment imposed upon an accused must be commensurate with the heinousness of the crime. We have elaborated earlier in the course of our judgment as to how mob psychology works and it is very difficult to gauge or assess what the notions of society are in a given situation. There may be one section of society which may cry for a very deterrent sentence while another section of society may exhort upon the court to be lenient in the matter. To gauge such notions is to rely upon highly slippery imponderables and, in this case, we cannot be definite about the views of society."

[See also Balraj v. State of U.P. (1994) 4 SCC 29; and Jashubha Bharatsing Gohil and Others - (1994) 4 SCC 353]

DURING COURSE OF INVESTIGATION, IF WITNESS HAD GIVEN IDENTIFYING FEATURES OF ASSAILANTS, SAME COULD BE CONFIRMED BY INVESTIGATING OFFICER BY SHOWING PHOTOGRAPHS OF THE SUSPECT AND SHALL NOT SHOW A SINGLE PHOTOGRAPH.

2004 4 Crimes(SC) 241 = 2004 7 Supreme 504; 2004(4) Crimes 241 (SC); D. Gopalakrishnan Vs. Sadanand Naik & Ors.

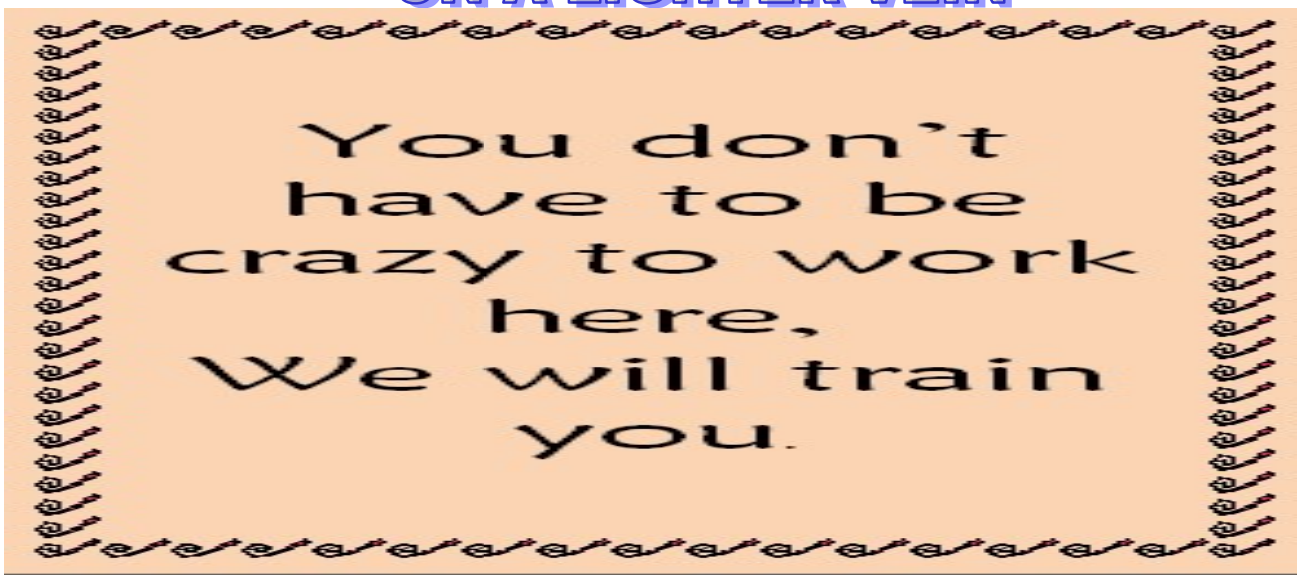
7. There are no statutory guidelines in the matter of showing photographs to the witnesses during the stage of investigation. But nevertheless, the police is entitled to show photographs to confirm whether the investigation is going on in the right direction. But in the instant case, it appears that the investigating officer procured the album containing the photographs with the names written underneath and showed this album to the eye-witnesses and recorded their statements under Section 161 Cr.P.C. The procedure adopted by the police is not justified under law as it will affect fair and proper investigation and may sometimes lead to a situation where wrong persons are identified as assailants. During the course of the investigation, if the witness had given the identifying features of the assailants, the same could be confirmed by the investigating officer by showing the photographs of the suspect and the investigating officer shall not first show a single photograph but should show more than one photograph of the same person, if available. If the suspect is available for identification or for video identification, the photograph shall never be shown to the witness in advance.

NEWS

- The Contents Of The Supreme Court Judges (Amendment) Rules, 2022 Notified.
- The Contents Of The National Anti-Doping Act, 2022. Notified
- S.O. 3653(E).—In Exercise Of The Powers Conferred By Sub-Section (2) Of Section 1 Of The Criminal Procedure (Identification) Act, 2022 (11 Of 2022), The Central Government Hereby Appoints The 4th Day Of August, 2022 As The Date On Which The Said Act Shall Come Into Force.
- The Andhra Pradesh State / District Level Police Complaints Authority (Administration And Procedure) Rules, 2022. [G.O.Ms.No.112, Home (Legal.II), 1st August, 2022.]
- Andhra Pradesh State Judicial Service - Civil Judges (Junior Division) - Notified For The Year, 2020 - Selection Of Candidates - Approved. [G.O.Ms.No.108, Law (L And LA & J - Home - Courts.A), 25th July, 2022.]
- Amendment To The Special Rules For The Andhra Pradesh Police (Secretarial Establishment) Service Rules, 1994. [G.O.Ms.No. 109, Home (Legal.II), 27th July, 2022.]
- Revolutionary Democratic Front (Rdf), A Front Organization Of Communist Party Of India (Maoist) - Extending The Declaration As Unlawful Association For A Further Period Of One Year With Effect From 09.08.2022. [G.O.Ms.No.71, General Administration (SC.II), 10th August, 2022.]
- Communist Party Of India (Maoist) - Extending The Declaration As Unlawful Association For A Further Period Of One Year With Effect From 17.08.2022 . [G.O.Ms.No.72, General Administration (SC.II), 10th August, 2022.]
- Radical Youth League (Ryl), A Front Organization Of The Communist Party Of India (Maoist) - Extending The Declaration As Unlawful Association For A Further Period Of One Year With Effect From 17.08.2022. [G.O.Ms.No.73, General Administration (SC.II), 10th August, 2022.]
- Rythu Coolie Sangham (Rcs), A Front Organization Of The Communist Party Of India (Maoist) - Extending The Declaration As Unlawful Association For A Further Period Of One Year With Effect From 17.08.2022. [G.O.Ms.No.74, General Administration (SC.II), 10th August, 2022.]
- Radical Students Union (Rsu), A Front Organization Of The Communist Party Of India (Maoist) - Extending The Declaration As Unlawful Association For A Further Period Of One Year With Effect From 17.08.2022. [G.O.Ms.No.75, General Administration (SC.II), 10th August, 2022.]
- Singareni Karmika Samakhya (Sikasa), A Front Organization Of The Communist Party Of India (Maoist) - Extending The Declaration As Unlawful Association For A Further Period Of One Year With Effect From 17.08.2022. [G.O.Ms.No.76, General Administration (SC.II), 10th August, 2022.]

- Viplava Karmika Samakhya (Vikasa), A Front Organization Of The Communist Party Of India (Maoist) - Extending The Declaration As Unlawful Association For A Further Period Of One Year With Effect From 17.08.2022. [G.O.Ms.No.77, General Administration (SC.II), 10th August, 2022.]
- All India Revolutionary Students Federation (Airsf), A Front Organization Of Communist Party Of India (Maoist) - Extending The Declaration As Unlawful Association For A Further Period Of One Year With Effect From 17.08.2022. [G.O.Ms.No.78, General Administration (Sc.Ii), 10th August, 2022.]
- Appointment Of The Members To The Andhra Pradesh State Commission For Protection Of Child Rights. [G.O.Ms.No.14, Dept. For Women, Children, Differently Abled & Senior Citizens (Prog.I), 5th August, 2022.]

ON A LIGHTER VEIN



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Part – 10

October, 2022

Aano Bhadra Kratvo Yantu Viswatah (Rig Ved)

Let all Noble thoughts come to us from all directions

ज्ञातिभिर्वण्टयते नैव चोरेणापि न नीयते ।
दाने नैव क्षयं याति विद्यारत्नं महाधनम् ॥

विद्यारुपी (ज्ञान) रत्न महान धन है, जिसका बंटवारा नहीं हो सकता, जिसे चोर चोरी नहीं कर सकता, और दान करने से जिसमें कमी नहीं आती|

The gem of knowledge (knowledge) is a great wealth, which cannot be divided, which a thief cannot steal, and which is not reduced by giving.

CITATIONS

2022 0 Supreme(SC) 899; P. Dharamaraj Versus Shanmugam & Ors.; Criminal Appeal Nos. 1514-1516 of 2022 (@ Special Leave Petition (Crl.) D.No.11748 of 2022, Special Leave Petition (Crl.) no.1354 of 2022) Decided on : 08-09-2022

We are constrained to say that even a novice in criminal law would not have left the offences under the P.C. Act, out of the final report. The attempt of the I.O. appears to be of one, **"willing to strike but afraid to wound"** (the opposite of what Alexander Pope wrote in "Epistle to Dr.Arbuthnot") [15][Damn with faint praise, assent with civil leer, And without sneering, teach the rest to sneer, Willing to wound and yet afraid to strike, just hint a fault, and hesitate dislike.].

As seen from the final report filed in this case and the counter affidavit filed by the I.O., persons who have adopted corrupt practices to secure employment in the Transport Corporation fall under two categories namely, (i) those who paid money and got orders of appointment; and (ii) those who paid money but failed to secure employment. If persons belonging to the 2nd category are allowed to settle their dispute by taking refund of money, the same would affix a seal of approval on the appointment of persons belonging to the 1st category. Therefore, the High Court ought not to have quashed the criminal proceedings on the basis of the compromise.

it is clear from the march of law that the Court has to go slow even while exercising jurisdiction under Section 482 Cr.PC or Article 226 of the Constitution in the matter of quashing of criminal proceedings on the basis of a settlement reached between the parties, when the offences are capable of having an impact not merely on the complainant and the accused but also on others.

2022 0 Supreme(SC) 904;Ketan Kantilal Seth Versus State of Gujarat & Ors.; Transfer Petition (Criminal) Nos. 333348 of 2021 With I.A. No. 134476 of 2021; Decided on : 09-09-2022

It is a settled principle of law in criminal jurisprudence that intervention application filed by a third party should not ordinarily be allowed in criminal cases unless the Court is satisfied that on the grounds on which the person seeking intervention is directly or substantially related to the case and question of law which may affect him adversely; or in the opinion of Court, joining the intervenor in the case is expedient in public interest. Having perused the contents of intervention application, nothing is averred in the application, how non-joining of applicant may cause prejudice or affect the public interest. The applicant is neither a complainant in any of the cases of which transfer is being sought, nor he has any direct involvement or ground of his joining in public interest. The intervenor has no locus to intervene in the present petition, therefore, I am of the opinion that the grounds as mentioned by the intervenor are not proper to allow the application.

2022 0 Supreme(SC) 895; Shiv Kumar Vs. The State of Madhya Pradesh; Criminal Appeal No. 1503 of 2022, SLP (Crl.) No. 9141 of 2019; 07-09-2022

Although recovery of items was made, the prosecution must further establish the essential ingredient of knowledge of the appellant that such goods are stolen property. Reliance solely upon the disclosure statement of Co-accused will not otherwise be clinching, for the conviction under Section 411 of the IPC.

