Prosecution Replenish

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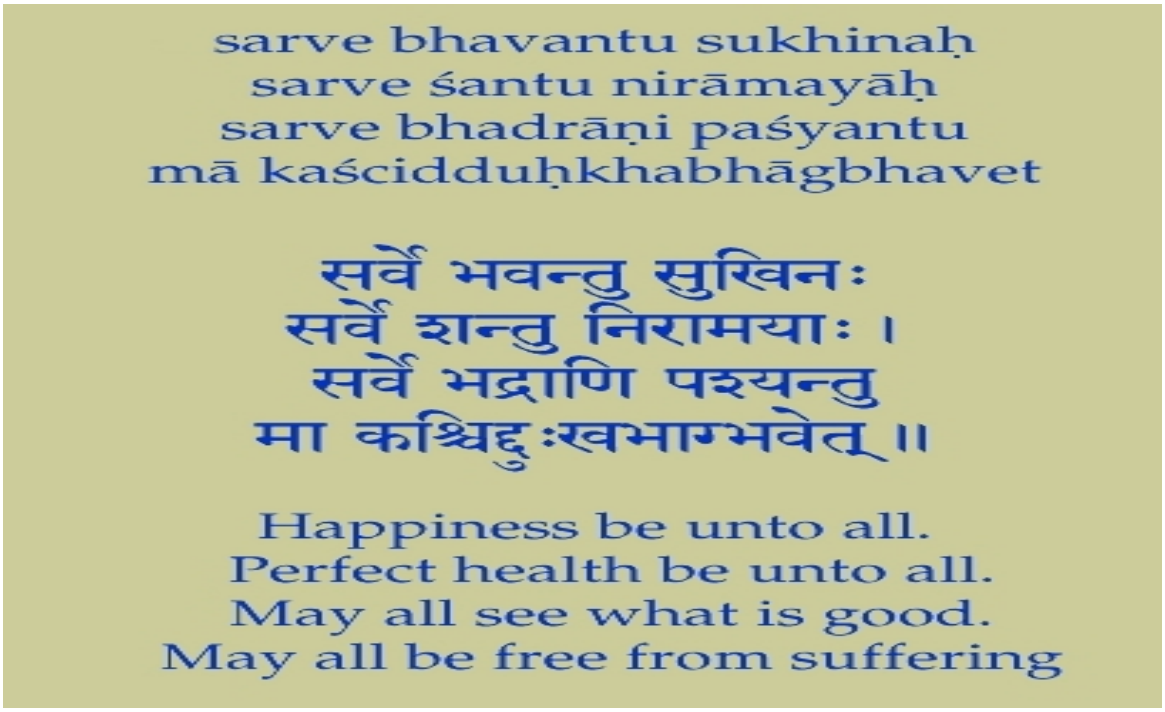
Aano Bhadr Kratvo Yantu Viswatah
(Let Noble Thoughts Come To Me From All Directions)



CITATIONS

2022 0 Supreme(SC) 1210; Sunita Devi and Another Vs. The State of Haryana; Criminal Appeal No. 2155-2156 of 2022 SLP (Criminal) Nos. 7323-7324 of 2021; 02-12-2022

The offences alleged against the appellants primarily relate to cheating in connection with certain land related transactions. In such circumstances, in our opinion, in the event the appellants cooperate with the Investigating Agency, custodial interrogation would not be necessary at this stage.

In the event the appellants refuse to cooperate with the investigating agency at any subsequent stage, it shall be open to the State to apply for cancellation of the bail before the Trial Court.

2022 0 Supreme(SC) 1214; Sukhpal Singh Khaira Vs. The State of Punjab; Criminal Appeal No.885 of 2019 with SLP (CRL.) No. 6960 of 2021, CRL.Appeal No.886 of 2019 & SLP (CRL.) No. 5933 of 2019 ; 05-12-2022 (5 Judge Bench)

it is clear that the conclusion of the trial in a criminal prosecution if it ends in conviction, a judgment is considered to be complete in all respects only when the sentence is imposed on the convict, if the convict is not given the benefit of Section 360 of CrPC. Similarly, in a case where there are more than one accused and if one or more among them are acquitted and the others are convicted, the trial would stand concluded as against the accused who are acquitted and the trial will

have to be concluded against the convicted accused with the imposition of sentence. When considered in the context of Section 319 of CrPC, there would be no dichotomy as argued, since what becomes relevant here is only the decision to summon a new accused based on the evidence available on record which would not prejudice the existing ccused since in any event they are convicted.

"I. Whether the trial court has the power under Section 319 of CrPC for summoning additional accused when the trial with respect to other co-accused has ended and the judgment of conviction rendered on the same date before pronouncing the summoning order?

The power under Section 319 of CrPC is to be invoked and exercised before the pronouncement of the order of sentence where there is a judgment of conviction of the accused. In the case of acquittal, the power should be exercised before the order of acquittal is pronounced. Hence, the summoning order has to precede the conclusion of trial by imposition of sentence in the case of conviction. If the order is passed on the same day, it will have to be examined on the facts and circumstances of each case and if such summoning order is passed either after the order of acquittal or imposing sentence in the case of conviction, the same will not be sustainable.

II. Whether the trial court has the power under Section 319 of the CrPC for summoning additional accused when the trial in respect of certain other absconding accused (whose presence is subsequently secured) is ongoing/pending, having been bifurcated from the main trial?

The trial court has the power to summon additional accused when the trial is proceeded in respect of the absconding accused after securing his presence, subject to the evidence recorded in the split up (bifurcated) trial pointing to the involvement of the accused sought to be summoned. But the evidence recorded in the main concluded trial cannot be the basis of the summoning order if such power has not been exercised in the main trial till its conclusion.

III. What are the guidelines that the competent court must follow while exercising power under Section 319 CrPC?"

(i) If the competent court finds evidence or if application under Section 319 of CrPC is filed regarding involvement of any other person in committing the offence based on evidence recorded at any stage in the trial before passing of the order on acquittal or sentence, it shall pause the trial at that stage.

(ii) The Court shall thereupon first decide the need or otherwise to summon the additional accused and pass orders thereon.

(iii) If the decision of the court is to exercise the power under Section 319 of CrPC and summon the accused, such summoning order shall be passed before proceeding further with the trial in the main case.
(iv) If the summoning order of additional accused is passed, depending on the stage at which it is passed, the Court shall also apply its mind to the fact as to whether such summoned accused is to be tried along with the other accused or separately.
(v) If the decision is for joint trial, the fresh trial shall be commenced only after securing the presence of the summoned accused.
(vi) If the decision is that the summoned accused can be tried separately, on such order being made, there will be no impediment for the Court to continue and conclude the trial against the accused who were being proceeded with.
(vii) If the proceeding paused as in (i) above is in a case where the accused who were tried are to be acquitted and the decision is that the summoned accused can be tried afresh separately, there will be no impediment to pass the judgment of acquittal in the main case.
(viii) If the power is not invoked or exercised in the main trial till its conclusion and if there is a split-up (bifurcated) case, the power under Section 319 of CrPC can be invoked or exercised only if there is evidence to that effect, pointing to the involvement of the additional accused to be summoned in the split up (bifurcated) trial.
(ix) If, after arguments are heard and the case is reserved for judgment the occasion arises for the Court to invoke and exercise the power under Section 319 of CrPC, the appropriate course for the court is to set it down for re-hearing.
(x) On setting it down for re-hearing, the above laid down procedure to decide about summoning; holding of joint trial or otherwise shall be decided and proceeded with accordingly.
(xi) Even in such a case, at that stage, if the decision is to summon additional accused and hold a joint trial the trial shall be conducted afresh and de novo proceedings be held.
(xii) If, in that circumstance, the decision is to hold a separate trial in case of the summoned accused as indicated earlier;
(a) The main case may be decided by pronouncing the conviction and sentence and then proceed afresh against summoned accused.
(b) In the case of acquittal the order shall be passed to that effect in the main case and then proceed afresh against summoned accused.

2022 0 Supreme(SC) 1215; Ratnambar Kaushik Vs Union of India; Petition for Special Leave to Appeal (Crl.) No.10319 of 2022; 05-12-2022

Needless to mention that the petitioner if released on bail, is required to adhere to the conditions to be imposed and diligently participate in the trial. Further, in a case of the present nature, the evidence to be tendered by the respondent would essentially be documentary and electronic. The ocular evidence will be through official witnesses, due to which there can be no apprehension of tampering, intimidating or influencing. Therefore, keeping all these aspects in perspective, in the facts and circumstances of the present case, we find it proper to grant the prayer made by the petitioner.

Hence, it is directed that the petitioner be released on bail subject to the conditions to be imposed by the trial Court, which among others, shall also include the condition to direct the petitioner to deposit his passport. Further, such other conditions shall also be imposed by the trial Court to secure the presence of the petitioner to diligently participate in the trial.

2022 0 Supreme(SC) 1236; Chandi Puliya Vs. The State of West Bengal; Criminal Appeal No. 2249 of 2022, SLP (Criminal) No. 9897 of 2022; 12-12-2022

the stage of discharge under Section 227 Cr.P.C. is a stage prior to framing of the charge (under Section 228 Cr.P.C.) and it is at that stage alone that the court can consider the application under Section 300 Cr.P.C. Once the court rejects the discharge application, it would proceed to framing of charge under Section 228 Cr.P.C.

2022 0 Supreme(SC) 1245; Kalicharan and Others vs State of Uttar Pradesh; Criminal Appeal No. 122 of 2021; 14-12-2022

Section 215 lays down when errors in the particulars required to be stated in the charge can be treated as material. It lays down that the error cannot be said to be material unless the accused was misled by such error or omission and that such error or omission has caused a failure of justice. Section 464 deals with the effect of error or omission made while framing charges on the finding and sentence of the competent Court. The Section provides that the finding and sentence of the Court cannot be invalid merely on the ground of error in framing charge or omission in framing charge. The finding and sentence will be invalid only if in the opinion of the Court of appeal, the error or omission has occasioned a failure of justice.

Questioning an accused under Section 313 Cr.P.C. is not an empty formality. The requirement of Section 313 Cr.P.C. is that the accused must be explained the circumstances appearing in the evidence against

him so that accused can offer an explanation. After an accused is questioned under Section 313 Cr.P.C. he is entitled to take a call on the question of examining defence witnesses and leading other evidence. If the accused is not explained the important circumstances appearing against him in the evidence on which his conviction is sought to be based, the accused will not be in a position to explain the said circumstances brought on record against him. He will not be able to properly defend himself.

2022 0 Supreme(SC) 1250; R. Nagender Yadav Vs. State of Telangana and Anr.; Criminal Appeal No. 2290 of 2022 (Arising out of S.L.P. (Criminal) No. 4629 of 2021); Decided On : 15-12-2022

As stated earlier, the police could be said to have made a mockery of the entire investigation. When it is the specific case of the original complainant that at no point of time he had executed the disputed sale deed dated 29.12.2010 and his signature on the disputed sale deed has been forged, then the first thing the police should have done was to obtain the specimen hand writings of the complainant so as to be compared with the disputed signature on the sale deed through a hand writing expert. We are informed that as on date there is no report of the hand writing expert in regard to the genuineness of the signature of the complainant on the disputed sale deed. Second thing which the investigating agency ought to have done is to investigate whether the sale consideration had been paid to the purchaser of the disputed plot or not and if the sale deed consideration had been paid, then in what manner. There is nothing on record in this regard. We fail to understand on what basis the police filed charge sheet against the appellant herein. If it is the case of the original complainant that a conspiracy was hatched, then in such circumstances why did the police drop the purchaser and the other individuals from the charge sheet stating that they are the bona fide purchasers of the plot in question for value without notice.

As on date, there is no convincing legal evidence on record to put the appellant herein to trial for the alleged offences. Since the purchaser of the plot in question and others have not been arrayed as accused, the entire theory of criminal conspiracy collapses like a pack of cards.

We are conscious of the fact that perfunctory investigation cannot be a ground either to quash the criminal proceedings or even to acquit the accused.

The civil suit being the Original Suit No. 1343 of 2016 between the parties is pending wherein the contention of the complainant as a plaintiff is that no sale deed dated 29.12.2010 was executed, whereas the contention of the appellant herein as a defendant in the suit is that the

sale deed had been executed by the complainant. The Civil Court is therefore seized of the question as regards the legality and validity of the disputed sale deed. The matter is sub judice in the Civil Court. At this juncture and more particularly in the peculiar facts and circumstances of the case, it will not be proper to permit the criminal prosecution to proceed further on the allegation of the sale deed being forged. That question will have to be decided by the Civil Court after recording the evidence and hearing the parties in accordance with law. It would not be proper having regard to what has been highlighted by us to permit the complainant to prosecute the appellant on this allegation when the validity of the sale deed is being tested before the Civil Court.