2022 0 Supreme(SC) 891; Sahebrao Arjun Hon Vs. Raosaheb S/o Kashinath Hon; Criminal Appeal No. 1499 of 2022, SLP (Criminal) No. 2353 of 2017; 06-09-2022

As far as the sentencing is concerned, the judicial discretion is always guided by various considerations such as seriousness of the crime, the circumstances in which crime was committed and the antecedents of the accused. The Court is required to go by the principle of proportionality. If undue sympathy is shown by reducing the sentence to the minimum, it may adversely affect the faith of people in efficacy of law. It is the gravity of crime which is the prime consideration for deciding what should be the appropriate punishment.

2022 0 Supreme(SC) 885; State Vs. R. Soundirarasu; Criminal Appeal Nos. 1452 – 1453 OF 2022 (Arising out of Special Leave Petition (Crl.) Nos. 3445-3446 of 2019): Decided On : 05-09-2022

Section 13(1)(e) of the Act 1988 makes a departure from the principle of criminal jurisprudence that the burden will always lie on the prosecution to prove the ingredients of the offences charged and never shifts on the accused to disprove the charge framed against him. The legal effect of Section 13(1)(e) is that it is for the

prosecution to establish that the accused was in possession of properties disproportionate to his known sources of income but the term “known sources of income” would mean the sources known to the prosecution and not the sources known to the accused and within the knowledge of the accused. It is for the accused to account satisfactorily for the money/assets in his hands. The onus in this regard is on the accused to give satisfactory explanation. The accused cannot make an attempt to discharge this onus upon him at the stage of Section 239 of the CrPC. At the stage of Section 239 of the CrPC, the Court has to only look into the prima facie case and decide whether the case put up by the prosecution is groundless.

The real test for determining whether the charge should be considered groundless under Section 239 of the CrPC is that whether the materials are such that even if unrebutted make out no case whatsoever, the accused should be discharged under Section 239 of the CrPC. The trial court will have to consider, whether the materials relied upon by the prosecution against the applicant herein for the purpose of framing of the charge, if unrebutted, make out any case at all.

the CrPC contemplates discharge of the accused by the Court of Sessions under Section 227 in a case triable by it, cases instituted upon a police report are covered by Section 239 and cases instituted otherwise than on a police report are dealt with in Section 245. The three Sections contain somewhat different provisions in regard to discharge of the accused. As per Section 227, the trial judge is required to discharge the accused if “the Judge considers that there is not sufficient ground for proceeding against the accused”. The obligation to discharge the accused under Section 239 arises when “the Magistrate considers the charge against the accused to be groundless”. The power to discharge under Section 245(1) is exercisable when “the Magistrate considers, for reasons to be recorded, that no case against the accused has been made out which, if unrebutted would warrant his conviction”. Sections 227 and 239 resply provide for discharge being made before the recording of evidence and the consideration as to whether the charge has to be framed or not is required to be made on the basis of the record of the case, including the documents and oral hearing of the accused and the prosecution or the police report, the documents sent along with it and examination of the accused and after affording an opportunity to the parties to be heard. On the other hand, the stage for discharge under Section 245 is reached only after the evidence referred to in Section 244 has been taken.

While the expression "known sources of income" refers to the sources known to the prosecution, the expression "for which the public servant cannot satisfactorily account" refers to the onus or burden on the accused to satisfactorily explain and account for the assets found to be possessed by the public servant. This burden is on the accused as the said facts are within his special knowledge. Section 106 of the Evidence act applies. The explanation to Section 13(1)(e) is a procedural

Section which seeks to define the expression "known sources of income" as sources known to the prosecution and not to the accused. The explanation applies and relates to the mode and manner of investigation to be conducted by the prosecution, it does away with the requirement and necessity of the prosecution to have an open, wide and rowing investigation and enquire into the alleged sources of income which the accused may have. It curtails the need and necessity of the prosecution to go into the alleged sources of income which a public servant may or possibly have but are not legal or have not been declared. The undeclared alleged sources are by their very nature are expected to be known to the accused only and are within his special knowledge. The effect of the explanation is to clarify and reinforce the existing position and understanding of the expression "known sources of income" i.e. the expression refers to sources known to the prosecution and not sources known to the accused. The second part of the explanation does away with the need and requirement for the prosecution to conduct an open ended or rowing enquiry or investigation to find out all alleged/claimed known sources of income of an accused who is investigated under the PC Act, 1988. The prosecution can rely upon the information furnished by the accused to the authorities under law, rules and orders for the time being applicable to a public servant. No further investigation is required by the prosecution to find out the known sources of income of the accused public servant.

The Investigating Officer is only required to collect material to find out whether the offence alleged appears to have been committed. In the course of the investigation, he may examine the accused. He may seek his clarification and if necessary, he may cross check with him about his known sources of income and assets possessed by him. Indeed, fair investigation requires as rightly stated by Mr. A.D. Giri, learned Solicitor General, that the accused should not be kept in darkness. He should be taken into confidence if he is willing to cooperate. But to state that after collection of all material the Investigating Officer must give an opportunity to the accused and call upon him to account for the excess of the assets over the known sources of income and then decide whether the accounting is satisfactory or not, would be elevating the Investigating Officer to the position of an enquiry officer or a judge. The Investigating Officer is not holding an enquiry against the conduct of the public servant or determining the disputed issues regarding the disproportionality between the assets and the income of the accused. He just collects material from all sides and prepares a report which he files in the court as charge-sheet."

2022 0 Supreme(SC) 909; Chherturam @ Chainu Vs. State of Chhattisgarh; Criminal Appeal No.1317 of 2022; Decided On : 13-09-2022

We have to thus turn to the fact that there was no prior intent but in the sudden fight, injuries were inflicted. It is necessary to look to the injuries in this behalf which had

been enumerated hereinabove. There were eleven injuries! It is not only the number of injuries but where and in what manner they were inflicted, even if it is by a piece of Nagar Wood and not by a dangerous weapon. There were multiple injuries on the head – on the right side, on the front side, on the back left side, near the left ear, on the front and left side of the neck and on the left cheek. The sternum bone on the chest was broken and there was a blood clot beneath it. On the right chest, 4X4 inch area contusion was present due to which the second, third, fourth rib were broken and blood had accumulated beneath the broken rib. Similarly on the left chest, there was a 6X2 inches size contusion. The contusions were also present on the back and left abdominal side. It is clearly a case of mercilessly beating on all the vital parts of the body and reigning blows, albeit with a wood piece, on head and on different parts of the head again and again. With these kinds of blows, there would be no possibility of the deceased surviving. Maybe it was under the influence of liquor, but the nature of blows was such that the endeavour was to end the life of the deceased, the father. It was certainly an act in a cruel and brutal manner taking advantage of the situation even if there was no pre-meditation.

2022 0 Supreme(SC) 905; Vinod Katara Versus State of Uttar Pradesh; Writ Petition (Criminal) No. 121 of 2022; Decided On : 12-09-2022

This Court observed that when a person is around 18 years of age, the ossification test can be said to be relevant for determining the approximate age of a person in conflict with law. However, when the person is around 40-55 years of age, the structure of bones cannot be helpful in determining the age. In such circumstances, it will be a matter of debate as to what extent the new ossification test report that may come on record can be relied upon and to what extent the same would be helpful to the appellant herein.

2022 0 Supreme(SC) 873; The State of Madhya Pradesh Versus Nandu @ Nandua; Criminal Appeal No. 1356 of 2022; Decided On : 02-09-2022

The punishment for murder under Section 302 IPC shall be death or imprisonment for life and fine. Therefore, the minimum sentence provided for the offence punishable under Section 302 IPC would be imprisonment for life and fine. There cannot be any sentence/punishment less than imprisonment for life, if an accused is convicted for the offence punishable under Section 302 IPC.

2022 0 Supreme(SC) 917; Yashpal Singh Vs. State of Uttar Pradesh & Anr.; Criminal Appeal No.1509 of 2022; Decided on : 15-09-2022

it is required to be noted that the accused persons were known to the complainant. There was a prior enmity. They came in a tractor. Therefore, at this stage it could not have been concluded and/or opined that it was not possible to identify the

accused. Be that as it may, even otherwise the aforesaid can be said to be a defence on the part of the accused which is required to be considered at the time of trial. In the present case in the FIR the injured informant – complainant has specifically named the accused persons. Even in his statement recorded under Section 161 of the CrPC the informant has stood by what he has stated in the FIR.

2022 0 Supreme(SC) 973; Jigar @ Jimmy Pravinchandra Adatiya Versus State of Gujarat; Criminal Appeal No.1656 to 1660 of 2022 [Arising out of SLP (Crl.) No. 7696, 7609, 7678-7679, 7758 of 2021]; Decided on : 23-09-2022.

We have already dealt with the importance of the report of the public prosecutor and emphasised that he is neither a 'post office' of the investigating agency nor its 'forwarding agency' but is charged with a statutory duty. He must apply his mind to the facts and circumstances of the case and his report must disclose on the face of it that he had applied his mind to the twin conditions contained in clause (bb) of sub-Section (4) of Section 20. Since the law requires him to submit the report as envisaged by the section, he must act in the manner as provided by the section and in no other manner. A Designated Court which overlooks and ignores the requirements of a valid report fails in the performance of one of its essential duties and renders its order under clause (bb) vulnerable.

the grant of extension of time to complete the investigation takes away the indefeasible right of the accused to apply for default bail. It takes away the right of the accused to raise a limited objection to the prayer for the extension. The failure to produce the accused before the Court at the time of consideration of the application for extension of time will amount to a violation of the right guaranteed under Article 21 of the Constitution. Thus, prejudice is inherent and need not be established by the accused.

The accused may not be entitled to know the contents of the report but he is entitled to oppose the grant of extension of time on the grounds available to him in law.

When they applied for bail, the appellants had no notice of the extension of time granted by the Court. Moreover, the applications were made before the filing of charge sheet. Hence, the appellants are entitled to default bail. At this stage, we may note here that in the case of Sanjay Dutt as well as in the case of Bikramjit Singh, this Court held that grant of default bail does not prevent re-arrest of the petitioners on cogent grounds after filing of chargesheet. Thereafter, the accused can always apply for regular bail. However, as held by this Court in the case of Mohamed Iqbal Madar Sheikh & Ors. v. State of Maharashtra, (1996) 1 SCC 722, re-arrest cannot be made only on the ground of filing of charge sheet. It all depends on the facts of each case.

2022 0 Supreme(SC) 974; Aminuddin Vs. State Of Uttar Pradesh & Anr.; Criminal Appeal No. 1669 of 2022 (Arising Out Of SLP (Crl.) No. 5029 of 2021); Decided on : 23-09-2022.

when the bail granted to co-accused person has been disapproved by this Court and such grant of bail to co-accused had been the only reason for which the bail was granted to the respondent No. 2, the impugned order is liable to be set aside.

2022 0 Supreme(SC) 975; Navika Kumar Vs. Union of India and Others; Writ Petition (Criminal) No. 286 of 2022; Decided On : 23-09-2022

The FIRs/complaints which are transferred to IFSO unit of Delhi Police, in which the petitioner is also a co-accused, there cannot be two investigating agencies with respect to the same FIRs/complaints arising out of the same incident/occurrence with respect to different co-accused. On the aforesaid ground as well as on the ground of parity, the FIRs/complaints, referred to hereinabove, are also required to be transferred to IFSO unit of Delhi Police so far as the petitioner is concerned being co-accused.

https://indiankanoon.org/doc/12892785/; Chotkau vs The State Of Uttar Pradesh on 28 September, 2022; CRIMINAL APPEAL NOs.361362 OF 2018

It is necessary at this stage to note that by the very same Amendment Act 25 of 2005, by which Section 53A was inserted, Section 164A was also inserted in the Code. While Section 53A enables the medical examination of the person accused of rape, Section 164A enables medical examination of the victim of rape. Both these provisions are somewhat similar and can be saidapproximately to be a mirror image of each other. But there are three distinguishing features. They are:

(i) Section 164A requires the prior consent of the women who is the victim of rape. Alternatively, the consent of a person competent to give such consent on her behalf should have been obtained before subjecting the victim to medical examination. Section 53A does not speak about any such consent;

(ii) Section 164A requires the report of the medical practitioner to contain among other things, the general mental condition of the women. This is absent in Section 53A;

(iii) Under Section 164A(1), the medical examination by a registered medical practitioner is mandatory when, “it is proposed to get the person of the women examined by a medical expert” during the course of investigation. This is borne out by the use of the words, “such examination shall be conducted”. In contrast, Section 53A(1) merely makes it lawful for a registered medical practitioner to make an examination of the arrested person if “there are reasonable grounds for believing that an examination of his person will afford evidence as to the commission of such offence”.

https://indiankanoon.org/doc/118515413/; Jonnalagadda Nageswara Rao vs The State on 27/09/2022; CRIMINAL PETITION NO.5240 OF 2021(APHC)

It is the well-settled principle laid down in cases too numerous to mention, that if the FIR did not disclose the commission of an offence, the court would be justified in quashing the proceedings preventing the abuse of process of law. Simultaneously, the courts are expected to adopt a cautious approach in matters of quashing, especially in cases of matrimonial disputes whether the FIR in fact discloses commission of an offence by the relatives of the principal accused or the FIR prima facie discloses a case of overimplication by involving the entire family of the accused at the instance of the complainant, who is out to settle her scores arising out of the teething problem or skirmish of domestic bickering while settling down in her new matrimonial surrounding

The learned members of the Bar have enormous social responsibility and obligation to ensure that the social fibre of family life is not ruined or demolished. They must ensure that exaggerated versions of small incidents should not be reflected in the criminal complaints. Majority of the complaints are filed either on their advice or with their concurrence. The learned members of the Bar who belong to a noble profession must maintain its noble traditions and should treat every complaint under Section 498-A as a basic human problem and must make serious endeavour to help the parties in arriving at an amicable resolution of that human problem. They must discharge their duties to the best of their abilities to ensure that social fibre, peace and tranquillity of the society remains intact. The members of the Bar should also ensure that one complaint should not lead to multiple cases.

https://indiankanoon.org/doc/50112307/; Ramakrishna vs State Of Ap., on 27 September, 2022;CRIMINAL PETITION NO.3940 OF 2018

In our view, the offences complained of cannot be said to be part of the duties of the investigating officer while investigating an offence alleged to have been committed. It was no part of his duties to threaten the complainant or her husband to withdraw the complaint. In order to apply the bar of Section 197 CrPC each case has to be considered in its own fact situation in order to arrive at a finding as to whether the protection of Section 197 CrPC could be given to the public servant. The fact situation in the complaint in this case is such that it does not bring the case within the ambit of Section 197

https://indiankanoon.org/doc/28132563/; T.Shanmukha Reddy vs The State Of Andhra Pradesh on 27/09/2022; CRIMINAL PETITION No.6564 of 2022;(APHC)

an order under Section 451 Cr.P.C is not an interlocutory order and it does not attract the bar under Section 397(2) Cr.P.C and as such a Revision under Section 397(1) Cr.P.C is maintainable. Accordingly, the Learned Judge held that the Criminal Petition under Section 482 Cr.P.C is not maintainable.

https://indiankanoon.org/doc/23814438/; Endla Mallesh vs The State Of Acb, Warangal Range on 13 September, 2022; Criminal Appeal No.1404 OF 2007;

No prudent person having knowledge that a particular public servant is incompetent or has no power to do such official act that was requested by a person, the question of agreeing to pay bribe amount or even asking such public servant to do the said

official work does not arise. When it is known to a person that no purpose would be served if a bribe is given, the said person would never venture into parting any amount as bribe.

If the entire file was placed before the competent authority on proper application of mind, the competent authority may have refused to sanction prosecution in the background of the discrepancies in the prosecution case and the very basis for demand is belied by documents filed by prosecution. In the said circumstances, it can be said that the appellant was prejudiced for the reason of not placing the file granting sanction before the competent authority

https://indiankanoon.org/doc/159723740/; Marampalli Narasaiah And 4 Others vs The State Of AP on 16 September, 2022; CRIMINAL APPEAL No.538 OF 2014(DB)

it is crystal clear that the accused have not disputed much over the homicidal death of the deceased and in-fact it could be inferred from the suggestions given by learned defence counsel to the doctor that such death was on account of sustaining injuries when the deceased fell down in intoxicated condition due to old age and also due to ill-health but there is no record to show that either the deceased was suffering with any of the old age ailments or that he was under intoxicated condition at the time of incident.

Though the doctor (PW16) has answered positively stating that it is possible to receive such ante-mortem injuries, as mentioned in Ex.P18, if a person falls on hard surface in intoxicated condition, there is no evidence to that effect either elicited in the cross- examination of prosecution witnesses or by examining any defence witnesses. Be it stated that even while answering the questions relating to incriminating evidence found against them under Section 313 Cr.P.C., the accused have totally denied and did not offer any explanation nor explained the occurrence of the incident in tune with the suggestions given to PW16. Thus, a feeble and unsuccessful attempt was made by the defence to show that the deceased sustained injuries by a fall on hard surface in intoxicated condition and that such injuries were not inflected by any of the accused.

Locus Standi

Sanjay Tiwari vs. State of Uttar Pradesh & Another, 2020 SCC Online SC 1027;

Respondent No. 2 is in no way connected with initiation of criminal proceeding against the appellant. Respondent No. 2 in his application under Section 482 Cr. P. C in paragraph 6 has described him as social activist and an Advocate. An application by a

person who is in no way connected with the criminal proceeding or criminal trial under Section 482 Cr.P.C. cannot ordinarily be entertained by the High Court.

Appreciation of Confession of co-accused:

The law governing disclosure statement was discussed by the Apex Court in the case of Haricharan Kurmi and Another vs. State of Bihar, AIR 1964 SC 1184. It was observed:

> "12.....In dealing with a criminal case where the prosecution relies upon the confession of one accused person against another accused person, the proper approach to adopt is to consider the other evidence against such an accused person and if the said evidence appears to be satisfactory and the court is inclined to hold that the said evidence may sustain the charge framed against the said accused person, the court turns to the confession with a view to assure itself that the conclusion which it is inclined to draw from the other evidence is right....."

Age Determination under old and new enactments

in the case of Ram Vijay Singh v. State of U.P., (2021) SCC Online SC 142, this Court, while negativing the contention canvassed on behalf of the appellant convict therein that the procedure as contained in Rule 12(3)(b) of the 2007 Rules now being part of Section 94 of the 2015 Act and once the statute has provided the ossification test as the basis for determining juvenility, the findings of such ossification test cannot be ignored, held in paras 15 and 16 resply as under:-

> "15. We find that the procedure prescribed in Rule 12 is not materially different than the provisions of Section 94 of the Act to determine the age of the person. There are minor variations as the Rule 12(3)(a)(i) and (ii) have been clubbed together with slight change in the language. Section 94 of the Act does not contain the provisions regarding benefit of margin of age to be given to the child or juvenile as was provided in Rule 12(3)(b) of the Rules. The importance of ossification test has not undergone change with the enactment of Section 94 of the Act. The reliability of the ossification test remains vulnerable as was under Rule 12 of the Rules.

16. As per the Scheme of the Act, when it is obvious to the Committee or the Board, based on the appearance of the person, that the said person is a child, the Board or Committee shall record observations stating the age of the Child as nearly as may be without waiting for further confirmation of the age. Therefore, the first attempt to determine the age is by assessing the physical appearance of the person when brought before the Board or the Committee. It is only in case of doubt, the process of age determination by seeking evidence becomes necessary. At that stage, when a person is around 18 years of age, the ossification test can be said to be relevant for determining the approximate age of a person in conflict with law. However, when the person is around 40-55 years of age, the structure of bones cannot be helpful in determining the age. This Court in Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal and Ors. held, in the context of certificate required under Section 65B of the Evidence Act, 1872,

that as per the Latin maxim, lex non cogit ad impossibilia, law does not demand the impossible. Thus, when the ossification test cannot yield trustworthy and reliable results, such test cannot be made a basis to determine the age of the person concerned on the date of incident. Therefore, in the absence of any reliable trustworthy medical evidence to find out age of the appellant, the ossification test conducted in year 2020 when the appellant was 55 years of age cannot be conclusive to declare him as a juvenile on the date of the incident."

Subsequent Bail Applications

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.

NEWS

- Prosecution Replenish congratulates the promoted prosecutors in Telangana Prosecution Department.

Sri Venkateshwarlu	Public Prosecutor/Joint Director of Prosecutions, Principal Sessions Court, Karimnagar.
Smt D.Srivani	Public Prosecutor/Joint Director of Prosecutions, Principal Sessions Court, Nalgonda
Sri Sambasiva Reddy	Public Prosecutor/Joint Director of Prosecutions, Directorate of Prosecutions, TS, Hyderabad
Sri N.Srinivas	Addl. PP Gr-I/Deputy Director of Prosecutions, Addl. Sessions Judge, Suryapet.
Sri D.Raghu	Addl. PP Gr-I/Deputy Director of Prosecutions, III Addl. Sessions Judge, Ranga Reddy District
Sri A.Ram Reddy	Addl. PP Gr-I/Deputy Director of Prosecutions, III AMSJ court, Hyderabad
Smt K.Srivani	Addl. PP Gr-I/Deputy Director of Prosecutions, IV AMSJ Court, Hyderabad
Smt T.Jyothi	Addl. PP Gr-I/Deputy Director of Prosecutions, Industrial Tribunal and Labour Court –cum- Addl. Sessions Court, Godavarikhani, Peddapalli.
Sri P. Rajkumar	Addl. PP Gr-II, ASJ Court, Medak
Sri V.Lakshmi Prasad	Addl. PP Gr-II, ASJ Court, Sircilla
Smt C.Nirmala	Addl. PP Gr-II, ASJ Court, Malkajgiri
Sri P.Laxminarsaiah	Addl. PP Gr-II, ASJ Court, Nizamabad
Sri T.Jayaram Naik	Addl. PP Gr-II, ASJ Court, Nalgonda
Smt B.Vanaja	Addl. PP Gr-II, ASJ Court, Hanmakonda

- Declaration of PFI as Unlawful Association- Gazette Notification -CG-DL-E-28092022-239179

- Gazette ID: CG-DL-E-28092022-239180- in exercise of the powers conferred by section 42 of the Unlawful Activities (Prevention) Act, 1967, the Central Government hereby directs that all powers exercisable by it under section 7 and section 8 of the said Act shall be exercised also by the State Government and the Union territory Administration in relation to the above said unlawful association
- the Criminal Procedure (Identification) Rules, 2022 notified , the 19th September, 2022 G.S.R. 708(E).
- MINISTRY OF WOMEN AND CHILD DEVELOPMENT NOTIFICATION New Delhi, the 23rd September, 2022 G.S.R. 726(E).—In exercise of the powers conferred under clause (c) of section 68 read with clause (3) of section 2 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (2 of 2016) and in supersession of the Adoption Regulations, 2017, except as respects things done or omitted to be done before such supersession, the Central Government hereby notifies the following Adoption Regulations as framed by the Central Adoption Resource Authority
- MINISTRY OF WOMEN AND CHILD DEVELOPMENT NOTIFICATION New Delhi, the 1st September, 2022 G.S.R. 678(E).—amendments to the Juvenile Justice (Care and Protection of Children) Model Rules, 2016 notified.
- MINISTRY OF WOMEN AND CHILD DEVELOPMENT NOTIFICATION New Delhi, the 31st August, 2022 S.O. 4127(E).—In exercise of the Powers conferred by sub-section (2) of section 1 of the Juvenile Justice (Care and Protection of Children) Amendment Act, 2021 (23 of 2021), the Central Government hereby appoints the 1st day of September, 2022 as the date on which the said Act shall come into force.
- Declaration Of Office Of Joint Director, Central Investigation Unit, Anti-Corruption Bureau, Andhra Pradesh, Vijayawada As Police Station With Jurisdiction Over Entire State Of Andhra Pradesh - Clarification . [G.O.Ms.No.137, Home (Services-III), 14th September, 2022.]
- Public Services – Disciplinary Cases against the Government employees – Time schedule to expedite the process of disciplinary cases at various levels - Consolidated instructions – Orders – Issued.
- District And Sessions Judges, Senior Civil Judges And Junior Civil Judges - Retirements During The Year, 2023 On Attaining The Age Of Superannuation At 60 Years - Notified. [G.O.Rt.No.244, Law (LA & J - SC.F), 15th September, 2022.]
- Ban On Plastic Flexi Banners In The State Under Environment (Protection) Act, 1986 w.e.f. 01.11.2022. [G.O.Ms.No.65, Environment, Forests, Science & Technology (SEC.I), 22nd September, 2022.]
- The Andhra Pradesh Banning Of Unregulated Deposit Schemes Rules, 2022. [G.O.Ms.No. 134, Home (General.A), 4th September, 2022.]