Whether a complaint discloses a criminal offence or not, depends upon the nature of the act alleged thereunder. Whether the essential ingredients of a criminal offence are present or not, has to be judged by the High Court. A complaint disclosing civil transaction may also have a criminal texture. But the High Court must see whether the dispute which is in substance of a civil nature is given a cloak of a criminal offence. In such a situation, if civil remedy is available and is in fact adopted, as has happened in the case on hand, the High Court should have quashed the criminal proceeding to prevent abuse of process of court.

2022 0 Supreme(SC) 1251; State of Gujarat Vs. Sandip Omprakash Gupta; Criminal Appeal No. 2291 of 2022 (Arising out of SLP (Criminal) No. 6101 of 2021); Decided On : 15-12-2022

It is a sound rule of construction that the substantive law should be construed strictly so as to give effect and protection to the substantive rights unless the statute otherwise intends. Strict construction is one which limits the application of the statute by the words used. According to Sutherland, ‘strict construction refuses to extend the import of words used in a statute so as to embrace cases or acts which the words do not clearly describe’.

(a) If ‘organised crime’ was synonymous with ‘continuing unlawful activity’, two separate definitions were not necessary.

(b) The definitions themselves indicate that the ingredients of use of violence in such activity with the objective of gaining pecuniary benefit are not included in the definition of ‘continuing unlawful activity’, but find place only in the definition of ‘organised crime’.

(c) What is made punishable under Section 3 is ‘organised crime’ and not ‘continuing unlawful activity’.

(d) If ‘organised crime’ were to refer to only more than one charge-sheets filed, the classification of crime in Section 3(1)(i) and 3(1)(ii) resply on the basis of consequence of resulting in death or otherwise would have been phrased differently, namely, by providing that ‘if any

one of such offence has resulted in the death', since continuing unlawful activity requires more than one offence. Reference to 'such offence' in Section 3(1) implies a specific act or omission.

(e) As held by this Court in State of Maharashtra v. Bharat Shanti Lal Shah (supra) continuing unlawful activity evidenced by more than one charge-sheets is one of the ingredients of the offence of organised crime and the purpose thereof is to see the antecedents and not to convict, without proof of other facts which constitute the ingredients of Section 2(1)(e) and Section 3, which respectively define commission of offence of organised crime and prescribe punishment.

(f) There would have to be some act or omission which amounts to organised crime after the Act came into force, in respect of which the accused is sought to be tried for the first time, in the Special Court (i.e. has not been or is not being tried elsewhere).

2022 3 Supreme(SC) 1248; Neeraj Dutta Vs. State (Govt. of N.C.T. of Delhi) ; Criminal Appeal Nos. 1669 of 2009, 1779, 2136 of 2010, 678, 1490 of 2021, 1592 of 2022, SLP (Crl.) Nos. 11339 of 2019, 3828, 6279, 6497 of 2020, 5905 of 2021, 294 of 2022, Diary No. 27232 of 2019; Decided On : 15-12-2022 (CONSTITUTION BENCH)

It is well settled that evidence is upon facts pleaded in a case and hence, the principal facts are sometimes the facts in issue. Facts relevant to the issue are evidentiary facts which render probable the existence or non-existence of a fact in issue or some relevant fact.

In criminal cases, the facts in issue are constituted in the charge, or acquisition, in cases of warrant or summon cases. The proof of facts in issue could be oral and documentary evidence. Evidence is the medium through which the court is convinced of the truth or otherwise of the matter under enquiry, i.e., the actual words of witnesses, or documents produced and not the facts which have to be proved by oral and documentary evidence. Of course, the term evidence is not restricted to only oral and documentary evidence but also to other things like material objects, the demeanour of the witnesses, facts of which judicial notice could be taken, admissions of parties, local inspection made and answers given by the accused to questions put forth by the Magistrate or Judge under Section 313 of the Criminal Procedure Code (CrPC).

Further, according to Sarkar on Law of Evidence, 20th Edition, Volume 1, "direct" or "original" evidence means that evidence which establishes the existence of a thing or fact either by actual production or by testimony or demonstrable declaration of someone who has himself perceived it, and believed that it established a fact in issue. Direct evidence proves the existence of a fact in issue without any inference of presumption. On the other hand, "indirect evidence" or "substantial

evidence" gives rise to the logical inference that such a fact exists, either conclusively or presumptively. The effect of substantial evidence under consideration must be such as not to admit more than one solution and must be inconsistent with any explanation that the fact is not proved. By direct or presumptive evidence (circumstantial evidence), one may say that other facts are proved from which, existence of a given fact may be logically inferred.

Normally, a hearsay witness would be inadmissible, but when it is corroborated by substantive evidence of other witnesses, it would be admissible

Evidence that does not establish the fact in issue directly but throws light on the circumstances in which the fact in issue did not occur is circumstantial evidence (also called inferential or presumptive evidence). Circumstantial evidence means facts from which another fact is inferred. Although circumstantial evidence does not go to prove directly the fact in issue, it is equally direct. Circumstantial evidence has also to be proved by direct evidence of the circumstances.

facts showing the existence of any state of mind, such as intention, knowledge, good faith, negligence, or ill will need not be proved by direct testimony. It may be proved inferentially from conduct, surrounding circumstances, etc.

it must be distinguished that even with regard to oral evidence, there are sub-categories – primary evidence and secondary evidence. Primary evidence is an oral account of the original evidence i.e., of a person who saw what happened and gives an account of it recorded by the court, or the original document itself, or the original thing when produced in court. Secondary evidence is a report or an oral account of the original evidence or a copy of a document or a model of the original thing.

Mere production and marking of a document as an exhibit by the court cannot be held to be due proof of its contents. Its execution has to be proved by admissible evidence.

when a particular fact is to be established by production of documentary evidence, there is no scope for leading oral evidence. What is to be produced is the primary evidence i.e., document itself. It is only when the absence of the primary source has been satisfactorily explained that secondary evidence is permissible to prove the contents of documents. Secondary evidence, therefore, should not be accepted without a sufficient reason being given for non-production of the original.

once a document has been properly admitted, the contents of the documents would stand admitted in evidence, and if no objection has been raised with regard to its mode of proof at the stage of tendering in evidence of such a document, no such objection could be allowed to be raised at any later stage of the case or in appeal. But the documents can

be impeached in any other manner, though the admissibility cannot be challenged subsequently when the document is bound in evidence.

It is trite law that in cases dependent on circumstantial evidence, the inference of guilt can be made if all the incriminating facts and circumstances are incompatible with the innocence of the accused or any other reasonable hypotheses than that of his guilt, and provide a cogent and complete chain of events which leave no reasonable doubt in the judicial mind. When an incriminating circumstance is put to the accused and the said accused either offers no explanation or offers an explanation which is found to be untrue, then the same becomes an additional link in the chain of circumstances to make it complete. If the combined effect of all the proven facts taken together is conclusive in establishing the guilt of the accused, a conviction would be justified even though any one or more of those facts by itself is not decisive.

The phrase “burden of proof” has two meanings :- one, the burden of proof as a matter of law and pleading and the other, the burden of establishing a case; the former is fixed as a question of law on the basis of the pleadings and is unchanged during the entire trial, whereas the latter is not constant but shifts as soon as a party adduces sufficient evidence to raise a presumption in his favour.

there is no legal bar to raise a conviction upon a “hostile witness” testimony if corroborated by other reliable evidence.

(a) Proof of demand and acceptance of illegal gratification by a public servant as a fact in issue by the prosecution is a sine qua non in order to establish the guilt of the accused public servant under Sections 7 and 13 (1)(d) (i) and(ii) of the Act.

(b) In order to bring home the guilt of the accused, the prosecution has to first prove the demand of illegal gratification and the subsequent acceptance as a matter of fact. This fact in issue can be proved either by direct evidence which can be in the nature of oral evidence or documentary evidence.

(c) Further, the fact in issue, namely, the proof of demand and acceptance of illegal gratification can also be proved by circumstantial evidence in the absence of direct oral and documentary evidence.

(d) In order to prove the fact in issue, namely, the demand and acceptance of illegal gratification by the public servant, the following aspects have to be borne in mind:

(i) if there is an **offer to pay by the bribe giver** without there being any demand from the public servant and the latter simply accepts the offer and receives the illegal gratification, it is a **case of acceptance** as per Section 7 of the Act. In such a case, there need not be a prior demand by the public servant.

(ii) On the other hand, **if the public servant makes a demand** and the bribe giver accepts the demand and tenders the demanded gratification which in turn is received by the public servant, it is **a case of obtainment**. In the case of obtainment, the prior demand for illegal gratification emanates from the public servant. This is an offence under Section 13 (1)(d)(i) and (ii) of the Act.

(iii) In both cases of (i) and (ii) above, the offer by the bribe giver and the demand by the public servant respectively have to be proved by the prosecution as a fact in issue. In other words, mere acceptance or receipt of an illegal gratification without anything more would not make it an offence under Section 7 or Section 13 (1)(d), (i) and (ii) respectively of the Act. Therefore, under Section 7 of the Act, in order to bring home the offence, there must be an offer which emanates from the bribe giver which is accepted by the public servant which would make it an offence. Similarly, a prior demand by the public servant when accepted by the bribe giver and inturn there is a payment made which is received by the public servant, would be an offence of obtainment under Section 13 (1)(d) and (i) and (ii) of the Act.

(e) The presumption of fact with regard to the demand and acceptance or obtainment of an illegal gratification may be made by a court of law by way of an inference only when the foundational facts have been proved by relevant oral and documentary evidence and not in the absence thereof. On the basis of the material on record, the Court has the discretion to raise a presumption of fact while considering whether the fact of demand has been proved by the prosecution or not. Of course, a presumption of fact is subject to rebuttal by the accused and in the absence of rebuttal presumption stands.

(f) In the event the complainant turns ‘hostile’, or has died or is unavailable to let in his evidence during trial, demand of illegal gratification can be proved by letting in the evidence of any other witness who can again let in evidence, either orally or by documentary evidence or the prosecution can prove the case by circumstantial evidence. The trial does not abate nor does it result in an order of acquittal of the accused public servant.

(g) In so far as Section 7 of the Act is concerned, on the proof of the facts in issue, Section 20 mandates the court to raise a presumption that the illegal gratification was for the purpose of a motive or reward as mentioned in the said Section. The said presumption has to be raised by the court as a legal presumption or a presumption in law. Of course, the said presumption is also subject to rebuttal. Section 20 does not apply to Section 13 (1) (d) (i) and (ii) of the Act.

(h) We clarify that the presumption in law under Section 20 of the Act is distinct from presumption of fact referred to above in point (e) as the

former is a mandatory presumption while the latter is discretionary in nature.

In the absence of evidence of the **complainant** (direct/primary, oral/documentary evidence) it is permissible to draw an inferential deduction of culpability/guilt of a public servant under Section 7 and Section 13(1)(d) read with Section 13(2) of the Act based on **other evidence** adduced by the prosecution.

2022 0 Supreme(SC) 1261; Iqram Vs. The State of Uttar Pradesh and Others; Criminal Appeal No. 2319 of 2022, SLP (Crl) No. 8238 of 2022; Decided On : 16-12-2022

Section 427 provides that when a person already undergoing a sentence of imprisonment is sentenced on a subsequent conviction to imprisonment or imprisonment for life, such imprisonment or imprisonment for life shall commence at the expiration of the imprisonment to which he has been previously sentenced, unless the court directs that the subsequent sentence shall run concurrently with such previous sentence. In other words, sub-section (1) of Section 427 confers a discretion on the court to direct that the subsequent sentence following a conviction shall run concurrently with the previous sentence.

2022 0 Supreme(SC) 1262; Rajaram Vs. State of Madhya Pradesh and Others; Criminal Appeal No. 2311 of 2022, Special Leave Petition (Crl.) No. 6762 of 2022; Decided On : 16-12-2022

This court has considered the above provision in numerous decisions and held that the weight and utility of a dying declaration depend upon the surrounding circumstances and the credibility which the court attaches to it, having regard to the evidence led before it. Therefore, whether it is essential to have medical certification before the statement is recorded, who records it, etc. are all fact dependent, and no stereotypical approach can be adopted by courts.

https://indiankanoon.org/doc/182882376/; Vikas Kumar vs The State Of Telangana on 15 December, 2022; Criminal Petition No.4740 OF 2022

As seen from the complainant and also Section 161 Cr.P.C statement made, the defacto complainant and the petitioner are both majors and working. Even according to the defacto complainant, she had accompanied the petitioner several times to various places and also had sex consensually, though she states that it was on account of promise of marriage. In the said circumstances when the petitioner and the defacto complainant being adults met and had physical relationship over a period of time, only for the reason of subsequently declining to marry

would not amount to an offence of rape. Further, it is no where mentioned in the charge sheet or the complaint that the petitioner deceitfully made the defacto complainant believe of lawful marriage and cohabited with her. When there is no such allegation, the question of attracting offence under Section 493 of IPC does not arise.

In the present case, on facts, neither the ingredients of the offence of rape punishable under Section 376(2)(n) of IPC nor the ingredients of section 493 of IPC for cohabiting deceitfully inducing belief of lawful marriage are attracted. It is not the case that there was any deceit played from the inception for which reason, an offence of cheating is not attracted.

https://indiankanoon.org/doc/53233521/; Elugeti Dasharatham vs The State Of Telangana on 14 December, 2022; CRIMINAL PETITION No.6590 OF 2022

the 2nd respondent never stayed with her parents-in-law/1st and 2nd petitioners continuously. However, she stayed for one or two weeks. Only allegations are that the parents-in-law had taken money, which the 2nd respondent provided encashing the FD and also that A1 would have get more dowry if married to someone else. Further, at the instance of parents-in-law, A1 also assaulted her in UK. Phone call conversation was in between A1 and his parents. What transpired in the said conversation, admittedly, is not known to the 2nd respondent/defacto complainant. However, she states that the parents-in-law were instigating A1. In the absence of any specific allegations which are levelled against these petitioners and the allegations made, appear to be more general in nature, proceedings cannot continue against petitioners.

Considering the allegations which are made against these petitioners, which are general and assumptive in nature, this Court finds that permitting the petitioners to undergo criminal trial on the basis of such assumptive evidence would only amount to permitting the 2nd respondent/defacto complainant prosecuting the petitioners without any evidence.

https://indiankanoon.org/doc/44123721/; State Of A.P. Rep., By Its Pp vs Nookathotti Nageshwar Rao on 14 December, 2022; CRIMINAL APPEAL No.771 of 2012

the prosecution did not even take steps to establish the exact age of PW3 as on the date of incident. Though the prosecution produced Ex.P2-Date of Birth certificate, the genuineness of the said certificate is not established by examining the author of the said certificate. No reason is assigned for non-examination of the person who issued said certificate. It is not as if the contents mentioned therein are gospel truth.

For the Court to attach value to the said certificate, the prosecution is burdened to establish its genuineness.

https://indiankanoon.org/doc/123103001/; Ansari vs The State Of Telangana on 13 December, 2022; CRIMINAL REVISION CASE No.835 OF 2022

before proceeding with the trial, the age of the accused shall be determined by the Court, if a claim is made that the person brought before the Court is a child.

Aadhaar card cannot be criteria for date of birth, when disputed by the person.

https://indiankanoon.org/doc/106247188/; D. Bhasker vs State Of Telangana And 2 Others on 13 December, 2022; CrlP No.180/2022

offence under Section 12 of the POCSO Act is cognizable and non-bailable

https://indiankanoon.org/doc/166879443/; Seni Thirupathi vs The State Of Telangana on 13 December, 2022; Criminal Petition No.9630 OF 2021

facts of altercation regarding money and the petitioners refusing to acknowledge any debt and thereafter asking the victim to go and die will not amount to an offence of abetting and instigating a person to commit suicide. During the course of heated exchange of words for the reason of owing or not owing money, it cannot be said that the petitioners have compelled the victim in any manner to commit suicide. The way the petitioners were denying any liability and refusing to pay the amount and in the process asking the victim to go and die, cannot be said to be an act of abetment to commit suicide falling within the definition of Section 107 of IPC. Unless there is an element of deliberate act of instigating or intentionally aiding a person to do a thing, can only be held to have abetted commission of such thing. Unless these ingredients are present, it would not fall within the definition of abettor under Section 108 of IPC.

https://indiankanoon.org/doc/161801437/; Kondam Madhava Reddy vs State Of Ap., Rep. Pp. Hyd., on 9 December, 2022 (DB); CRLA No.273 OF 2014

It is settled law that the conduct of an accused in an offence, previous and subsequent to the crime, is relevant fact. When the death had occurred in front of house of A-1, the appellant is under obligation in Section 313 Cr.P.C statement at least to give plausible explanation for his absence at the house, but A-1 had simply denied the prosecution case. The normal human conduct is when a dead body is found in front

of the house, the inmate of the house as owner i.e., A-1 herein was absconding. Since the accused failed to offer an explanation about his absence on the day of incident when the dead body was found in front of his house and the accused does not offer any explanation, it certainly would give rise to a very strong presumption against the accused that he committed the offence. The facts and circumstances of the case are consistent with the hypothesis that A-1 is the prime accused in the commission of gruesome murder of the deceased.

https://indiankanoon.org/doc/36716055/; Khumbam Shivakumar Reddy vs State Of Telangana on 9.12.2022; Crl.P.No.8493 of 2022

it is clearly brought to the notice of this Court that though an allegation is levelled through the complaint itself that the nude pictures of the de facto complainant were taken and she was threatened of posing the same in Internet, nothing is seized from the possession of the petitioner till now by police, atleast by issuing notice to the petitioner for production of those things. Though it is contended that a notice under Section 91 Cr.P.C. was issued to the petitioner, surprisingly, in the said notice, nothing is stated for production of any document or thing. That apart, though it is clearly narrated in the complaint that the petitioner threatened the de facto complainant to kill her with a gun and though it is contended and projected that the petitioner holds a revolver, it appears that even a request was not made to the petitioner to surrender the said weapon. The allegations levelled through the complaint are grave in nature. The de facto complainant in her Section 164 Cr.P.C. statement confirmed the allegations as narrated in the complaint and has submitted that the petitioner is a strong politician, that too at the helm of affairs. Therefore, this Court is inclined to accede to the submission of the learned counsel for the de facto complainant that the de facto complainant would not be in a position to safeguard herself and that the relevant witnesses would not be in a position to give statements in a free and fair manner in case the petitioner is granted with the relief of pre-arerst bail. Also, this Court is not inclined to accept the proposition of the learned counsel for the petitioner that pre-arrest bail is a constitutional right guaranteed under Section 21 of the Constitution of India. Though pre-arrest bail is a safeguard granted against arbitrary arrest under Section 438 Cr.P.C., it cannot be termed to be either a statutory right or constitutional right.

https://indiankanoon.org/doc/164483256/; G. Kireeti Reddy vs The State Of Telangana on 9 December, 2022; CRLP No.10911 of 2022

the money invested by the petitioner's father, whether it is a tainted money or it is a genuine investment can only be decided in a detailed trial.

The judgments referred by the petitioner counsel is pertaining to return of property which was laying in the Courts and police station and defreezing of bank accounts whereas the case on hand the prosecution alleging that it is a tainted money. Hence judgments referred by the petitioner counsel is not applicable to this case on facts.

However, in the interest of justice the petitioner/petitioner's father are at liberty for renewal of the mutual funds with a view to fetch the amount without keeping the said amount in suspense account. The respective authorities may renew the mutual funds with a view to benefit the petitioner in future if he/petitioner's father succeeds. But the petitioner/petitioner's father is not entitled for withdrawal of the same in view of the grave allegations made by CBI and Enforcement Directorate against the petitioner's father.

The petitioner having noticed that the amounts of his father were attached by the Enforcement Directorate which was confirmed by the Adjudicating Authority and matter is pending before the Hon'ble Supreme Court, even though he admitted the fact that the Enforcement Directorate has passed the Provisional Attachment Order 6 HCJ Crl.P.No.10911 of 2022 but the petitioner failed to add the Enforcement Directorate as one of the party to this proceedings. In their absence also the stage of the case cannot be ascertained in proper perspective. Similarly, the petitioner also failed to add the bank authorities in whose custody/suspense account the amounts were kept. Therefore, the petitioner is not entitled for the relief prayed in the petition.

https://indiankanoon.org/doc/48785382/; Sabawat Pandu vs P.S., Chaderghat, Hyd Ano on 7 December, 2022;CRIMINAL PETITION No.869 of 2015

law mandates that criminal cases cannot be settled through adjudication by civil Courts or that criminal jurisdiction cannot be invoked to settle civil scores

https://indiankanoon.org/doc/108703779/; Mogarala Prasad vs State Of Andhra Pradesh on 24 December, 2022; CRIMINAL PETITION NO.7420 OF 2021

Since the offences under Sections 290, 452 of IPC are non-compoundable offences, learned counsel for the petitioners relied on the judgment of the Supreme Court rendered in the case of Ramgopal v.

State of Madhya Pradesh (2021 SCC Online SC 834). As per the law enunciated in the said judgment, the High Court in exercise of its inherent power under Section 482 Cr.P.C. can quash the criminal proceedings even when the appeals are pending relating to the said criminal cases and set aside the conviction in view of the compromise entered into by both the parties in appropriate cases.

https://indiankanoon.org/doc/79226353/; Guduri Ramu vs The State Of Andhra Pradesh on 22.12.2022; MAIN CASE Crl.P.No.10247/ 2022

The allegation against the main accused in the complaint and the charge sheet was that the main accused had cheated the de facto-complainant into paying money on the promise of getting employment for her children, when he was incapable of getting any such employment. The allegation against the petitioner herein was that he had intervened in the matter asking for time to be given to the main accused to repay the money and that there was a threat of force in the event of the de facto-complainant pressing for repayment immediately.

The complaint in the charge sheet has been filed under Section 420 of Indian Penal Code. It is clear that the said provision would not, prima facie be attracted against the petitioner who is arrayed as accused No.3.

https://indiankanoon.org/doc/51707556/; Gandavarapu Ramana vs State Of A.P. on 22.12.2022; MAIN CASE Crl.P.No.10249/2022

A perusal of the complaint would show that the allegations therein would amount to a case of assault. The necessary ingredients of touching a minor girl with sexual intent is not available in the complaint and the tone and tenor of the complaint, prima facie, makes out a case of assault rather than an offence under Section 7 of the POCSO Act, 2012. As Section 8 is only prescribing the punishment for an offence under Section 7, prima facie, there may not be a case under Sections 7 or 8 of the POCSO Act. Similar considerations would arise in relation to section 354-A of Indian Penal Code also.

Judgment becomes complete on imposition of sentence

In Yakub Abdul Razak Memon vs. State of Maharashtra (2013) 13 SCC 1 has held as hereunder:-

> "106. It is clear that a conviction order is not a "judgment" as contemplated under Section 353 and that a judgment is pronounced only after the award of sentence.
>
> 113. It is also clear from the judgment that detailed submissions were made by the appellant (A-1) during the pre-sentence hearing and these

submissions were considered and, accordingly, reasons have been recorded by the Designated Judge in Part 46 of the final judgment in compliance with the requirement of Section 235(2) and Section 353 of the Code. It is also relevant to mention that Section 354 makes it clear that "judgment" shall contain the punishment awarded to the accused. It is therefore, complete only after the sentence is determined."

No Discharge after framing of charges:

in the case of Ratilal Bhanji Mithani vs. State of Maharashtra, (1979) 2 SCC 179, once the charges are framed, the accused is disentitled from praying for discharge.

313CrPC

In paragraph 145 of the well known decision of this Court in the case of Sharad Birdhichand Sarda vs. State of Maharashtra, (1984) 4 SCC 116, it was held thus:

"145. It is not necessary for us to multiply authorities on this point as this question now stands concluded by several decisions of this Court. In this view of the matter, the circumstances which were not put to the appellant in his examination under Section 313 of the Criminal Procedure Code, 1973 have to be completely excluded from consideration."

(Emphasis added)

Defective investigation

in Karnel Singh v. State of MP {(1995) 5 SCC 518} observed that in a case of defective investigation it would not be proper to acquit the accused if the case is otherwise established conclusively because in that event it would tantamount to be falling in the hands of erring investigating officer. Similarly, in Ram Bihari Yadav v. State of Bihar {(1998) 4 SCC 517 para 13} this Court observed:-

In such cases, the story of the prosecution will have to be examined dehors such omissions and contaminated conduct of the officials otherwise the mischief which was deliberately done would be perpetuated and justice would be denied to the complainant party and this would obviously shake the confidence of the people not merely in the law-enforcing agency but also in the administration of justice.

Further in Paras Yadav and others v. State of Bihar {(1999) 2 SCC 126} this Court held:-

It may be that such lapse is committed designedly or because of negligence. Hence the prosecution evidence is required to be examined dehors such omissions to find out whether the said evidence is reliable or not Further, it is to be borne in mind that criminal trial is meant for doing justice to the accused, victim and the

society so that law and order is maintained. Hence, as observed by this court in State of UP v. Anil Singh, (AIR 1988 SC 1998) it is necessary to remember that a Judge does not preside over a criminal trial merely to see that no innocent man is punished. A Judge also presides to see that a guilty man does not escape. One is as important as the other. Both are public duties which the Judge has to perform.