ON A LIGHTER VEIN

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Prosecution Replenish

Vol- X

Part – 11

November, 2022

Aano Bhadra Kratvo Yantu Viswatah (Rig Ved)

Let all Noble thoughts come to us from all directions

अन्नदानं परं दानं विद्यादानमतः परम् ।
अन्नेन क्षणिका तृप्ति र्यावज्जीवं च विद्यया ॥

In this beautiful Subhashita, the poet writes about the difference between food and knowledge. Even the provided food is of great importance, but the knowledge that we acquire is even more important. While the food lasts for a few moments until we are hungry again, the skill or knowledge that we acquire takes the responsibility of taking care of us for the entire life, including earning Food.

We are 10 now. Please await the special edition

CITATIONS

https://indiankanoon.org/doc/123882828/; T.Soundarya, vs The State Of Andhra Pradesh, on 14 October, 2022; Writ Petition No.15180 OF 2022
if the detenue was already enlarged on bail in the cases which were placed before the Detaining Authority seeking preventive detention, duty will be cast on the Sponsoring Authority to place the entire relevant material such as FIRs, remand reports, bail applications and bail orders along with the other record and the Detaining Authority shall invariably consider the same for forming opinion.

https://indiankanoon.org/doc/79145297/; Paltthiya Srinu vs The State Of Andhra Pradesh on 20 October, 2022; Writ Petition No.15517 OF 2022(DB)
https://indiankanoon.org/doc/95508540/; Polavarapu Lakshmi Sirisha vs The State Of Andhra Pradesh, on 19 October, 2022; Writ Petition No.17333 OF 2022 (DB)
Andhra Pradesh Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986- When the scheme of the Act as envisaged in the above provisions is perused, under Section-13 the maximum period of detention under this Act shall be twelve months from the date of detention. Be that it may, we will find in the Section-3 that the said period of detention of twelve months is not in one stretch and it is regulated by Section-3. Then as per Section-3(3) after making initial detention order, the officer passing the detention order shall report to the Government within twelve days for approval. Then the Government as per Section-3(2) proviso can extend the period of detention at the first instance for three months and amend such order from time to time for further period not exceeding three months at any one time. Then according to Section-12 of the Act, 1986, the Government on the report of the Advisory Board, may confirm the detention order and continue the same not exceeding the maximum period specified in Section-13 i.e., twelve months from the date of detention.
Thus the detention at the first instance shall not exceed three months as per proviso to Section 3(2). Then the Government shall act upon the report of Advisory

Board within the said initial period of three months of detention and either confirm the detention or set aside.
a perusal of the record would show that admittedly the detention order was passed on 30.04.2022 and the 1st respondent have issued G.O.Rt.No.839, dated 10.05.2022 according approval for the order of detention. So far so good, however no material is placed by the respondents to show that the confirmation order was passed thereafter within 3 months after detention, in terms of Section 12 of the Act 1 of 1986.
It is true that in Section-12 no time limit is prescribed for confirming the detention order by the Government. However, when the above provisions are studied conjunctively, one can understand that three months limitation is implicit in Section-12.

https://indiankanoon.org/doc/77021476/; Gogineni Lakshmi Gowthami vs The State Of Andhra Pradesh on 20 October, 2022; CRIMINAL PETITION No.2837 of 2022
Respondent permitted to mark documents and to depose before the Court of Trial via Skype or Blue Jeans or any other alternative electronic media under Section 275(1) Cr.P.C and 285(3) of Cr.P.C.

2022 0 Supreme(SC) 1081; State of Himachal Pradesh Vs. Nirmal Kaur @ Nimmo and Others; Criminal Appeal No. 956 of 2012; 20-10-2022
'Poppy straw' has been defined to mean all parts of 'opium poppy' after harvesting, whether in their original form or cut, crushed or powdered and whether or not juice has been extracted therefrom. However, the said definition excludes the seeds. As such, 'poppy straw' would mean all parts of 'opium poppy' except the seeds
it is more than a settled principle of law that, while interpreting the provisions of the statute, the court has to prefer an interpretation which advances the purpose of the statute.
once a Chemical Examiner establishes that the seized 'poppy straw' indicates a positive test for the contents of 'morphine' and 'meconic acid', it is sufficient to establish that it is covered by sub-clause (a) of Clause (xvii) of Section 2 of the 1985 Act and no further test would be necessary for establishing that the seized material is a part of 'papaver somniferum L'. In other words, once it is established that the seized 'poppy straw' tests positive for the contents of 'morphine' and 'meconic acid', no other test would be necessary for bringing home the guilt of the accused under the provisions of Section 15 of the 1985 Act.

2022 0 Supreme(SC) 1065; Md. Jabbar Ali & Ors. Vs. State of Assam; Criminal Appeal No.1105 of 2010 With Md. Ajmot Ali Vs. The State of Assam; Criminal Appeal No.1128 of 2010; Decided On : 17-10-2022
This Court is conscious of the well-settled principle that just because the witnesses are related/interested/partisan witnesses, their testimonies cannot be disregarded, however, it is also true that when the witnesses are related/interested, their testimonies have to be scrutinized with greater care and circumspection.

In the present case, owing to the substantial and material contradictions in the testimonies of the prosecution witnesses, the evidence of the prosecution is considered wholly unreliable. Additionally, the prosecution has examined only related witnesses and not a single independent witness. Therefore, in the facts and circumstances of the case, the evidence does not prove the alleged offences against the accused-appellants.

2022 0 Supreme(SC) 1067; Gurmail Singh & Anr. Vs State of Uttar Pradesh & Anr.; Criminal Appeal No. 965 of 2018; 17-10-2022

The first question in that regard is when once the prosecution established the membership of an accused/convict in the unlawful assembly whether the individual overt act also to be established by the prosecution to bring culpability on him on the principle of constructive/vicarious liability. According to us, no such burden can be fastened on the prosecution in view of the phraseology under Section 149, I.P.C.

whether the reduction in number of the convicts below five on account of death of the co-accused got any impact or effect on the surviving convict(s) in the matter of consideration of his/their, vicarious liability in view of Section 149, I.P.C. There can be no two views on the position that reduction of number of accused/convicts in an appeal, below five on account of acquittal of co-accused/co-convicts and such reduction in numbers below five due to death of co-convicts are different and distinct. The impact and effect of the former situation is no longer res integra. In the decision in Amar Singh & Ors. v. State of Punjab, (1987) 1 SCC 679 seven persons were charged for offences punishable under Section 148, Section 302 read with Section 149, IPC. There was no case for the prosecution that other persons had also involved in the commission of the offence. It was held that because of the acquittal of three out of the seven accused the remaining four could not have been convicted under Section 148 read with Section 149, IPC.

In Nethala Pothuraju & Ors. v. State of Andhra Pradesh, (1992) 1 SCC 49 also this position was reiterated. That was a case where the case of the prosecution was that seven accused persons formed an unlawful assembly and committed murder in pursuance of a common object and they were charged under Section 302/149, IPC. Four of them were acquitted. In the appeal this Court held that in the said factual situation the remaining three accused could not have been convicted by applying Section 149, IPC. At the same time, it was further held that the non-applicability of Section 149, IPC would not be a bar for convicting accused/appellants if evidence would disclose commission of offence in furtherance of a common intention.

The term ‘abatement’ or ‘abate’ has not been defined in Cr.P.C. In the said circumstances, its dictionary meaning has to be looked into. As relates criminal proceedings going by the meaning given in Black’s Law Dictionary, 10th Edition, abatement means ‘the discontinuation of criminal proceedings before they are concluded in the normal course of litigation, as when the defendant dies’. Thus, it can be seen that the meaning of abatement can only be taken in criminal proceedings as ‘discontinuation of such proceedings owing to the death of the accused/convict pending such proceedings’. In short, it would reveal that an appeal against conviction (except an appeal from a sentence of fine) would abate on the death of the appellant as in such a situation, the sentence under appeal could no

longer be executed. The abatement is certainly different from acquittal and a mere glance at the proviso to Section 394 (2), Cr.P.C., will make this position very clear.
the non-recovery of the weapons cannot be a ground to discard the evidence of the injured eye witnesses

2022 0 Supreme(SC) 1054; State through the Inspector of Police Vs. Laly @ Manikandan and Another; Criminal Appeal Nos. 1750-1751 of 2022; Decided On : 14-10-2022

Merely because the original complainant is not examined cannot be a ground to discard the deposition of PW-1. As observed hereinabove, PW-1 is the eye-witness to the occurrence at both the places. Similarly, assuming that the recovery of the weapon used is not established or proved also cannot be a ground to acquit the accused when there is a direct evidence of the eye-witness. Recovery of the weapon used in the commission of the offence is not a sine qua non to convict the accused. If there is a direct evidence in the form of eye-witness, even in the absence of recovery of weapon, the accused can be convicted. Similarly, even in the case of some contradictions with respect to timing of lodging the FIR/complaint cannot be a ground to acquit the accused when the prosecution case is based upon the deposition of eye-witness.

As per settled position of law, there can be a conviction on the basis of the deposition of the sole eye-witness, if the said witness is found to be trustworthy and/or reliable.

2022 0 Supreme(SC) 1045; Ramanand @ Nandlal Bharti Vs. State of Uttar Pradesh; Criminal Appeal Nos. 64-65 of 2022; Decided On : 13-10-2022 (THREE JUDGE BENCH)

In ‘A Treatise on Judicial Evidence’, Jeremy Bentham, an English Philosopher included a whole chapter upon what lies next when the direct evidence does not lead to any special inference. It is called Circumstantial Evidence. According to him, in every case, of circumstantial evidence, there are always at least two facts to be considered:

a) The **Factum probandum** , or say, the principal fact (the fact the existence of which is supposed or proposed to be proved; &

b) The **Factum probans** or the evidentiary fact (the fact from the existence of which that of the factum probandumis inferred).

Although there can be no straight jacket formula for appreciation of circumstantial evidence, yet to convict an accused on the basis of circumstantial evidence, the Court must follow certain tests which are broadly as follows :

1. Circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established;
2. Those circumstances must be of a definite tendency unerringly pointing towards guilt of the accused and must be conclusive in nature;
3. The circumstances, if taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and

4. The circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused but should be inconsistent with his innocence. In other words, the circumstances should exclude every possible hypothesis except the one to be proved.

When the accused while in custody makes such statement before the two independent witnesses (panch witnesses) the exact statement or rather the exact words uttered by the accused should be incorporated in the first part of the panchnama that the investigating officer may draw in accordance with law. This first part of the panchnama for the purpose of Section 27 of the Evidence Act is always drawn at the police station in the presence of the independent witnesses so as to lend credence that a particular statement was made by the accused expressing his willingness on his own free will and volition to point out the place where the weapon of offence or any other article used in the commission of the offence had been hidden. Once the first part of the panchnama is completed thereafter the police party along with the accused and the two independent witnesses (panch witnesses) would proceed to the particular place as may be led by the accused. If from that particular place anything like the weapon of offence or blood stained clothes or any other article is discovered then that part of the entire process would form the second part of the panchnama. This is how the law expects the investigating officer to draw the discovery panchnama as contemplated under Section 27 of the Evidence Act.