Delay in examination of witnesses by I.O.

In Dr Krishna Pal & Anr. v. State of U.P. {(1996) 7 SCC 194} this court rejected similar contention of non-explanation by the prosecution as to why eye- witnesses had not been examined shortly after the incident and for inordinate delay in examining them, by holding that it would not be a ground to discard the convincing and reliable evidence adduced in the case.

Non-examination of IO, Medical Officer, MVI

https://indiankanoon.org/doc/112318015/; Patri Srinivasa Rao, vs The State Of Ap Rep By Its Pp Hyd., on 3 December, 2019; CRIMINAL REVISION CASE No.1613 OF 2006

the non-examination of the Investigating Officer, the Doctor and the Motor Vehicle Inspector is also not fatal to the case of the prosecution. As can be seen from the record, there are no material contradictions marked in the evidence of any of the prosecution witnesses, so as to confront the same to the Investigation Officer to prove the said contradictions in the evidence of prosecution case. So, no prejudice is caused to the accused on account of non-examination of the said Investigating Officer. Further, as the Investigating Officer died during the pendency of the trial, he could not be examined.

As regards the non-examination of the Motor Vehicle Inspector is concerned, he has given a certificate certifying that the accident has not occurred due to any mechanical defect. It is not the case of the accused or the defence in the case that the accident occurred due to any mechanical defect. He did not give any suggestion to any of the witnesses to show that the accident occurred due to any mechanical defect. So, when it is not the case of the defence that accident occurred due to mechanical defect, the non-examination of the Motor Vehicle Inspector, cannot also be held to be fatal to the case of the prosecution. Similarly, the death of the two persons in the said accident and the injuries sustained by the other witnesses is also not in controversy. So, the non-examination of Doctor is also not fatal to the prosecution case.

NEWS

- MINISTRY OF HOME AFFAIRS NOTIFICATION New Delhi, the 8th December, 2022 No. 11024/55/2022-PMA.—the Union Home Minister is pleased to award the "Union Home Minister's Special Operation Medal" for the Year- 2022 to the mentioned officials:

- MINISTRY OF HOME AFFAIRS NOTIFICATION New Delhi, the 28th December, 2022 No. 11019/40/2022-PMA.—The "Prime Minister's Police Medal for Life Saving" instituted by Ministry of Home Affairs, stands discontinued with immediate effect.

- Wild Life (Protection) Amendment Act, 2022, published in CG-DL-E-20122022-241252 Extraordinary part-II, dated 20th December, 2022.

- the Constitution (Scheduled Castes and Scheduled Tribes) Orders (Second Amendment) Act, 2022 Published in CG-DL-E-24122022-241400 Extraordinary part-II, dated 24th December, 2022.

- the Narcotic Drugs and Psychotropic Substances (Seizure, Storage, Sampling and Disposal) Rules, 2022 Published in CG-DL-E-23122022-241357 Extraordinary part-II, dated 23rd December, 2022.

- MINISTRY OF FINANCE (Department of Revenue) (CENTRAL BOARD OF DIRECT TAXES) (INVESTIGATION DIVISION-V) NOTIFICATION New Delhi, the 26th December, 2022 S.O. 6066(E).—In exercise of the powers conferred by sub-section (1) of section 280A of the Income-tax Act, 1961 (43 of 1961) read with section 84 of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 (22 of 2015), the Central Government, in consultation with the Chief Justice of the High Court of Orissa, designates the Courts in the State of Odisha, as mentioned in column (2) of the Table as Special Courts

- GOVERNMENT OF TELANGANA ABSTRACT IPS – Certain transfers and postings – Orders – Issued- GENERAL ADMINISTRATION (SPECIAL-B) DEPARTMENT G.O.Rt.No.2438 Dated:29.12.2022.
    - Sri Anjani Kumar, IPS (1990), Director General, Anti-Corruption Bureau, Telangana is transferred and posted as Director General of Police (Coordination), Telangana and placed in full additional charge of the post of Director General of Police (HoPF), Telangana State

- Sri Ravi Gupta, IPS (1990), Principal Secretary to Government, Home Department is transferred and posted as Director General, Anti-Corruption Bureau, Telangana and is also placed in full additional charge of the post of Director General (V&E), General Administration Department, until further orders.
- Dr. Jitender, IPS (1992), Additional Director General of Police (L&O) O/o DGP, Telangana is transferred and posted as Principal Secretary to Government, Home Department and is also placed in full additional charge of the post of Director General of Prisons & Correctional Services, Telangana, Hyderabad, until further orders.
- Sri Mahesh Muralidhar Bhagwat, IPS (1995), Commissioner of Police, Rachakonda Commissionerate is transferred and posted as Additional Director General of Police, CID, Telangana in the existing vacancy.
- Sri Devendra Singh Chauhan, IPS (1997), Additional Commissioner of Police (L&O), Hyderabad City is transferred and posted as Commissioner of Police, Rachakonda Commissionerate
- Sri Sanjay Kumar Jain, IPS (1997), Additional Director General of Police (P&L) O/o DGP, Telangana is transferred and posted as Additional Director General of Police (L&O), Telangana, Hyderabad and is also placed in full additional charge of the post of Director General, Telangana State Disaster Response & Fire Services, Telangana, Hyderabad, until further orders

ON A LIGHTER VEIN

This is a friendly reminder about drinking and driving during New Year.
A friend went out last night.
After drinking he made a sensible decision to leave his car at the pub and took the bus home.
He was really proud of himself this morning.
He had never driven a bus before!!

✍The Prosecution Replenish,
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Prosecution Replenish

(An Endeavour for Learning & Excellence)

Vol : XI

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Aano Bhadr Kratvo Yantu Viswatah

(Let Noble Thoughts Come To Me from All Directions)

CITATIONS

2023 0 Supreme(SC) 12; B. Venkateswaran & Ors. Vs. P. Bakthavatchalam; Criminal Appeal No. 1555 of 2022 (@ SLP (Crl.) No. 3411/2021); Decided On : 05-01-2023

In the entire complaint, there are no allegations that the complainant is obstructed and/or interfered with enjoyment of his right on his property deliberately and willfully knowing that complainant belongs to SC/ST. From the material on record, it appears that a civil dispute is converted into criminal dispute and that too for the offence under the provisions of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

None of the ingredients of Sections 3(1)(v) and (va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 are made out and/ or satisfied.

https://indiankanoon.org/doc/35463642/;CRL.A.No.1153_2014;Potnuru Appala Naidu vs P.P., Hyd on 6 January, 2023 (DB) APHC

the evidence of PW.1 shows that for the first time, they had sexual intercourse in the year 2007. As seen from the suggestions put to PW.1 in the cross- examination that the marriage of the accused with one Hemalatha held in the year 2005, the accused was blessed with a son in the year 2007; he performed a Barasala function. In the facts of the case, it is difficult to believe that the accused developed intimacy with

PW.1 with an intention to marry her. No material is placed to suggest that the false promise of marriage had no nexus to the consent of the prosecutrix for having sexual intercourse with the Appellant. As already indicated, the accused was a married man. He concealed his marriage to the victim, and as a result, she developed intimacy with the accused. It was apparent from the conduct of the Appellant that he only wanted to indulge in sexual intercourse with the victim, and he had no intention of actually marrying the victim. The victim, in her cross-examination, affirmed that the Appellant obtained her consent on the pretext of marriage. There is no evidence at all that they were in deep love; the evidence on record indicates that the Appellant obtained her consent to gratify his lust, knowing it fully well that he would never marry her. The conduct of the Appellant has proved that even though he had no intention to marry her, being already married and blessed with a son, he kept the promise of marriage alive to obtain her consent for having sexual intercourse. His intention was thus really malafide. Clearly, in this case, the whole conduct of the Appellant irresistibly led us to conclude that he never wanted to marry the victim because he was already married and had a son from his marriage; he concealed these facts. One also must be mindful of the fact that the victim would not have consented to sexual intercourse with him had she not been deceived by the Appellant with the false promise of marriage.

Having regard to the ratio of Judgments cited supra, and applying the same to the evidence and the facts and circumstances of the case, we are of the considered opinion that the findings of the Trial court with regard to the guilt of the accused for the offences under section 376 and 417 of I.P.C is well founded.

it is clear that knowing victim is a member of scheduled caste is not sufficient to convict the accused as the offence in question in the instant case took place prior to 25.10.2012, whereas the amendment came into force with effect from 20.01.2016.

https://indiankanoon.org/doc/106053610/; Kaligithi Sekhar vs State Of AP(DB) on 6 January, 2023; Crl.Appeal No. 322 of 2013

It cannot be laid down as a rule of universal application that whenever one blow is given, Section 302 IPC is ruled out. It would depend upon the weapon used, its size, the force with which the blow was given, the body part it was given and several such relevant factors. The evidence (2000) 9 SCC 1 Page No.32 Crl.Appeal No. 322 of 2013 on record shows that the injury caused by the accused resulted in the instantaneous death of the deceased.

The intention of a person has to be gathered from his acts, as indeed there is no other measure of ascertaining the same. We are of opinion

that while appreciating the evidence brought on record by the prosecution total evidence has to be appreciated in its entirety. It transpires from the record that there was premeditation and the accused had been carrying a knife with the intention to attack the deceased.
The material on record does not suggest that as a result of the quarrel, on the spur of the movement, the appellant attacked the deceased with a knife. There is nothing on record to suggest that the accused caused the death of the deceased in the heat of passion.

https://indiankanoon.org/doc/163737530/; Mangalapalli Venkata Subramanya ... vs The State Of Andhra Pradesh on 6 January, 2023; CRIMINAL PETITION NO.10042 OF 2022
As many as 18 crimes have been registered as against the petitioner and others. It is submitted that in respect of other crimes, police filed application for custody and the court below granted custody of the petitioner to the investigating agency. It is submitted that investigation is at nascent stage and certain shell companies have to be identified by the investigating agency. In view of the same and having regard to the gravity of the offence and since custody of the petitioner is also granted by the court below to the investigating agency, in respect of other crimes, this Court is not inclined to grant bail to the petitioner at this stage.

https://indiankanoon.org/doc/65496052/; Kakanuti Venkata Ramireddy vs State of AP on 06.01.2023; I.A.No 1 & 2 in Crl.RC No.23 of 2023
When the suit is pending between both the parties, initiation of proceedings under Section 145 Cr.P.C., is nothing but multiplicity of proceedings.

2023 0 Supreme(SC) 2; Deepak Gaba and Others Vs. State of Uttar Pradesh and Another; Criminal Appeal No. 2328 of 2022; 02-01-2023
In order to apply Section 420 of the IPC, namely cheating and dishonestly inducing delivery of property, the ingredients of Section 415 of the IPC have to be satisfied. To constitute an offence of cheating under Section 415 of the IPC, a person should be induced, either fraudulently or dishonestly, to deliver any property to any person, or consent that any person shall retain any property. The second class of acts set forth in the section is the intentional inducement of doing or omitting to do anything which the person deceived would not do or omit to do, if she were not so deceived. Thus, the sine qua non of Section 415 of the IPC is “fraudulence”, “dishonesty”, or “intentional inducement”,

and the absence of these elements would debase the offence of cheating.
Summoning order is to be passed when the complainant discloses the offence, and when there is material that supports and constitutes essential ingredients of the offence. It should not be passed lightly or as a matter of course. When the violation of law alleged is clearly debatable and doubtful, either on account of paucity and lack of clarity of facts, or on application of law to the facts, the Magistrate must ensure clarification of the ambiguities. Summoning without appreciation of the legal provisions and their application to the facts may result in an innocent being summoned to stand the prosecution/trial. Initiation of prosecution and summoning of the accused to stand trial, apart from monetary loss, sacrifice of time, and effort to prepare a defence, also causes humiliation and disrepute in the society. It results in anxiety of uncertain times.

2023 0 Supreme(SC) 35; State Through Central Bureau of Investigation Vs. T. Gangi Reddy @ Yerra Gangi Reddy; Criminal Appeal No. 37 of 2023; Decided on : 16-01-2023
there is no absolute bar as observed and held by the High Court in the impugned judgment and order that once a person is released on default bail under Section 167(2) Cr.P.C., his bail cannot be cancelled on merits and his bail can be cancelled on other general grounds like tampering with the evidence/witnesses; not cooperating with the investigating agency and/or not cooperating with the concerned Trial Court etc.
in a case where an accused is released on default bail under Section 167(2) Cr.P.C., and thereafter on filing of the chargesheet, a strong case is made out and on special reasons being made out from the chargesheet that the accused has committed a non-bailable crime and considering the grounds set out in Sections 437(5) and Section 439(2), his bail can be cancelled on merits and the Courts are not precluded from considering the application for cancelation of the bail on merits. However, mere filing of the chargesheet is not enough, but as observed and held hereinabove, on the basis of the chargesheet, a strong case is to be made out that the accused has committed non-bailable crime and he deserves to be in custody.