We are conscious of the position of law that even if the independent witnesses to the discovery panchnama are not examined or if no witness was present at the time of discovery or if no person had agreed to affix his signature on the document, it is difficult to lay down, as a proposition of law, that the document so prepared by the police officer must be treated as tainted and the discovery evidence unreliable. In such circumstances, the Court has to consider the evidence of the investigating officer who deposed to the fact of discovery based on the statement elicited from the accused on its own worth.

But where the evidence is clear, cogent and creditworthy and where the court can distinguish the truth from falsehood, the mere fact that the injuries are not explained by the prosecution cannot itself be a sole basis to reject such evidence, and consequently the whole case. Much depends on the facts and circumstances of each case. These aspects were highlighted by this Court in Vijay Singh and Ors. v. State of U.P., (1990) CriLJ 1510.

2022 0 Supreme(SC) 1047; Md. Anowar Hussain Vs. State of Assam; Criminal Appeal No. 414 of 2019; Decided On : 13-10-2022

Where an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence. The burden would be of a comparatively lighter character. In view of Section 106 of the Evidence Act there will be a corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed. The inmates of the house cannot get away by simply keeping quiet and offering no explanation on the

supposed premise that the burden to establish its case lies entirely upon the prosecution and there is no duty at all on an accused to offer any explanation.
Fact of the matter remains that all the aforesaid facts and factors, which ought to be in the knowledge of the appellant, are either not clarified or the explanation given by the appellant turns out to be false. Hence, in the given set of facts and circumstances, the legal consequence is that such omission coupled with such falsehood indeed provide additional links in the chain of circumstances.
the sum and substance of the matter is that the falsehood cooked up by the witnesses (regarding illness and hospitalisation of the victim) and readily accepted by the appellant coupled with the undischarged burden of Section 106 of the Evidence Act provide such strong links in this matter that the chain of circumstances is complete, leading to the conclusion on the guilt of the appellant beyond any doubt.

2022 0 Supreme(SC) 1036; Devendra Nath Singh Vs. State Of Bihar & Ors.; Criminal Appeal No. 1768 of 2022 (Arising Out Of SLP (Crl.) No. 9609 of 2022 @ Diary No. 22814 of 2019); Decided on : 12-10-2022

For what has been noticed hereinbefore, we could reasonably cull out the principles for application to the present case as follows:

(a) The scheme of the Code of Criminal Procedure, 1973 is to ensure a fair trial and that would commence only after a fair and just investigation. The ultimate aim of every investigation and inquiry, whether by the police or by the Magistrate, is to ensure that the actual perpetrators of the crime are correctly booked and the innocents are not arraigned to stand trial.

(b) The powers of the Magistrate to ensure proper investigation in terms of Section 156 CrPC have been recognised, which, in turn, include the power to order further investigation in terms of Section 173(8) CrPC after receiving the report of investigation. Whether further investigation should or should not be ordered is within the discretion of the Magistrate, which is to be exercised on the facts of each case and in accordance with law.

(c) Even when the basic power to direct further investigation in a case where a charge-sheet has been filed is with the Magistrate, and is to be exercised subject to the limitations of Section 173(8) CrPC, in an appropriate case, where the High Court feels that the investigation is not in the proper direction and to do complete justice where the facts of the case so demand, the inherent powers under Section 482 CrPC could be exercised to direct further investigation or even reinvestigation. The provisions of Section 173(8) CrPC do not limit or affect such powers of the High Court to pass an order under Section 482 CrPC for further investigation or reinvestigation, if the High Court is satisfied that such a course is necessary to secure the ends of justice.

(d) Even when the wide powers of the High Court in terms of Section 482 CrPC are recognised for ordering further investigation or reinvestigation, such powers are to be exercised sparingly, with circumspection, and in exceptional cases.

(e) The powers under Section 482 CrPC are not unlimited or untrammelled and are essentially for the purpose of real and substantial justice. While exercising such powers, the High Court cannot issue directions so as to be impinging upon

the power and jurisdiction of other authorities. For example, the High Court cannot issue directions to the State to take advice of the State Public Prosecutor as to under what provision of law a person is to be charged and tried when ordering further investigation or reinvestigation; and it cannot issue directions to investigate the case only from a particular angle. In exercise of such inherent powers in extraordinary circumstances, the High Court cannot specifically direct that as a result of further investigation or reinvestigation, a particular person has to be prosecuted.

More so, the accused has no right to have any say as regards the manner and method of investigation. Save under certain exceptions under the entire scheme of the Code, the accused has no participation as a matter of right during the course of the investigation of a case instituted on a police report till the investigation culminates in filing of a final report under Section 173(2) of the Code or in a proceeding instituted otherwise than on a police report till the process is issued under Section 204 of the Code, as the case may be Code, as the case may be. Even in cases where cognizance of an offence. Even is taken on a complaint notwithstanding that the said offence is triable by a Magistrate or triable exclusively by the Court of Sessions, the accused has no right to have participation till the process is issued. In case the issue of process is postponed as contemplated under Section 202 of the Code, the accused may attend the subsequent inquiry but cannot participate.

even if the appellant had been exonerated in the departmental proceedings, such a fact, by itself, may not be conclusive of criminal investigation;

2022 0 Supreme(SC) 1025; Vijay Rajmohan Vs. State Represented by the Inspector of Police, CBI, ACB, Chennai, Tamil Nadu; Criminal Appeal No. 1746 of 2022 Arising Out of SLP (CRL) No. 1568 of 2022; Decided On : 11-10-2022 (THREE JUDGE BENCH)

PC Act- upon expiry of the three months and the additional one-month period, the aggrieved party, be it the complainant, accused or victim, would be entitled to approach the concerned writ court. They are entitled to seek appropriate remedies, including directions for action on the request for sanction and for the corrective measure on accountability that the sanctioning authority bears. This is especially crucial if the non-grant of sanction is withheld without reason, resulting in the stifling of a genuine case of corruption. Simultaneously, the CVC shall enquire into the matter in the exercise of its powers under Section 8(1)(e) and (f) and take such corrective action as it is empowered under the CVC Act.

The second issue is answered by holding that the period of three months, extended by one more month for legal consultation, is mandatory. The consequence of non-compliance with this mandatory requirement shall not be quashing of the criminal proceeding for that very reason. The competent authority shall be Accountable for the delay and be subject to judicial review and administrative action by the CVC under Section 8(1)(f) of the CVC Act.

2022 0 Supreme(SC) 1030; Lalankumar Singh & Ors. Vs. State of Maharashtra; Criminal Appeal No. 1757 of 2022 [Arising out of SLP (Crl.) No. 8882 of 2015]; Decided On : 11-10-2022

It was held that merely because a person is a director of a company, it is not necessary that he is aware about the day-to-day functioning of the company. This Court held that there is no universal rule that a director of a company is in charge of its everyday affairs. It was, therefore, necessary, to aver as to how the director of the company was in charge of day-to-day affairs of the company or responsible to the affairs of the company. This Court, however, clarified that the position of a managing director or a joint managing director in a company may be different. This Court further held that these persons, as the designation of their office suggests, are in charge of a company and are responsible for the conduct of the business of the company. To escape liability, they will have to prove that when the offence was committed, they had no knowledge of the offence or that they exercised all due diligence to prevent the commission of the offence.

https://indiankanoon.org/doc/29197799/; Perla Venkata Swamy, Nalgonda vs State Of Telangana on 29 October, 2022; CRIMINAL APPEAL No.646 OF 2014;(DB)

considering the factual scenario of the case on hand, legally acceptable evidence available on record, in the background of the principles laid by the Apex Court and Division Bench of this Court in the above decisions we arrive at an inevitable conclusion that the appellant / accused was in inebriated state, he was not in his full senses and it was not a premeditated act, he had no intention to kill the deceased though he may be having knowledge of the AIR 2000 SC 3630 AVR,J & GAC,J Crl.A_646_2014 consequences of his act of pouring kerosene and setting fire the deceased and that the deceased succumbed to the injuries after eight days of the said incident, he cannot be held liable for the offence punishable under Section 302 of IPC but only for the offence of culpable homicide not amounting to murder and liable to be convicted for the offence punishable under Section 304 part II of IPC.

https://indiankanoon.org/doc/87966852/; S.Venkatreddy, Dichpally M., vs State Of Telanganaon 29 October, 2022; CRIMINAL APPEAL No.647 of 2014

In a case of homicide, it is for the prosecution to prove the intention, motive and knowledge of the offence committed by the accused. In the present case, as per the evidence of PWs.1, 2 and 4 to 6, the accused had quarrelled with his mother for the purpose of gold which proves the motive and intention to commit the offence. Further, the accused had knowledge that the injuries inflicted with an axe will cause the death of the deceased. Thus, the prosecution AVR, J & GAC, J Crl.A.No.647 of 2014 has proved the guilt of the accused beyond reasonable doubt. Therefore, this Court is of the considered opinion that there is no error or irregularity in the judgment passed by the Sessions Court so as to interfere with the same and the trial Court is justified in convicting the appellant for the offence punishable under Section 302 of IPC.

https://indiankanoon.org/doc/75969412/; Dereddy Muralidhara Reddy vs The State Of Telangana on 28 October, 2022; CRIMINAL PETITION No.4075 OF 2018

considering the refusal to grant sanction by the State Government under Section 19 of the PC Act to prosecute the petitioner and on a thorough examination of the allegations made against the petitioner, Court is of the view that the main allegations against the petitioner on the basis of which IPC related offences have been alleged to have been committed by the petitioner, were intrinsically connected with the discharge of official duty by the petitioner. Therefore, the protection under Section 197 Cr.P.C cannot be denied to the petitioner. Stand taken by the CBI that no previous sanction is required to prosecute the petitioner for the IPC related offences is therefore clearly unsustainable in law and on facts.

https://indiankanoon.org/doc/198292873/; T.Vijay & 5 Otrs. Vs State Of AP. Rep. PP. Hyd., on 29 October, 2022; CRIMINAL APPEAL No.526 OF 2014

As such in the given facts and circumstances of the case, the evidence of PWs.1, 2 and 5 cannot be discarded only on the ground that either they are closely related family members of the deceased or that there are minor discrepancies here and there which are not touching the root of the matter. Therefore, in such circumstances, being rustic village women, having lost three of their family members in a ghastly crime they cannot be expected to give picture perfect details as to the individual overt acts of each of the appellants. On an overall consideration of their evidence, we hold that it is wholly reliable and the mere fact that they are relatives of the deceased or there are minor discrepancies here and there not touching the root of the matter itself is not sufficient to discard their evidence and accused cannot be acquitted only on the ground of not furnishing the copy of dying declaration of PW5 or faulty investigation if any (State of U.P. Vs.Jagdeep and others8).

https://indiankanoon.org/doc/88486194/; Kanumuru Raghu Ramakrishan Raju vs Central Bureau Of Investigation on 28 October, 2022; CRIMINAL PETITION No.9246 OF 2021

Merely saying that respondent No.2 has been abusing his official position by giving important posts/offices to other co-accused to tamper evidence by influencing witnesses is not adequate to cancel the bail granted to respondent No.2. Further, saying that respondent No.2 has no regard for democracy and judiciary is no ground to cancel the bail granted to respondent No.2. The supporting affidavit is conspicuous by complete absence of any details whatsoever essential for considering a prayer for cancellation of bail. No single instance of violation of the bail conditions has been mentioned by the petitioner.

https://indiankanoon.org/doc/184726735/; Mekarthi Mallesham And 5 Others vs The Station House Officer And 2 Ors on 18 October, 2022; CRIMINAL PETITION No.9131 of 2022

The Station House Officer, Gambhiraopet Police Station/Investigating Officer shall adhere to the requirement to follow Section 41-A Cr.P.C except under the circumstances mentioned under Sections 41(1) and 41-A (4) Cr.P.C.