2023 0 Supreme(SC) 39; Jabir & Ors. Vs. State of Uttarakhand; Criminal Appeal No(s). 972 of 2013; Decided On : 17-01-2023
A basic principle of criminal jurisprudence is that in circumstantial evidence cases, the prosecution is obliged to prove each circumstance, beyond reasonable doubt, as well the as the links between all circumstances; such circumstances, 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; further, the facts so proved should unerringly point towards the guilt of the accused. 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, and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.

2023 0 Supreme(SC) 42; John Anthonisamy @ John Vs. State, Rep. by the Inspector of Police; Criminal Appeal No. 466 of 2017; Decided on : 19-01-2023

The engine and gear box of the stolen car were found from the custody of PW-17 on the disclosure statement made by A-1. Though, PW-17 has turned hostile, however, at the same time, the recovery of engine and gear box from PW17 which were recovered on the disclosure statement made by A-1 has been established and proved by the prosecution by examining Police witness – PW-30, we see no reason to disbelieve PW-30 on the aforesaid.

2023 0 Supreme(SC) 63; Saurav Das Vs. Union of India and Others; Writ Petition (Civil) No. 1126 of 2022; Decided On : 20-01-2023

on conjoint reading of Section 173 Cr.P.C. and Section 207 Cr.P.C. the Investigating Agency is required to furnish the copies of the report along with the relevant documents to be relied upon by the prosecution to the accused and to none others. Therefore, if the relief as prayed in the present petition is allowed and all the charge-sheets and relevant documents produced along with the charge-sheets are put on the public domain or on the websites of the State Governments it will be contrary to the Scheme of the Criminal Procedure Code and it may as such violate the rights of the accused as well as the victim and/or even the investigating agency. Putting the FIR on the website cannot be equated with putting the charge-sheets along with the relevant documents on the public domain and on the websites of the State Governments.

Copies of the charge-sheet and the relevant documents along with the charge-sheet do not fall within Section 4(1)(b) of the RTI Act. Under the circumstances also the reliance placed upon Section 4(1)(2) of the RTI Act is also misconceived and misplaced.

2023 0 Supreme(SC) 66; Boby Vs. State Of Kerala; Criminal Appeal No.1439 of 2009; Decided on : 12-01-2023

it is say of the investigating officer that the accused appellant while in custody on his own free will and volition made a statement that he would lead to the place where he had hidden the weapon of offence, the site of

burial of the dead body, clothes etc., then the first thing that the investigating officer should have done was to call for two independent witnesses at the police station itself. Once the two independent witnesses would arrive at the police station thereafter in their presence the accused should be asked to make an appropriate statement as he may desire in regard to pointing out the place where he is said to have hidden the weapon of offence etc. 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.

the two essential requirements for the application of Section 27 of the Evidence Act are that (1) the person giving information must be an accused of any offence and (2) he must also be in police custody. The Court held that the provisions of Section 27 of the Evidence Act are based on the view that if a fact is actually discovered in consequence of information given, some guarantee is afforded thereby that the information was true and consequently the said information can safely be allowed to be given in evidence.

the last seen theory comes into play where the time-gap between the point of time when the accused and the deceased were last seen alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. If the gap between the time of last seen and the deceased found dead is long, then the possibility of other person coming in between cannot be ruled out.

2023 0 Supreme (SC) 68; Bimla Tiwari Vs. State Of Bihar & Ors.; Special Leave Petition (CRL.) Nos.834-835 of 2023 [Diary No.41186 of 2022]; Decided On : 16-01-2023

We would reiterate that the process of criminal law cannot be utilised for arm-twisting and money recovery, particularly while opposing the prayer for bail. The question as to whether pre-arrest bail, or for that matter regular bail, in a given case is to be granted or not is required to be examined and the discretion is required to be exercised by the Court with reference to the material on record and the parameters governing bail considerations. Putting it in other words, in a given case, the concession of pre-arrest bail or regular bail could be declined even if the accused has made payment of the money involved or offers to make any payment; conversely, in a given case, the concession of pre-arrest bail or regular bail could be granted irrespective of any payment or any offer of payment.

2023 0 Supreme(SC) 70; Prasad Pradhan & Anr. Vs. The State Of Chhattisgarh; Criminal Appeal No(s). 2025 of 2022; 24-01-2023

There can be no stereotypical assumption or formula that where death occurs after a lapse of some time, the injuries (which might have caused the death), the offence is one of culpable homicide. Every case has its unique fact situation. However, what is important is the nature of injury, and whether it is sufficient in the ordinary course to lead to death. The adequacy or otherwise of medical attention is not a relevant factor in this case, because the doctor who conducted the post-mortem clearly deposed that death was caused due to cardio respiratory failures, as a result of the injuries inflicted upon the deceased. Thus, the injuries and the death were closely and directly linked.

If one were to apply the above tests to the present case, what is evident is that while there were pre-existing disputes of some vintage, between the appellants and the deceased, there is nothing to show that they had been aggravated. It is also, likewise, not clear whether the deceased said anything to the appellants which triggered their ire, leading to loss of self-control as to result in “grave and sudden provocation”. In any case, if there were something, the appellants ought to have brought the relevant material or evidence on record, as what facts did exist, was within their peculiar knowledge.

2023 0 Supreme(SC) 71; Munna Lal vs The State of Uttar Pradesh; Criminal Appeal No. 490 of 2017 WITH Sheo Lal Vs. The State of Uttar Pradesh; Criminal Appeal No. 491 of 2017; 24-01-2023

Before embarking on the exercise of deciding the fate of these appellants, it would be apt to take note of certain principles relevant for a

decision on these two appeals. Needless to observe, such principles have evolved over the years and crystallized into settled principles of law. These are:

(a) Section 134 of Indian Evidence Act, 1872, enshrines the well-recognized maxim that evidence has to be weighed and not counted. In other words, it is the quality of evidence that matters and not the quantity. As a sequitur, even in a case of murder, it is not necessary to insist upon a plurality of witnesses and the oral evidence of a single witness, if found to be reliable and trustworthy, could lead to a conviction.

(b) Generally speaking, oral testimony may be classified into three categories:

(i) Wholly reliable.

(ii) Wholly unreliable.

(iii) Neither wholly reliable nor wholly unreliable.

The first two category of cases may not pose serious difficulty for the court in arriving at its conclusions. However, in the third category of cases, the court has to be circumspect and look for corroboration of any material particulars by reliable testimony, direct or circumstantial, as a requirement of the rule of prudence.

(c) A defective investigation is not always fatal to the prosecution where ocular testimony is found credible and cogent. While in such a case the court has to be circumspect in evaluating the evidence, a faulty investigation cannot in all cases be a determinative factor to throw out a credible prosecution version.

(d) Non-examination of the Investigating Officer must result in prejudice to the accused; if no prejudice is caused, mere non-examination would not render the prosecution case fatal.

(e) Discrepancies do creep in, when a witness deposes in a natural manner after lapse of some time and if such discrepancies are comparatively of a minor nature and do not go to the root of the prosecution story, then the same may not be given undue importance.

It is true that mere failure/neglect to effect seizure of the weapons cannot be the sole reason for discarding the prosecution case but the same assumes importance on the face of the oral testimony of the so-called eyewitnesses, i.e. PW-2 and PW-3, not being found by this Court to be wholly reliable.

Whether or not non-examination of a witness has caused prejudice to the defence is essentially a question of fact and an inference is required to be drawn having regard to the facts and circumstances obtaining in

each case. The reason why the Investigating Officer could not depose as a witness, as told by PW-4, is that he had been sent for training. It was not shown that the Investigating Officer under no circumstances could have left the course for recording of his deposition in the trial court. It is worthy of being noted that neither the trial court nor the High Court considered the issue of non-examination of the Investigating Officer. In the facts of the present case, particularly conspicuous gaps in the prosecution case and the evidence of PW-2 and PW-3 not being wholly reliable, this Court holds the present case as one where examination of the Investigating Officer was vital since he could have adduced the expected evidence. His non-examination creates a material lacuna in the effort of the prosecution to nail the appellants, thereby creating reasonable doubt in the prosecution case.

As far as non-obtaining of ballistic report is concerned, it is no doubt true that its essentiality would depend upon the circumstances of each case. Here, since no weapon of offence was seized, no ballistic report was called for and obtained.

Although, mere defects in the investigative process by itself cannot constitute ground for acquittal, it is the legal obligation of the Court to examine carefully in each case the prosecution evidence de hors the lapses committed by the Investigating Officer to find out whether the evidence brought on record is at all reliable and whether such lapses affect the object of finding out the truth.

2023 0 Supreme(SC) 77; Naim Ahamed Vs. State (NCT of Delhi); Criminal Appeal No. 257 of 2023, SLP (Crl.) No. 8586 of 2017; Decided On : 30-01-2023

it is pertinent to note that there is a difference between giving a false promise and committing breach of promise by the accused. In case of false promise, the accused right from the beginning would not have any intention to marry the prosecutrix and would have cheated or deceited the prosecutrix by giving a false promise to marry her only with a view to satisfy his lust, whereas in case of breach of promise, one cannot deny a possibility that the accused might have given a promise with all seriousness to marry her, and subsequently might have encountered certain circumstances unforeseen by him or the circumstances beyond his control, which prevented him to fulfill his promise. So, it would be a folly to treat each breach of promise to marry as a false promise and to prosecute a person for the offence under Section 376. As stated earlier, each case would depend upon its proved facts before the court.

The evidence of the witness has to be recorded in the language of the court or in the language of the witness as may be practicable and then get it translated in the language of the court for forming part of the

record. However, recording of evidence of the witness in the translated form in English language only, though the witness gives evidence in the language of the court, or in his/her own vernacular language, is not permissible. As such, the text and tenor of the evidence and the demeanor of a witness in the court could be appreciated in the best manner only when the evidence is recorded in the language of the witness. Even otherwise, when a question arises as to what exactly the witness had stated in his/her evidence, it is the original deposition of the witness which has to be taken into account and not the translated memorandum in English prepared by the Presiding Judge. It is therefore directed that all courts while recording the evidence of the witnesses, shall duly comply with the provisions of Section 277 of Cr.P.C.

NOSTALGIA

Time Gap for Last Seen Theory

In Bodhraj v. State of (2002) 8 SCC 45) held that :

"31. The last seen theory comes into play where the time gap between the point of time when the accused and the deceased were last seen alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible."

ON A LIGHTER VEIN

Q: Why was the dead man happy to be sentenced during his trial?
A: Because they gave him life.

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Vol : XI

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Aano Bhadr Kratvo Yantu Viswatah

(Let Noble Thoughts Come To Me from All Directions)

CITATIONS

2023 0 Supreme(SC) 109; Chandmal @ Chandanmal Vs. The State of Madhya Pradesh & Anr.; Criminal Appeal No. 359 of 2023 [@ SLP [Crl.] No. 1912 of 2022] With Criminal Appeal No. 360 of 2023 [@ SLP(Crl) No. 3112 of 2022]; Decided On : 07-02-2023

We would normally expect that even in the District Courts, in the Covid period, arrangements would have been made for virtual hearing. It is not as if the virtual method of appearing before the Court has to be abandoned as this is an alternative method of appearance now which is to be followed by different Courts.

2023 0 Supreme(SC) 120; Suresh Vs. State of Kerala; Criminal Appeal No(s). 452 of 2023 (Arising out of SLP(Crl.) No(s). 178 of 2020); 14-02-2023

A strict scrutiny of the oral evidence tendered by PW-13 would show that there is no embellishment but what is narrated by her is the true version of what she had experienced on the alleged date and time of the

incident. She had given a narration of the alleged incident which is having two separate episodes. The first one is that the accused came to her house and as usual picked up quarrel with her husband and they fought with each other at the verandah of the house. It is also spoken by her that during the course of quarrel between the appellant and the victim, the victim gave a stab injury to the appellant. On receiving the stab injury, the appellant went away from her house. The second episode, according to her, started when PW-13 and her husband were sleeping in their dwelling house, the accused appellant stealthily entered into the house with a wooden stick and took a country grinding stone and hit on the victim's head. He had also attacked PW-13 by beating on her cheek and body and she fell down. The appellant again hit on victim's head with the country grinding stone and then left the place.

On consideration of the prosecution evidence and of PW-13 which is supported by PW-14 in particular, we are of the view that the death of the victim was not caused in the heat of the sudden fight and it was a case of murder under Section 302 IPC and not under any exceptions of Section 300 IPC. Further, the appellant has rightly been convicted under Sections 302 and 449 IPC.

2023 0 Supreme(SC) 122; Ajai Alias Ajju & Ors. Vs. The State Of Uttar Pradesh; Criminal Appeal Nos.598-600 of 2013 With Criminal Appeal No.337 of 2014 and With Criminal Appeal Nos.745-748 of 2015: 15-02-2023

PW-1 is an injured witness. Her injuries have not been challenged. There is no reason why PW-1 would make false implication and allow the real assailants to go scot-free. A perusal of her testimony shows that she has fully supported the prosecution story as narrated by her in her statement under section 161 CrPC. Even during cross-examination nothing has been elicited from her which in any way may weaken or demolish her testimony. She was a fully reliable witness and has stated the things in natural course.

The pressing of the dog squad into service was also fully justified as till that time when the dog squad was pressed into service in the morning the names of the assailants had not been disclosed. The dog squad had been pressed into service as per the FIR since the names of the assailants were not known. It is the case of the prosecution itself that the time when the FIR was lodged and at the time when Smt Pinky (PW-1) was admitted to the hospital, the names of the assailants had not been disclosed deliberately and for justifiable reasons. The daughters of the deceased Vijay Pal Singh needed to protect their lives otherwise they would also had been done to death.

Non-examination of Ms Rashmi and Horam, father of Vijay Pal Singh also has no material bearing. It is the discretion of the prosecution to lead as much evidence as is necessary for proving the charge. It is not the quantity of the witnesses but the quality of witnesses which matters. Smt Pinky (PW-1) was the injured witness having received grievous and life-threatening injuries. We are not impressed by this argument also.
Non-examination of the statement under section 164 CrPC also has no relevance or bearing to the findings and conclusions arrived at by the courts below. It was for the Investigating Officer to have got the statement under section 164 CrPC recorded. If he did not think it necessary in his wisdom, it cannot have any bearing on the testimony of PW-1 and the other material evidence led during trial.
Learned Amicus for the appellant Mukesh has tried to point out several discrepancies and inconsistencies in the evidence. We need not go into details as the same are minor and do not have any impact on the findings recorded by the courts below.

2023 0 Supreme(SC) 126; Ram Gopal S/o Mansharam Vs. State of Madhya Pradesh; Special Leave Petition (Crl.) No. 9221 of 2018; 17-02-2023

It cannot be gainsaid that when the entire case of the prosecution hinges on the circumstantial evidence, the entire chain of circumstances has to be completely proved, which unerringly would lead to the guilt of the accused and none else.
it is discernible that though the last seen theory as propounded by the prosecution in a case based on circumstantial evidence may be a weak kind of evidence by itself to base conviction solely on such theory, when the said theory is proved coupled with other circumstances such as the time when the deceased was last seen with the accused, and the recovery of the corpse being in very close proximity of time, the accused does owe an explanation under Section 106 of the Evidence Act with regard to the circumstances under which death might have taken place. If the accused offers no explanation or furnishes a wrong explanation, absconds, motive is established and some other corroborative evidence in the form of recovery of weapon etc. forming a chain of circumstances is established, the conviction could be based on such evidence.
The time gap between the period when the deceased was last seen with the accused and the recovery of the corpse of the deceased being quite proximate, the non-explanation of the petitioner with regard to the circumstance under which and when the petitioner had departed the company of the deceased was a very crucial circumstance proved against him. Having regard to the oral evidence of the witnesses, the enmity between the deceased and the petitioner had also surfaced. The

corroborative evidence with regard to recovery of the weapon – axe alleged to have been used in the commission of crime from the petitioner, also substantiated the case of prosecution.

2023 0 Supreme(SC) 149; Vahitha Vs. State of Tamil Nadu; Criminal Appeal No. 762 of 2012; Decided On : 22-02-2023

Taking an overall view of the matter, we do not find any reason that entire prosecution case be disbelieved and discarded because PW-1 has not projected the case in a consistent manner. Apart from the private witnesses, all the relevant facts have been duly established in the testimonies of the official witnesses too. The discrepancies as noticed in the present case, at the most, could be said to be of minor contradictions or inconsistencies or embellishments of trivial nature and are reasonably referable to the reasons recounted by this Court in Bharwada Bhoginbhai Hirjibhai vs. State of Gujarat, (1983) 3 SCC 217, for which, the minor discrepancies do occur in evidence and excessive importance cannot be attached to them.

Another submission made on behalf of the appellant, that her husband has not been examined by the prosecution, does not take her case any further. Her husband was not shown to be in the country at the time of incident and he was not a direct witness in relation to the material facts to be established by the prosecution. Other way round, if at all the appellant considered him to be a material witness, nothing prevented her from making a prayer to the Court for his examination and nothing prevented her from making specific submissions in that regard during her examination under Section 313 Cr.P.C.

As regards the statement under Section 313 Cr.P.C. the appellant has not given any explanation whatsoever and has not made any statement except denying the circumstances put to her. In the facts of the present case, when the prosecution evidence categorically established the fact that the victim child was last seen alive with the appellant only; she was required to explain the circumstances leading to the demise of the child. Upon her failure to do so and failure to give the explanation with regard to the circumstances under which death may have taken place, burden of Section 106 of the Evidence Act operates heavily against the appellant

The submissions made in the alternative that in the given set of circumstances, the present case could only be of culpable homicide not amounting to murder has only been noted to be rejected. Even if it be taken that there was a quarrel of the appellant with her mother-in-law (PW-1) in the morning of the date of incident because the appellant wanted to go the place of her father, it cannot be said that such a quarrel would make it a case of grave and sudden provocation. The

circumstances as proved on record, and the manner of commission of crime, make it clear that the present case cannot be brought under any of the Exceptions of Section 300 IPC and conviction and sentencing of the appellant under Section 302 IPC cannot be faulted.

2023 0 Supreme(SC) 156; Pawan Khera Vs. The State Of Assam & Anr; Writ Petition(Criminal) Diary No(s). 8222 of 2023; Decided on : 23-02-2023

We are inclined to entertain the petition confined to the issue as to whether the FIRs should be clubbed in one and the same jurisdiction. Such a course of action has been previously adopted by this Court in Arnab Ranjan Goswami v Union of India, (2020) 14 SCC 12.

2023 0 Supreme(SC) 144; Juhru & Ors. Vs. Karim & Anr.; Criminal Appeal No.549 of 2023 [Arising out of Special Leave Petition (Criminal) No. 1658 of 2020] Decided On : 21-02-2023

We may hasten to add that with a view to prevent the frequent misuse of power to summon additional accused under Section 319 Cr.P.C., and in conformity with the binding judicial dictums referred to above, the procedural safeguard can be that ordinarily the summoning of a person at the very threshold of the trial may be discouraged and the trial court must evaluate the evidence against the persons sought to be summoned and then adjudge whether such material is, more or less, carry the same weightage and value as has been testified against those who are already facing trial. In the absence of any credible evidence, the power under Section 319 Cr.P.C. ought not to be invoked.

2023 0 Supreme(SC) 152; The Directorate of Enforcement Vs. M. Gopal Reddy & Anr.; Criminal Appeal No. 534 of 2023 (@SLP (Crl) No. 8260 of 2021); Decided on : 24-02-2023

Now so far as the submissions on behalf of respondent No. 1 that respondent No. 1 was not named in the FIR with respect to the scheduled offence and that the other accused are discharged/acquitted is concerned, merely because other accused are acquitted, it cannot be a ground not to continue the investigation against respondent No. 1. An enquiry/investigation is going on against respondent No. 1 with respect to the scheduled offences. Therefore, the enquiry/investigation itself is sufficient at this stage.

the rigour of Section 45 of the PMLA Act, 2002 shall be applicable even with respect to the application under Section 438 Cr.PC.

2023 0 Supreme(SC) 154; State of Madhya Pradesh Vs. Jad Bai; Criminal Appeal No. 586 of 2023, SLP (Criminal) No. 8692 of 2022; 24-02-2023

The deposition of the eye-witness is required to be considered as a whole and it cannot be in a particular part or sequence. On considering the deposition of PW-1 as a whole, the presence of the respondent at the place of the occurrence has been established. The prosecution has also established that the respondent caught hold of the deceased. In her section 313 statement, the respondent-original accused No. 3 has not explained why she caught hold of the deceased. Thus, the participation in action of the respondent has been established and proved. If the respondent would not have caught hold of the deceased, in that case the original accused No. 1 might not have been able to cause injuries on the head of the deceased. Thus, it can be seen that the respondent participated actively in commission of the offence and shared the common intention to kill the deceased.

2023 0 Supreme(SC) 163; Anant Thanur Karmuse Vs. State of Maharashtra & Ors.; Criminal Appeal No. 13 of 2023; 24-02-2023

the victim has a fundamental right of fair investigation and fair trial. Therefore, mere filing of the charge-sheet and framing of the charges cannot be an impediment in ordering further investigation/re-investigation/de novo investigation, if the facts so warrant.

https://indiankanoon.org/doc/167302873/; Gandeti Dhana Karthk vs The State Of Andhra Pradesh on 24 February, 2023; CRIMINAL REVISION CASE No.964 OF 2022

The accused, the prosecution and the victim are stake holders of criminal justice system. It is settled law that the concept of 'fair trial' includes fair trial to victim also. Right to fair trial is cornerstone of administration of justice and it is a sine qua non of Article 21 of the Constitution of India. Such a right cannot be confined only to the accused. The victim is represented by the Public Prosecutor and is entitled to have a copy of the document filed on behalf of the accused. Principles of natural justice also enunciate that the other stake holder has a right to know the documents being filed by the other stake holder, in order not only to know its contents but also to ascertain its genuineness. No doubt, in a criminal trial, the entire burden casts on the prosecution to prove its case beyond reasonable doubt as against the accused. But, denial of furnishing copy of the documents filed on behalf of the accused to the prosecution, which is representing the victim, does not fulfil requirements of the principles of natural justice and also fair trial. As rightly observed by the Court below, the admissibility and other

aspects with regard to the said documents, have to be adjudicated separately.

https://indiankanoon.org/doc/3988465/; State Of AP Rep by Spl PP vs Sri Juthiga Murali Krishna. 23 February, 2023; CRIMINAL APPEAL NO.1016 OF 2007

The so-called version of A.O.1 and A.O.2 is hit under the provisions of Indian Evidence Act. The natural tendency of A.O.1 and A.O.2 in the given situation would be to disclose something so as to say that they are innocents. Here it is very doubtful as to whether A.O.1 and A.O.2 gave such confession during post-trap. So, the so-called version of A.O.1 and A.O.2 in the post-trap is hit under the provisions of Section 25 of the Indian Evidence Act.

https://indiankanoon.org/doc/87651312/; Bonthu Varalakshmi vs The State Of Andhra Pradesh on 23 February, 2023; Writ Petition No.37059 of 2022

the complicity of the detenue in those cases can be decided only after the trial. It is true that the 2 nd respondent who is the Detaining Authority cannot go into such merits. However, in order to test whether the acts of the detenue effect adversely to the maintenance of public order, the Detaining Authority shall consider whether the cases in which the detenue was allegedly involved, prima facie establish his involvement even if prosecution case is unchallenged.

https://indiankanoon.org/doc/17039951/; Dasari Ram Babu vs The State of A.P; on 21 February, 2023;CRIMINAL REVISION CASE No.1040 of 2009

Be it noted, mere relationship between witnesses does not make one witness an interested witness. A witness ceases to be neutral and could be categorized as interested only when the material is shown that he is prepared to speak falsehood and implicate an innocent.

https://indiankanoon.org/doc/151310897/; Marneedi Durga Prasad Prasad vs The State Of Andhra Pradesh on 20 February, 2023; Criminal Petition No.1300 of 2023

Case registered for the offences punishable under Sections 417, 376(2) (n), 313, 323, 506 read with 34 IPC and Sections 3(1)(r), 3(1)(s), 3(2)(v) and 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

It is stated by 2nd respondent-defacto complainant in the affidavit filed in support of I.A.No.4 of 2023 that she realized that her love was one side for which she bore grudge against petitioner No.1/A.1 and lodged the report. She further stated that elders advised her to settle the issue

peacefully and that she wishes to marry in furture and the present complaint may cause hurdle to such marriage. She further stated in the affidavit that there is no coercion, force or misrepresentation from anybody in giving the said affidavit or in compounding the present case and out of her free will and wish, she was giving the affidavit.
as the parties have entered into a compromise and compounded the offences, this Criminal Petition is allowed and the proceedings in Crime No.22 of 2023 of Tadepalligudem Town Police Station, West Godavari district, against the petitioners herein/A-1 to A-3 are hereby quashed.