2022 LiveLaw (SC) 890; Criminal Appeal No. 1441 of 2022; October 31, 2022 The State of Jharkhand versus Shailendra Kumar Rai @ Pandav Rai

The "two-finger test" or pre vaginum test must not be conducted

It is patriarchal and sexist to suggest that a woman cannot be believed when she states that she was raped, merely for the reason that she is sexually active

Conduct workshops for health providers to communicate the appropriate procedure to be adopted while examining survivors of sexual assault and rape

Although a dying declaration ought to ideally be recorded by a Magistrate if possible, it cannot be said that dying declarations recorded by police personnel are inadmissible for that reason alone. The issue of whether a dying declaration recorded by the police is admissible must be decided after considering the facts and circumstances of each case

The fact that the dying declaration is not in the form of questions and answers does not impact either its admissibility or its probative value

There is no rule mandating the corroboration of the dying declaration through medical or other evidence, when the dying declaration is not otherwise suspicious.

CRIMINAL APPEAL NO. 242 OF 2022; October 13, 2022 SUBRAMANYA versus STATE OF KARNATAKA

In the aforesaid context, we may also refer to a decision of this Court in the case of Bodhraj alias Bodha and Others v. State of Jammu and Kashmir reported in (2002) 8 SCC 45, as under: “18. …..It would appear that under Section 27 as it stands in order to render the evidence leading to discovery of any fact admissible, the information must come from any accused in custody of the police. The requirement of police custody is productive of extremely anomalous results and may lead to the exclusion of much valuable evidence in cases where a person, who is subsequently taken into custody and becomes an accused, after committing a crime meets a police officer or voluntarily goes to him or to the police station and states the circumstances of the crime which lead to the discovery of the dead body, weapon or any other material fact, in consequence of the information thus received from him. This information which is otherwise admissible becomes inadmissible under Section 27 if the information did not come from a person in the custody of a police officer or did come from a person not in the custody of a police officer. The statement which is admissible under Section 27 is the one which is the information leading to discovery. Thus, what is admissible being the information, the same has to be proved and not the opinion formed on it by the police officer. In other words, the exact information given by the accused while in custody which led to recovery of the articles has to be proved. It is, therefore, necessary for the benefit of both the accused and the prosecution that information given should be recorded and proved and if not so recorded, the exact information must be adduced through evidence. The basic idea embedded in Section 27 of the Evidence Act is the doctrine of confirmation by subsequent events. The doctrine is founded on the principle that if any fact is discovered as a search made on the strength of any information obtained from a prisoner, such a discovery is a guarantee that the information supplied by the prisoner is true. The information might be confessional or non-inculpatory in nature

but if it results in discovery of a fact, it becomes a reliable information. It is now well settled that recovery of an object is not discovery of fact envisaged in the section. Decision of the Privy Council in Pulukuri Kottaya v. Emperor [AIR 1947 PC 67 : 48 Cri LJ 533 : 74 IA 65] is the most-quoted authority for supporting the interpretation that the "fact discovered" envisaged in the section embraces the place from which the object was produced, the knowledge of the accused as to it, but the information given must relate distinctly to that effect. (See State of Maharashtra v. Damu Gopinath Shinde [(2000) 6 SCC 269 : 2000 SCC (Cri) 1088 : 2000 Cri LJ 2301] .) No doubt, the information permitted to be admitted in evidence is confined to that portion of the information which "distinctly relates to the fact thereby discovered". But the information to get admissibility need not be so truncated as to make it insensible or incomprehensible. The extent of information admitted should be consistent with understandability. Mere statement that the accused led the police and the witnesses to the place where he had concealed the articles is not indicative of the information given." [Emphasis supplied]

NOSTALGIA

Unlawful Assembly- proof

the decisions in Amerika Rai & Ors. v. State of Bihar, AIR 2011 SC 1379; Surendra & Ors. v. State of Uttar Pradesh, AIR 2012 SC 1743 and in Yunis alias Kariya v. State of M.P., AIR 2003 SC 539. In Amerika Rai's case (supra) this Court held that even the presence in an unlawful assembly, with an active mind, to achieve the common object, would make a person vicariously liable for the acts of the unlawful assembly. In Surendra's case (supra) this Court held that inference of common object has to be drawn from the various factors such as the weapons with which the members were armed, their movements, the acts of violence committed by them and the result. In Yunis' case (supra) it was held that the presence of the accused as a part of the unlawful assembly is sufficient for his conviction. It was further held that when the presence of the accused at the place of occurrence as part of the unlawful assembly was not disputed it will be sufficient to hold him guilty even if no overt act was attributed to him.

NEWS

- Prosecution Replenish congratulates all the awardees and the following Telangana awardees of "Union Home Minister's Medal for Excellence in Investigation" for the year 2022:-
  - Shri Pratapagiri Venkata Ramana, Dy. Superintendent of Police Telangana
  - Shri Rudravaram Gandla Siva Maruthi, Asst. Commissioner of Police Telangana
  - Shri Bujoor Anji Reddy, Inspector of Police Telangana
  - Shri Ashala Gangaram, Dy. Superintendent of Police Telangana

- Shri Veggalam Raghu, Dy. Superintendent of Police Telangana

- Notification Of Joint Collector In The State As "Adjudicating Officer" Of The District Concerned Under Section 68 Of The Food Safety And Standards Act, 2006.

- The Andhra Pradesh Prevention Of Anti-Social And Hazardous Activities, Tribunal (Procedure) Rules, 2022 Under Section 6 Of The A. P. Prevention Of Anti- Social And Hazardous Activities Act, 1980.

- Motor Vehicles Act 1988 And Andhra Pradesh Motor Vehicles Rules, 1989 - Reconstitution Of The State Transport Authority For The State Of Andhra Pradesh.

- Establishment of A.P.Judicial Academy notified.

- Public Services - Child Care Leave — Enhancement of maximum spells to avail the eligible Child Care Leave of 180 days up to 10 spells — Orders — Issued.

ON A LIGHTER VEIN

The first thing I did when I heard our great-granddaughter was born was to text my son: "You are a great uncle!"
He texted me back immediately: "Thank you. What did I do?"

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

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Prosecution Replenish

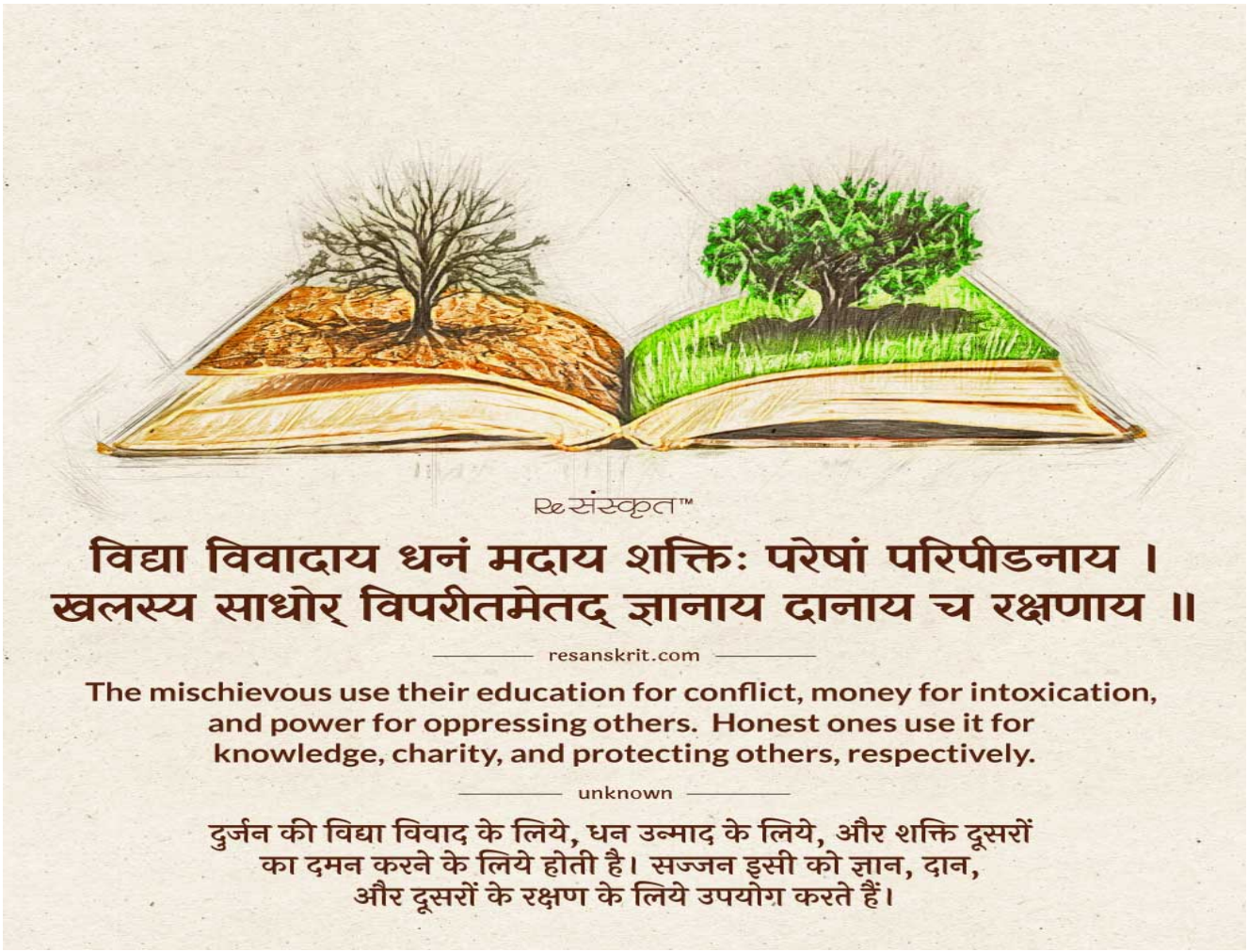
Vol- X

Part – 12

December, 2022

Aano Bhadra Kratvo Yantu Viswatah (Rig Ved)

Let all Noble thoughts come to us from all directions



CITATIONS

2022 0 Supreme(SC) 1107; Naveen Vs. State Of Haryana & Others; Criminal Appeal No(s). 1866 of 2022 (Arising out of Special Leave Petition (Crl.) No.3746 of 2022) Decided on : 01-11-2022

The Constitution Bench has given a caution that power under Section 319 CrPC is a discretionary and extraordinary power which should be exercised sparingly and only in those cases where the circumstances of the case so warrant and the crucial test as noticed above has to be applied is one which is more than prima facie case as exercised at the time of framing of charge, but short of satisfaction to an extent that the evidence, if goes unrebutted, would lead to conviction.

2022 0 Supreme(SC) 1111; State of Maharashtra and Another Vs. Dr. Maroti S/o Kashinath Pimpalkar; Criminal Appeal No. 1874 of 2022, Special Leave Petition (Crl.) No. 718 of 2022; Decided On : 02-11-2022

Prompt and proper reporting of the commission of offence under the POCSO Act is of utmost importance and we have no hesitation to state that its failure on coming to know about the commission of any offence thereunder would defeat the very purpose and object of the Act. We say so taking into account the various provisions

thereunder. Medical examination of the victim as also the accused would give many important clues in a case that falls under the POCSO Act. Section 27 (1) of the POCSO Act provides that medical examination of a child in respect of whom any offence has been committed under the said Act, shall, notwithstanding that a First Information Report or complaint has not been registered for the offence under the Act, be conducted in accordance with Section 164 A of the Cr.P.C. which provides the procedures for medical examination of the victim of rape. In this contextual situation, it is also relevant to refer to Section 53A of Cr.P.C. that mandates for examination of a person accused of rape by a medical practitioner. It is also a fact that clothes of the parties would also offer very reliable evidence in cases of rape.
non-reporting of sexual assault against a minor child despite knowledge is a serious crime and more often than not, it is an attempt to shield the offenders of the crime of sexual assault.
statements recorded under Section 161/164, Cr.P.C. are inadmissible in evidence, as held in M.L. Bhatt vs. M.K. Pandita, 2002 (3) JT 89 and in Rajeev Kourav vs. Baisahab and Others, (2020) 3 SCC 317.
There can be no dispute with respect to the position that statements recorded under Section 161 Cr.P.C. are inadmissible in evidence and its use is limited for the purposes as provided under Sections 145 and 157 of the Indian Evidence Act, 1872. As a matter of fact, statement recorded under Section 164, Cr.P.C. can also be used only for such purposes.

2022 0 Supreme(SC) 1112; S. KALEESWARAN Vs. STATE BY THE INSPECTOR OF POLICE POLLACHI TOWN EAST POLICE STATION, COIMBATORE DISTRICT, TAMIL NADU; CRIMINAL APPEAL NO. 160 OF 2017; WITH JOHN ANTHONISAMY @ JOHN Vs. STATE, REP. BY THE INSPECTOR OF POLICE POLLACHI TOWN EAST POLICE STATION, COIMBATORE DISTRICT, TAMIL NADU; CRIMINAL APPEAL NO. 410 of 2017; Decided On : 03-11-2022
it would be very risky to convict the accused believing the identification of the dead body of the victim through the super-imposition test. It is true that in the case based on circumstantial evidence, if the entire chain is duly proved by cogent evidence, the conviction could be recorded even if the corpus is not found, but when as per the case of prosecution, the dead body of the victim was discovered from the place shown by the accused, it is imperative on the part of the prosecution to prove that the dead body or the skeleton found at the instance of the accused was that of the victim and of none else.

2022 0 Supreme(SC) 1113; Mohd. Arif @ Ashfaq Vs State (NCT of Delhi); Review Petition (Crl.) Nos. 286-287 of 2012, Criminal Appeal Nos. 98-99 of 2009; Decided On : 03-11-2022 (THREE JUDGE BENCH)
Consequently, we must eschew, for the present purposes, the electronic evidence in the form of CDRs which was without any appropriate certificate under Section 65-B(4) of the Evidence Act.

2022 0 Supreme(SC) 1128; Ashok Kumar Singh Chandel Vs. State of U.P.; Criminal Appeal Nos. 946-947 of 2019 with Criminal Appeal Nos. 1030-

The variations indicated in the tehreer and the FIR, as well as the argument of improbability based on a minute-by-minute construct by the learned counsels for the Appellants, can under no circumstance become fatal to the acceptance of the tehreer and the FIR. This Court, while noting the defects and variations in the investigation observed in Rammi Alia Rameshwar v. State of M.P., (1999) 8 SCC 649 :

> "24. When an eyewitness is examined at length it is quite possible for him to make some discrepancies. No true witness can possibly escape from making some discrepant details. Perhaps an untrue witness who is well tutored can successfully make his testimony totally non-discrepant. But courts should bear in mind that it is only when discrepancies in the evidence of a witness are so incompatible with the credibility of his version that the court is justified in jettisoning his evidence. But too serious a view to be adopted on mere variations falling in the narration of an incident (either as between the evidence of two witnesses or as between two statements of the same witness) is an unrealistic approach for judicial scrutiny.
>
> 25. It is a common practice in trial courts to make out contradictions from the previous statement of a witness for confronting him during cross-examination. Merely because there is inconsistency in evidence it is not sufficient to impair the credit of the witness. No doubt Section 155 of the Evidence Act provides scope for impeaching the credit of a witness by proof of an inconsistent former statement. But a reading of the section would indicate that all inconsistent statements are not sufficient to impeach the credit of the witness….
>
> 26. A former statement though seemingly inconsistent with the evidence need not necessarily be sufficient to amount to contradiction. Only such of the inconsistent statement which is liable to be "contradicted" would affect the credit of the witness….."

Reiterating the same principle about the evidence of an injured witness, this Court in Rajendra Alia Rajappa & Ors v. State of Karnataka, (2021) 6 SCC 178 held as under:

> "18. This Court in Narayan Chetanram Chaudhary v. State of Maharashtra [Narayan Chetanram Chaudhary v. State of Maharashtra, (2000) 8 SCC 457 : 2000 SCC (Cri) 1546] has considered the minor contradictions in the testimony, while appreciating the evidence in criminal trial. It is held in the said judgment that only contradictions in material particulars and not minor contradictions can be a ground to discredit the testimony of the witnesses…."

we are of the opinion that the High Court has unnecessarily given weightage to some minor contradictions. The contradictions, if any, are not material contradictions which can affect the case of the prosecution as a whole. PW 6 was an injured eyewitness and therefore his presence ought not to have been doubted and being an injured eyewitness, as per the settled proposition of law laid down by this Court in catena of decisions, his deposition has a greater reliability and credibility."

In view of the fact that the ballistic report has come from the office of the Assistant Director bearing his seal and having considered the same in the context of Section 293(4) Cr.P.C., as explained by this Court in State of Himachal Pradesh v. Mast Ram (2004) 8 SCC 660, we are opinion that the Trial Court committed a serious error in rejecting the ballistic report and it was necessary and compelling for the High Court to reverse the finding of the Trial Court on this count also.

2022 0 Supreme(SC) 1136; Rahul Vs. State of Delhi Ministry of Home Affairs and Another; Criminal Appeal No. 611 of 2022 WITH Ravi Kumar Vs State of NCT of Delhi; Criminal Appeal Nos. 612-613 of 2022 WITH Vinod @ Chhotu Vs. The State Govt. of NCT of Delhi Home Affairs; Criminal Appeal Nos. 614-615 of 2022 ; Decided On : 07-11-2022 (THREE JUDGE BENCH)

the confession before the police officer by the accused when he is in police custody, cannot be called an extra-judicial confession. If a confession is made by the accused before the police, and a portion of such confession leads to the recovery of any incriminating material, such portion alone would be admissible under Section 27 of the Evidence Act, and not the entire confessional statements. --------. Though, the information furnished to the Investigating Officer leading to the discovery of the place of the offence would be admissible to the extent indicated in Section 27 read with Section 8 of the Evidence Act, but not the entire disclosure statement in the nature of confession recorded by the police officer.

material witnesses examined by the prosecution having not been either cross-examined or adequately examined, and the trial court also having acted as a passive umpire, we find that the Appellants-accused were deprived of their rights to have a fair trial, apart from the fact that the truth also could not be elicited by the trial court. We leave it to the wisdom and discretion of the trial courts to exercise their powers under Section 165 of the Indian Evidence Act for eliciting the truth in the cases before them, howsoever heinous or otherwise they may be.

It is needless to say that in view of Section 357(A) Cr.P.C. the family members of the deceased-victim would be entitled to the compensation even though the accused have been acquitted.

2022 0 Supreme(SC) 1150; P. Ponnusamy Vs. State of Tamil Nadu; Criminal Appeal No. 1926 of 2022, Special Leave Petition (Crl.) No. 9288 of 2022; Decided On : 07-11-2022 (THREE JUDGE BENCH)

The said suo-moto proceedings were registered as Criminal Trials Guidelines Regarding Inadequacies and Deficiencies, In Re: vs. State of Andhra Pradesh and Others, (2021) 10 SCC 598. The said case related, amongst others to deficiencies/lapses with regard to the manner in which the documents (list of witnesses, list of exhibits, list of material objects) referred to and presented and exhibited in the judgments, and lack of uniform practices in regard to preparation of injury reports, deposition of witnesses, translation of statements, numbering and nomenclature of witnesses, labeling of material objects etc. which often led to a asymmetries and hamper appreciation of evidence, which in turn had a tendency prolonging the proceedings especially at the appellate stage. The court in the said case had noticed that on these aspects, some High Courts had framed the rules,

however some had not, which had led to a lack of clarity and uniformity in regard to the presentation of trial court proceedings and records, for the purpose of appreciation at the High Court and Supreme Court level. The court in the said case, after considering the suggestions/submissions of the Amicus Curie and of the counsels appearing for the High Courts, States and the Union Territories, on "the Draft Rules of Criminal Practice 2020" prepared by the Amicus Curie, had given the directions vide the order dated 20.04.2021:

it is undeniable that there could also arise a situation wherein the investigating officer, ignores or does not rely on seized documents, material or evidence which favours the accused, and fails to forward it to the Magistrate [as required under Section 173 Cr.P.C. specifically sub-section (6)]. Merely because it is not already on the record of the court, cannot disentitle the accused from accessing material that may have exculpatory value. It is this gap, that was recognised and addressed (paragraph 11 of final order) in the suo-moto proceedings, and suitably codified in the text of the Draft Rule 4, by introducing a requirement of providing a list (at the commencement of the trial) of all documents, material, evidence, etc. seized during the course of investigation or in the possession of the prosecution regardless of whether the prosecution plans to rely on it.

May it be noted that in any case, the Draft Rule No. 4 with regard to the supply of documents under Sections 173, 207 and 208 Cr.P.C. is part of the Chapter I of the said Draft Rules, to be followed during the course of investigation and before the commencement of the trial. The said Draft Rule no. 4 as and when brought into force after following the due process of law could be pressed into service by the accused only during the course of investigation and during the course of trial, and not at the appellate stage before the High Court or the Supreme Court.

2022 0 Supreme(SC) 1168; The State Of Jammu & Kashmir (Now U.T. Of Jammu & Kashmir) & Ors. Vs. Shubam Sangra; Criminal Appeal No. 1928 of 2022 (Arising Out Of S.L.P. (Criminal) No. 11220 of 2019); Decided on : 16-11-2022

"Rape is one of the most terrible crimes on earth and it happens every few minutes. The problem with groups who deal with rape is that they try to educate women about how to defend themselves. What really needs to be done is teaching men not to rape. Go to the source and start there." -Kurt Cobain

the rising rate of juvenile delinquency in India is a matter of concern and requires immediate attention. There is a school of thought, existing in our country that firmly believes that howsoever heinous the crime may be, be it single rape, gangrape, drug peddling or murder but if the accused is a juvenile, he should be dealt with keeping in mind only one thing i.e., the goal of reformation. The school of thought, we are taking about believes that the goal of reformation is ideal. The manner, in which brutal and heinous crimes have been committed over a period of time by the juveniles and still continue to be committed, makes us wonder whether the Act, 2015 has subserved its object. We have started gathering an impression that the leniency with which the juveniles are dealt with in the name of goal of reformation is making them more and more emboldened in indulging in such heinous crimes. It is for the Government to consider whether its enactment of 2015 has proved to be

effective or something still needs to be done in the matter before it is too late in the day.

2022 0 Supreme(SC) 1175; Amy Mehta Vs State of Karnataka & Anr.; Criminal Appeal No. 1981 of 2022; Decided on : 17-11-2022

it appears that the High Court has not at all considered the seriousness of the allegations and the gravity of the offences alleged against the accused.

Even the observation that there is no need of further custodial trial is also not relevant aspect while considering the bail application under Section 439 of Cr.P.C. The same may have some relevance while considering the application for anticipatory bail.

2022 0 Supreme(SC) 1185; `a V.K. & Ors. Vs. The State Of Telangana; Petition(s) for Special Leave to Appeal (Crl.) No(s). 10356/2022 With Diary No. 37248 of 2022; Decided On : 21-11-2022

The revision arises out of the order passed by the learned 1st Additional Session Judge dated 27.10.2022 for SPE and A.C.B. cases at Hyderabad, vide which the learned Judge had rejected the remand application made by the Police for remand of the petitioners. This was basically done by the learned Trial Judge on the ground that the mandatory notice under Section 41A of Code of Criminal Procedure was not issued to the accused persons.