https://indiankanoon.org/doc/183902358/; Syed Khaja Ziauddin vs The State Of Telangana on 22 February, 2023; CRIMINAL PETITION No.33 OF 2022
charge sheet was filed under Section 188 of IPC, for which there is a prohibition under Section 195 of Cr.P.C. Unless a public servant files a complaint as defined under Section 2(d) of Cr.P.C, the Court cannot take cognizance.

https://indiankanoon.org/doc/9148266/; Kurra Ramesh Goud vs The State Of Telangana And Another on 20 February, 2023; CRIMINAL PETITION No.7828 OF 2022
since A1 continued to have relationship with A2, the same would amount to cruelty as defined under Section 498-A of IPC.

https://indiankanoon.org/doc/62524606/;Kadarla Prabhavathi vs The State Of Telanganaa on 20 February, 2023; Crl.Petition No.1717 of 2023
The attendance of the petitioners is dispensed with subject to filing affidavits by the petitioners stating that in their absence the proceedings conducted by their counsel will not be disputed by them in any manner and shall not dispute their identity also. However, the petitioners shall appear before the learned Magistrate as and when their presence is required. In the event of failure of the petitioners to appear when the Court directs, this order dispensing their attendance shall stand cancelled.

https://indiankanoon.org/doc/56675270/; Ragir Narasimha vs The State Of A.P. on 17 February, 2023; CRL.R.C.No. 1121 of 2009
A perusal of the case record would disclose that the revision petitioner/accused engaged an advocate in the trial Court to defend his case, however, he did not cross-examine P.Ws.1 to 3. One R.Subramanyam and A.Shiva Raj, advocates filed memo of appearance on behalf of the accused originally in the trial Court. The trial Court

examined P.W.1 on 03.07.2008, P.W.2 on 10.07.2008 and P.W.3 on 31.07.2008. However, the Counsel for the accused did not cross-examine the witnesses for the reasons best known to them. Further, the said A.Shiva Raj, advocate filed Crl.M.P.No.1496 of 2008, under Section 70 (2) Cr.P.C., on 21.02.2008 seeking to recall Non Bailable Warrant issued against the accused and the same was allowed. That apart, subsequent to conviction and sentence of accused by the trial Court, the same advocate along with another advocate filed a petition under Section 389 (3) Cr.P.C. for suspension of sentence of the accused. Therefore, sufficient opportunity was given by the trial Court to the accused to cross-examine the witnesses, however, the accused and his Counsel failed to utilise the said opportunity for the reasons best known to them. Therefore, I find no force in the contention of the learned Counsel for the revision petitioner that the revision petitioner/accused is entitled for another opportunity to cross-examine the witnesses.

https://indiankanoon.org/doc/17305884/; Muffadal Hussain vs The State Of Telangana on 17 February, 2023 ;Crl.P.No.1430 of 2023

while granting bail, the Sessions Court directed the petitioner to surrender his passport. Accordingly, he surrendered the same and a condition was also imposed that he shall not leave India without permission of the Court. Learned counsel further submits that the petitioner intends to visit Mecca on holy pilgrimage and therefore, by releasing his passport, he may be permitted to leave India.

On the other hand, the submission of the learned Additional Public Prosecutor is that the petitioner is one of the conspirators who have committed the offence of dacoity and therefore, such permission should not be accorded. The same relief which was sought for before the Court of Metropolitan Sessions Judge was negatived. Also, by the contents of the charge sheet, it is found that the petitioner is the prime person who is involved in the transactions and committing the offence punishable under Section 395 IPC. Therefore, this Court is of the view that it would be wholly undesirable to accord such a permission pending proceedings before the concerned criminal Court.

https://indiankanoon.org/doc/125262993/; The State Of Telangana vs Anitha Sen on 16 February, 2023; CRIMINAL PETITION No.362 of 2019

No doubt, speedy trial is a right that is guaranteed to the accused. But that does not mean that the real culprits can take aid of the said norm and flee from the clutches of law.

NOSTALGIA

FIR can be issued for offence under section 195A IPC:

2012 2 ALD(Cri) 98 ; 2012 3 ALT(Cri) 197 ; 2012 0 Supreme(AP) 236; Rebaka Vara Prasad & Another Vs. State of A.P. & Another; Criminal Petition Nos. 10807 of 2011 & 12836 of 2011; Decided On : 05-03-2012

No doubt, the word 'complaint' defined under Section 2(d) of Cr.P.C., reads, any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report'. Explanation reads that a report made by a police officer in a case which discloses, after investigation, the commission of a non-cognizable offence shall be deemed to be a complaint; and the police officer by whom such report is made shall be deemed to be the complainant. But the word 'complaint' as mentioned under Section 195A of Cr.P.C cannot be construed in a narrow sense so as to not to include a police report, because if the contention of the counsel for the petitioners is accepted as true and correct, the schedule of Cr.P.C. would not have been stated that it is a cognizable offence, and the offence should have been mentioned as a non-cognizable offence, whereunder the police cannot investigate the offence. The very fact that under Section 195A IPC, the offence is shown as cognizable offence and that provision has to be read with Section 156 Cr.P.C. Section 156 of Cr.P.C. confers on the police unrestricted power to investigate a cognizable offence without the order of Magistrate or without a formal first information report. This they may do either on information under Section 154 of Cr.P.C., or of their own motion on their own knowledge or to other reliable information. Hence the police has got power to investigate the case. Therefore, the expression 'complaint', as referred to in Section 195A Cr.P.C, cannot have a restricted meaning as defined under Section 2(d) of Cr.P.C. Therefore, the contention of the learned counsel for the petitioners that the police have no power to investigate the case cannot be countenanced.

(This judgment is contributed by Sri Ch.Satish, APP, Nirmal)

Hostility or Death of Complainant:

Neeraj Dutta v. State (Government of NCT of Delhi); (2022) SCC OnLine SC 1724- In the event the complainant turns 'hostile', or has died or is unavailable to let in his evidence during trial, demand of illegal gratification can be proved by letting in the evidence of any other witness who can again let in evidence, either orally or by documentary evidence or the prosecution can prove the case by circumstantial evidence. The trial does not abate nor does it result in an order of acquittal of the Accused public servant.

NEWS

- HIGH COURT FOR THE STATE OF TELANGANA :: AT HYDERABAD ROC.N0.393/S0/2019 DT.10.02.2023 CIRCULAR N0.5/S0/2023 Sub: High Court For The State Of Telangana - High Court's Orders Dated 03.02.2023 In Criminal Petition No.563 Of 2023 - Investigating Officers Are Not Submitting Inventory Of Substances Seized Before Magistrates As Per Section 52-A Of NDPS Act - Magistrates Issuing Certificates As To The Correctness Of The Inventory Under Section 52-A (2) Of The Narcotic Drugs And Psychotropic Substances Act, 1985 In Casual Manner - Earlier Circular Instructions Reiterated - Reg.
- High Court For The State Of Telangana :: Hyderabad Abstract State Judicial Services - District And Sessions Judges - Postings - Orders - Issued. Roc.No. 577 /2023-B.Spl. Notification No. 53-B.Spl. Dated:03.02.2023.
- THE ANDHRA PRADESH STATE AND SUBORDINATE SERVICE RULES, 1996 - AMENDMENT TO RULE-12. [G.O.Ms.No.27, General Administration (Services-D), 24th February, 2023.]
- High Court For The State Of Telangana :: Hyderabad Guidelines For Recording Of Evidence Of Vulnerable Witnesses Notification No. 01/S0/2023
- THE CRIMINAL RULES OF PRACTICE AND CIRCULAR ORDERS, 1990 - Amendments To The Criminal Rules Of Practice And Circular Orders, 1990 In Terms Of Orders Dated: 20.04.2021 Passed By The Hon'ble Supreme Court Of India In S.M.W.P.(Crl.) No.1/2017. [G.O.Rt.No.194, Law (L, L.A & J - Home - Courts.B), 16th February, 2023.]
- AP- Extending Ban On Carrying Of Certain Sharp Edged Weapons In The Districts Of Kurnool, Ysr (Kadapa), Chittoor, Anantapuramu, Annamayya, Nandyala, Sri Sathya Sai And Tirupati Districts (Rayalaseema Region), Krishna, Guntur, Prakasam, Ntr, Palnadu & Bapatla Districts (Andhra Region), For A Further Period Of Six Months Beyond 15.01.2023. [G.O.Rt.No.89, Home (Arms), 25th January, 2023.]
- APHC- Rules - The Criminal Rules Of Practice And Circular Orders, 1990 - In Corporation Of New Rule 30-A Under The Heading "E-Authenticated Copies Of Orders Through FASTER System" After Rule 30 In Criminal Rules Of Practice And Circular Orders, 1990 - Amendment - Notification - Orders – Issued
- APHC- JCJS POSTING OF NEWLY APPOINTED JUDGES 2023

- APHC- DISTRICT JUDICIARY - Method Of Assessment Of Work - Relaxation Of Circular Instruction With Regard To Deduction Of 1/4th Unit - Work Review Cell – Regarding
- High Court Of Andhra Pradesh - Letter Dt.10.01.2023 From The Assistant Registrar, Supreme Court Of India, Forwarding Copy Of **Judgment Dated 15.12.2022 Passed In Civil Appeal No.9322 Of 2022 (Gohar Mohammed Vs Uttar Pradesh State Road Transport Corporation & Others)** By The Hon'ble Supreme Court Of India - Certain Instructions - Issued-Reg.
- APHC- ASSURED CAREER PROGRESSION SCALES – Andhra Pradesh State Judicial Services – Granting Of Assured Career Progressing Scale I To Certain Judicial Officers In The Cadre Of Senior Civil Judges – ORDERS – ISSUED

ON A LIGHTER VEIN

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Attorney: "How was your first marriage terminated?"
Witness: "By death."
Attorney: "And by whose death was it terminated?"
Witness: "Guess."

Attorney: "Doctor, how many of your autopsies have you performed on dead people?"
Witness: "All of them. The live ones put up too much of a fight."

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Aano Bhadr Kratvo Yantu Viswatah

(Let Noble Thoughts Come To Me from All Directions)

CITATIONS

2023 0 Supreme(SC) 281; Pulen Phukan and Others Vs. The State of Assam; Criminal Appeal No. 906 of 2016; Decided On : 28-03-2023(THREE JUDGE BENCH)

The job of the prosecution is not to accept the complainant's version as Gospel Truth and proceed in that direction but the investigation must be made in a fair and transparent manner and must ascertain the truth. The evidence collected during investigation should then be analysed by the Investigating Officer and accordingly a report under Section 173(2) of the Cr.P.C. should be submitted. Further, the duty of the Trial Court is to carefully scrutinise the evidence, try to find out the truth on the basis of evidence led. Wherever necessary the Trial Court may itself make further inquiry on its own with regard to facts and circumstances which may create doubt in the minds of the Court during trial. If the investigation is unfair and tainted then it is the duty of the Trial Court to get the clarifications on all the aspects which may surface or may be reflected by the evidence so that it may arrive at a just and fair

conclusion. If the Trial Court fails to exercise this power and discretion vested in it then the judgment of the Trial Court may be said to be vitiated.

The prosecution has not established the place of occurrence by any material exhibit of having collected the blood-stained earth from the place of occurrence. Even the material exhibit, the axe, which is said to have been taken into custody by the police whether on the date of the incident or two days thereafter has also not been produced nor any evidence led to that effect. It is still a mystery as to how the Investigating Officer in his statement has stated that he had filed a charge-sheet against eight accused as five were absconding and there is no further statement regarding three more accused being arrested and put to trial, how the Trial Court proceeded to convict 11 accused and only two were set to be absconding. Even the scribe of the FIR has not been examined. It was extremely relevant when PW-1 has stated that she had no knowledge of the contents of the FIR.

2023 0 Supreme(SC) 264; Arup Bhuyan Vs State of Assam & Anr.; Criminal Appeal No. 889 of 2007 With Review Petition (Criminal) No. 417/2011 In Criminal Appeal No. 1383/2007 With Review Petition (Criminal) No. 426/2011 In Criminal Appeal No. 889/2007 With Special Leave Petition (Crl) No. 5971/2019 With Special Leave Petition (Crl) No. 5964/2019 With Criminal Appeal No. 1383/2007 With SLP(Crl.)...CRLMP No. 16637/2014 With Special Leave Petition (Crl.) No. 5643/2019 With Special Leave Petition (Crl.) No. 6270/2019; Decided On : 24-03-2023 (THREE JUDGE BENCH)

Once an association is declared unlawful of whom concerned person was member wishes to continue as a member despite the fact that he is well aware of fact that such an association is declared unlawful and if he still wishes to continue being a part of such unlawful association it shows a conscious decision on his part and liable to be penalized for such an act of continuation of his membership with such unlawful association.