The same was challenged by the State before the High Court. The State argued that the observations made in the case of Arnesh Kumar Vs. State of Bihar and Another would not be applicable to the facts of the present case. Per contra, the petitioners accused strongly relied on the observations made in Arnesh Kumar (Supra), particularly, in paragraph 11.4 thereof.

We, therefore, dispose of the petition by observing that the observations made in the judgment in Criminal Revision Case No. 699 of 2022 which are contrary to the observations made in the case of Arnesh Kumar (Supra) would not be treated as a binding precedent in the State of Telangana.

2022 0 Supreme(SC) 1187; The State Of Himachal Pradesh Vs. Angrejo Devi & Ors.; CRIMINAL APPEAL NO(S). 959 of 2012, Crl.A. No. 957/2012, Crl.A. No. 958 of 2012, Crl.A. No. 2040 of 2022 @ SLP(Crl) No. 761of 2014; Decided On : 23-11-2022

The High Court basically allowed the appeals on the ground that the prosecution has failed to establish that the seized material is not the genesis of a plant of Papaver somniferum L or any other plant, which is notified by the Central Government under Section 2(xvii) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'NDPS Act').

On a reference, this Court in State of Himachal Pradesh v. Nirmal Kaur alias Nimmo and Others, reported in 2022 SCC Online SC 1462, has decided the issue and it has been held that once it is found that the seized material contain 'morphine' and 'meconic acid' it is sufficient to establish that the seized material comes within the definition of Section 2(xvii) of the NDPS Act.

https://indiankanoon.org/doc/135317995/; Mohammed Abdul Ahad vs The State Telangana on 28 November, 2022;
Sections 120(B), 269, 270, 271, 323, 448, 427 and 506 of IPC, Sections 2, 4 and 6 of the Telangana Medicare Service Persons and Medicare Service Institutions (Prevention of Violence and Damage to Property) Act, 2008 (for short, 'the Act') and Section 3(2) of the Epidemic Disease Act, 1897 and Section 51(B) of the Disaster Management Act, 2005, allowed to be compounded by the parties basing on their compromise and on payment of Rs 10000 to the Telangana High Court Advocates' Association, Hyderabad

https://indiankanoon.org/doc/176642688/; B. Kripanandam, I.A.S., Retd. vs Union Of India, on 25 November, 2022;
Supreme Court in Station House Officer v. D.A.Srinivasan reiterated the position that protection under Section 197 Cr.P.C is available to the public servant when an offence is said to have been committed 'while acting or purporting to act in discharge of official duty', but where the acts are performed using the office as a mere cloak for unlawful gains, such acts are not protected.

https://indiankanoon.org/doc/35733799/; G. Jhansi vs The State Of Telangana on 24 November, 2022
In IPC offences, the employees or directors of the company cannot be made vicariously liable for the offences committed by the company. There has to be specific role attributed to the persons who form part of the company and alter-ego of the company, to be arrayed as an accused. There should be either oral or documentary evidence to say that such persons were responsible for the day to day affairs of the company and also how the said persons were complicit in the offence that has been alleged against the company.

https://indiankanoon.org/doc/11092338/; Syed Ameer Amer vs The State Of Ap., Rep By Its P.P on 18 November, 2022
call data records shall not be considered unless filed along with the certificate under Section 65-B of Evidence Act, confession of accused without leading to any recovery shall not be accepted and conviction shall not be based on the answers of accused during their examination under Section 313 Cr.P.C.

https://indiankanoon.org/doc/99269059/; Kiran Borkar, Hyderabad., vs The State Of Telangana, Rep Pp., on 4 November, 2022
In view of the law declared by the Apex Court in various judgments referred supra as to considering an application filed under Section 239 Cr.P.C, at the stage of framing charges, the duty of the court is only to look into allegations made in the final report and the documents annexed to it including statements of witnesses recorded and examined during investigation, and afford an opportunity to the accused to advance arguments. But said argument must be connected to the material on record i.e., allegations in charge sheet and documents filed along with report under Section 173 Cr.P.C, not more than that. The accused is not entitled to

produce any documents and adduce any evidence at the time of framing charges or at the time of disposal of petition filed under Section 239 Cr.P.C.

https://indiankanoon.org/doc/192875272/; In Re vs The State Of Andhra Pradesh, on 24 November, 2022

When such importance is accorded to criminal cases against M.L.As. and M.Ps., the court concerned at Nellore as well as the State machinery including the law enforcing agency should have taken due care and caution to secure the case property; otherwise, in the absence of case property being produced and proved in the court, trial against M.L.As. and M.Ps. may fail for lack of evidence. It is for this reason the matter assumes importance. If timely and proper steps are not taken to book the culprits, people at large may lose faith in the judicial process. It is necessary to reach to the root of the incident as to who are involved in theft of case property, wherein influential people are accused.

https://indiankanoon.org/doc/126691484/; Sadu Chinnarao, Srikakulam Dt., vs The State Of Ap., Rep Pp., on 21 November, 2022

The Division Bench of this Court in Batchu Rangarao & others (2016 (3) ALT (Crl.) 505 (DB) (A.P).), held as under:

"On considering their valuable suggestions and after a thorough evaluation of the relevant factors, we are inclined to indicate broad criteria on which the applications for grant of bail pending the Criminal Appeals filed against the conviction for the offences, including the one under Section-302 IPC, and sentencing of the appellants to life among other allied sentences, are to be considered. Accordingly, we evolve the following criteria:

(1) A person who is convicted for life and whose appeal is pending before this Court is entitled to apply for bail after he has undergone a minimum of five years imprisonment following his conviction;

(2) Grant of bail in favour of persons falling in (1) supra shall be subject to his good conduct in the jail, as reported by the respective Jail Superintendents;

(3) In the following categories of cases, the convicts will not be entitled to be released on bail, despite their satisfying the criteria in (1) and (2) supra:

The offences relating to rape coupled with murder of minor children, dacoity, murder for gain, kidnapping for ransom, killing of the public servants, the offences falling under the National Security Act and the offences pertaining to narcotic drugs.

(4) While granting bail, the two following conditions apart from usual conditions have to be imposed, viz., (1) the appellants on bail must be present before the Court at the time of hearing of the Criminal Appeals; and (2) they must report in the respective Police Stations once in a month during the bail period.

This broad criteria cannot be understood as invariable principles and the Bench hearing the bail applications may exercise its discretion either for granting or rejecting the bail based on the facts of each case. Needless to observe that grant of bail based on these principles shall, however, be subject to the provisions of Section-389 of the Code of Criminal Procedure."

Sec 319 CrPC

The scope and ambit of Section 319 CrPC has been well settled by the Constitution Bench of this Court in Hardeep Singh v. State of Punjab and others, (2014) 3 SCC 92 and paras 105 and 106 which are relevant for the purpose are reproduced hereunder:

> "105. Power under Section 319 CrPC is a discretionary and an extraordinary power. It is to be exercised sparingly and only in those cases where the circumstances of the case so warrant. It is not to be exercised because the Magistrate or the Sessions Judge is of the opinion that some other person may also be guilty of committing that offence. Only where strong and cogent evidence occurs against a person from the evidence led before the court that such power should be exercised and not in a casual and cavalier manner.
>
> 106. Thus, we hold that though only a prima facie case is to be established from the evidence led before the court, not necessarily tested on the anvil of cross-examination, it requires much stronger evidence than mere probability of his complicity. The test that has to be applied is one which is more than prima facie case as exercised at the time of framing of charge, but short of satisfaction to an extent that the evidence, if goes unrebutted, would lead to conviction. In the absence of such satisfaction, the court should refrain from exercising power under Section 319 CrPC. In Section 319 CrPC the purpose of providing if "it appears from the evidence that any person not being the accused has committed any offence" is clear from the words "for which such person could be tried together with the accused". The words used are not "for which such person could be convicted". There is, therefore, no scope for the court acting under Section 319 CrPC to form any opinion as to the guilt of the accused."

Yardstick of gravity of offence

In Vijay Madanlal Choudhary and Others vs. Union of India and Others, 2022 SCC Online SC 929, this Court observed that the length of punishment is not only the indicator of the gravity of offence and it is to be judged by a totality of factors, especially keeping in mind the background in which the offence came to be recognized by the Legislature in the specific international context.

Skull superimposing technique – evidentiary value

In Pattu Rajan v. State of Tamil Nadu, (2019) 2 SCC (Cri) 354, this Court has explained that though identification of the deceased through superimposition is an acceptable piece of opinion evidence, however the courts generally do not rely upon opinion evidence as the sole incriminating circumstances, given its fallibility, and the superimposition technique cannot be regarded as infallible.

OVERT ACTS OF UNLAWFUL ASSEMBLY

in Saddik Alias Lalo Gulam Hussein Shaikh and ors v. State of Gujarat, (2016) 10 SCC 663 where the Court expressly rejected this argument and held:

> "18. Further, once it is established that the unlawful assembly had a common object, it is not necessary that all the persons forming the unlawful assembly must be shown

to have committed some overt act. For the purpose of incurring vicarious liability under the provision, the liability of other members of the unlawful assembly for the offence committed during the continuance of the occurrence, rests upon the fact whether the other members knew beforehand that the offence actually committed was likely to be committed in prosecution of the common object."

DEFECTIVE INVESTIGATION

in the case of C. Muniappan and Others v. State of Tamil Nadu, (2010) 9 SCC 567 this Court held:

"55. There may be highly defective investigation in a case. However, it is to be examined as to whether there is any lapse by the IO and whether due to such lapse any benefit should be given to the accused. The law on this issue is well settled that the defect in the investigation by itself cannot be a ground for acquittal. If primacy is given to such designed or negligent investigations or to the omissions or lapses by perfunctory investigation, the faith and confidence of the people in the criminal justice administration would be eroded. Where there has been negligence on the part of the investigating agency or omissions, etc. which resulted in defective investigation, there is a legal obligation on the part of the court to examine the prosecution evidence dehors such lapses, carefully, to find out whether the said evidence is reliable or not and to what extent it is reliable and as to whether such lapses affected the object of finding out the truth. Therefore, the investigation is not the solitary area for judicial scrutiny in a criminal trial….."

Witness not going to rescue of Victim

This Court in Rana Pratap and ors v. State of Haryana, (1983) 3 SCC 327 held:

"6. Yet another reason given by the learned Sessions Judge to doubt the presence of the witnesses was that their conduct in not going to the rescue of the deceased when he was in the clutches of the assailants was unnatural. We must say that the comment is most unreal. Every person who witnesses a murder reacts in his own way. Some are stunned, become speechless and stand rooted to the spot. Some become hysteric and start wailing. Some start shouting for help. Others run away to keep themselves as far removed from the spot as possible. Yet others rush to the rescue of the victim, even going to the extent of counter-attacking the assailants. Every one reacts in his own special way. There is no set rule of natural reaction. To discard the evidence of a witness on the ground that he did not react in any particular manner is to appreciate evidence in a wholly unrealistic and unimaginative way [35][This principle has been reiterated in a number of decisions of this court in Leela Ram (Dead) through Duli Chand v. State of Haryana and anr (1999) 9 SCC 525 ; State of U.P. v. Devendra Singh (2004) 10 SCC 616 ; Kathi Bharat Vajsur and anr v. State of Gujarat (2012) 5 SCC 724.]."

NEWS

- The Central Government hereby specifies,- (i) Professor, Associate Professor or Assistant Professor, / (ii) Deputy Director, / (iii) Senior Scientific Officer, and / (iv) Junior Scientific Officer of the National Forensic Sciences University as Government scientific experts for the purpose of section 293 CrPC.

ON A LIGHTER VEIN

Defence cross examination

Q: How far apart were the vehicles at the time of the collision?

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