Under Indian law, it is not membership of political organizations etc. or free speech or criticism of government that is sought to be banned, it is only those organizations which aim to compromise sovereignty and integrity of India and have been notified to be such and unlawful, whose membership is prohibited.

Right to freedom of speech is subject to reasonable restrictions and is not an absolute right.

2023 0 Supreme(SC) 268; Anil Kumar Vs State of Haryana and Others; Writ Petition (Crl.) No. 46 of 2022; Decided On : 24-03-2023

when the petitioner has been convicted for the offences under Sections 302/34 of IPC and sentenced to undergo life imprisonment, he has to undergo the said sentence actually subject to any rule/policy in respect of remission and the period during which he is released on emergency/interim parole has to be excluded for the purpose of actual imprisonment.

Essential Commodities Act : Liquefied Petroleum Gas (Regulation of Supply and Distribution) Order, 1988 : 2023 0 Supreme(SC) 263; Avtar Singh & Anr. Vs. State Of Punjab; Criminal Appeal No.1711 of 2011; Decided on : 23-03-2023

It nowhere prescribes that a Sub-Inspector of the Police can take action. No doubt, the aforesaid Clause provides that in addition to the specified officers, the persons authorised by the Central or State Government may take action under the Order. However, nothing has been placed on record to support the argument that the Sub-Inspector of the Police was authorised to take action under the aforesaid Order.

In the absence of the authority and power with the Sub-Inspector to take action as per the Order, the proceedings initiated by him will be totally unauthorised and have to be struck down.

2023 0 Supreme(SC) 248; Sundar @ Sundarrajan Vs. State by Inspector of Police; Review Petition (Crl.) Nos. 159-160 of 2013 IN Criminal Appeal Nos. 300-301 of 2011; Decided On : 21-03-2023 (THREE JUDGE BENCH)

the law is now settled: a Section 65B certificate is mandatory in terms of this Court's judgment in Anvar P.V. as confirmed in Arjun Panditrao Khotkar.

2023 0 Supreme(SC) 254; Seemant Kumar Singh Vs. Mahesh PS & Ors.; Criminal Appeal No. 872 of 2023 (arising out of Special Leave Petition (Crl,) No. 6572 of 2022); With The State Of Karnataka Vs. Mahesh P.S. & Anr; Criminal Appeal No. 873 of 2023 (Arising out of Special Leave Petition (Crl) No. 6253 of 2022) With J. Manjunath Vs The State Of Karnataka & Ors.; Criminal appeal no. 874 of 2023 (Arising out of Special Leave Petition (Crl) No. 6573 of 2022) Decided on : 21-03-2023

The legal system in general, and the judicial system in particular, has ushered into a new age of accessibility and transparency due to the adoption of virtual hearings and live telecasting of open court proceedings. These changes in the judiciary have ensured that the courts as redressal mechanisms have become more accessible to the common man than ever before. The limitations of physical infrastructure, that has constrained the courts to a physical location, has often been cited as one of the main

roadblocks in the path towards access to justice. This roadblock, however, has now been cleared due to the availability of technology and the adoption of the same. This never before seen transparency in the judicial system, while it brings with it great benefits, it also attaches with it a stricter standard of responsibility on judges while conducting such court proceedings. Remarks passed in court, due to the live broadcasting of court proceedings, now have ramifications that are far reaching, and as can be seen in the present case, can cause great injury to the reputation of the parties involved. In such a circumstance, it is essential for the courts to be extremely cautious while passing adverse remarks against the parties involved, and must do so with proper justification, in the right forum, and only if it is necessary to meet the ends of justice.

Sections 366, 342 and 506 IPC: 2023 0 Supreme(SC) 252; K.H. Balakrishna Vs. State Of Karnataka; Criminal Appeal No.1006 of 2011; Decided on : 21-03-2023

The entire evidence on record in no way reflects that the appellant had any intention to kidnap PW2 for the purpose of marriage. They appear to have gone together to various places and may have married.

Conviction awarded by trial court and confirmed by the high court are set aside.

2023 0 Supreme(SC) 246; MAHDOOM BAVA Vs. CBI; CRIMINAL APPEAL NO. 853 OF 2023 (Arising out of SLP (Crl.) No.376 OF 2023), CRIMINAL APPEAL NO. 854 OF 2023 (Arising out of SLP (Crl.) No.1534 of 2023), CRIMINAL APPEAL NO. 855 OF 2023 (Arising out of SLP (Crl.) No.3002 of 2023), CRIMINAL APPEAL NO. 856 OF 2023 (Arising out of SLP (Crl.) No.3027 of 2023); Decided On : 20-03-2023

More importantly, the appellants apprehend arrest, not at the behest of the CBI but at the behest of the Trial Court. This is for the reason that in some parts of the country, there seems to be a practice followed by Courts to remand the accused to custody, the moment they appear in response to the summoning order. The correctness of such a practice has to be tested in an appropriate case.

2023 0 Supreme(SC) 243; Ms. X vs. The State of Maharashtra and Another; Criminal Appeals Nos. 822-823 of 2023 (Arising Out of Petitions For Special Leave To Appeal (Crl.) Nos. 11104-11105 of 2022); Decided On : 17-03-2023

Surprisingly, none of the aforesaid aspects have been touched upon in both the impugned orders. The nature and gravity of the alleged offence has been disregarded. So has the financial stature, position and standing of the accused vis-à-

vis the appellant/prosecutrix been ignored. The High Court has granted anticipatory bail in favour of the respondent No. 2/accused in a brief order of three paragraphs, having been swayed by the "star variations in the narration of the prosecutrix" implying thereby that what was originally recorded in the FIR, did not make out an offence of rape, as defined in Section 375 IPC, which is an erroneous assumption. Even if the first Supplementary statement of the appellant/prosecutrix recorded in the evening hours of 6th August, 2022, the date on which the FIR had been registered against the respondent No.2/accused in the first half of the same day, her second Supplementary statement recorded on 6th September, 2022 and the Medico-Legal Report of the doctor who had examined the appellant/prosecutrix on 8th August, 2022, are kept aside for a moment, we find that there was still sufficient material in the FIR that would prima facie attract the provision of Section 376, IPC. In our opinion, these factors ought to have dissuaded the High Court from exercising its discretion in favour of the respondent No.2/accused for granting him anticipatory bail. It must be remembered that in the present case, the machinery of criminal justice has been set into motion by none other than the appellant/prosecutrix herself. She was the one who had dialled '100' number from the reception area of the Hotel where the crime had allegedly taken place. She was the one who had approached senior officers in the police hierarchy complaining of the apathy and inertia adopted by the investigating officers in her case. Notably, she had moved an intervention application in the anticipatory bail application moved by the respondent No.2/accused before the learned Additional Sessions Judge and as is reflected from the order passed, her counsel was granted a hearing whereafter the said application was rejected. However, when a similar application for intervention[40][Intervention Application No. 17150 of 2022] was moved by the appellant/prosecutrix before the High Court in the anticipatory bail application moved by the respondent No.2/accused, it appears that heed was not paid to the pleas taken by her though her counsel's presence does find mention in the order sheet. We are constrained to note that such an approach tantamounts to failure to recognize the right of the prosecutrix to participate in the criminal proceedings that would include a right to oppose the application for anticipatory bail moved by the accused. The appellant/prosecutrix having been denied a meaningful hearing when the first impugned order of anticipatory bail granted in favour of the respondent No.

2/accused was confirmed by the second impugned order, is an additional factor that has prevailed with this Court to interfere in the impugned orders.

2023 0 Supreme(SC) 228; Ravasaheb @ Ravasahebgouda Vs. State Of Karnataka; Criminal Appeal Nos.1109-1110 of 2010, Crl. A. No. 1229 of 2011, Crl. A. No. 1230 of 2011, Crl. A. No. 213 of 2012 & Crl. A. No. 682 of 2013; Decided on : 16-03-2023(THREE JUDGE BENCH)

In regard to the delay in the FIR reaching the Magistrate, it is the settled position of law that each and every delay caused is not fatal to a case in the absence of demonstrated prejudice [Bhajan Singh @ Harbhajan Singh Vs. State of Haryana (2011) 7 SCC 421]. In Chotkau (supra) it has been held that a Court is "duty bound to see the effect of such delay on investigation and even the credit worthiness of the investigation." In the present case, though, while there is reliance at the Bar on this principle no submission has been made to show prejudice having been caused to the accused. Statements sans adequate backing cannot sway the Court. Even the delay in the receipt of the FIR with the concerned Magistrate cannot be a reason to disbelieve the prosecution case. It is not a case of non-compliance of provisions equally the delay is not inordinate so as to cast any doubt.

Merely because no recovery was made from anyone apart from accused Nos.2 and 4 would not mean that others were not present at the scene of the crime; simply because a number of witnesses had turned hostile, does not on its own give a ground to reject the evidence of PW-1; and that PW-1 being the brother of the deceased and therefore, is an interested as well a chance witness, are untenable submissions. It is in the backdrop that we do not find favour with the submissions of Mr. Nagamuthu S., and Dr. K. Radhakrishnan, learned senior counsel appearing for the appellants that the conviction of eight persons based on solitary evidence is not justified, particularly when there is no vagueness in his testimony with respect to the role ascribed to each one of the accused.

https://indiankanoon.org/doc/80070120/; Varupula Venkata Ramana Ramana vs The State Of A.P. on 27 March, 2023;CRIMINAL APPEAL No.87 OF 2009

it is not a case where the place of offence was encircled with any compound. Though the place of offence is the private land of PW.6 but, on either side of the place of offence there were agricultural lands and further there was also a road adjacent to the agricultural land of PW.6. So, the agricultural land of PW.6 was open to public view. Apart from this, in the agricultural lands, farmers used to work up to 04:00 p.m.

in view of the answer elicited by the accused during the course of cross-examination of PW.1. Apart from this, PW.3 testified that she was a witness to the occurrence. All this goes to show that the agricultural land of PW.6 is open land and it is within the public view. So, it can be safely held that the place of offence is within the public view, as contemplated under Section 3(1)(x) of the SCs and STs Act.

https://indiankanoon.org/doc/194750065/; I.A. Nos.1 and 2 of 2023 in/and Criminal Petition No.2294 of 2023; 27.03.2023

Heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. cannot be fittingly quashed even though the victim or victim's family and the offender have settled the dispute. Such offences are not private in nature and have serious impact on society.

Sections, 337 and 304-A of the Indian Penal Code, 1860. It is not a serious and heinous crime to refuse permission to compound the offence. This Court is satisfied with the identification of the parties and voluntariness in arriving at the compromise. In view of the compromise between the parties, continuation of the impugned proceedings is nothing but abuse of process of Court.

https://indiankanoon.org/doc/118530668/; Pitcholla Sanjanna, vs The State Of A.P. on 27 March, 2023; CRIMINAL APPEAL No.1322 OF 2010

When the accused pleaded the plea of alibi during the course of 313 Cr.P.C. examination, which he failed to put forth before PWs.1 and 2, he was bound to probabilize the same. He miserably failed to probabilize the same.

the prosecution did not prove the exact intention of the accused to commit murder. In that view of the matter, the learned Additional Sessions Judge was of the view that the prosecution could establish the offence under Section 304 (Part-II) IPC i.e., culpable homicide not amounting to murder and rightly convicted the accused.

https://indiankanoon.org/doc/85429541/; Gogineni Ramanjaneyulu vs The State Of Andhra Pradesh on 24 March, 2023; Crl.P.No.5099 of 2022

Sanction, under Section 17-A of the Prevention of Corruption Act, is not necessary for every prosecution of a public servant under the Prevention of Corruption Act. This sanction is restricted to offences relatable to a recommendation made by the public servant or a decision taken by such public servant. In the present case, the

allegation against the petitioner is not in relation to any recommendation made by him or on any decision taken by him.

https://indiankanoon.org/doc/49081517/; Dasa Shekar, vs The State Of A.P. on 24 March, 2023
W.P.Nos.30185, 7336, 8635, 8638, 8717, 10161, 10320, 10500, 11405,11440, 11480, 11502, 11531, 11543, 11834, 11903, 12059, 12061,12062, 12087, 12094, 12179, 12277, 12291, 12344, 12793, 12915,12949, 14416, 14445, 19010 and 21080 of 2021; W.P.Nos.11854, 16172,16187, 16257, 16699, 16713, 16843, 16935, 17295, 19761, 19765, 19983, 20035, 20108, 20110, 20118, 20534, 20680, 22119, 22120, 22121, 22132, 22139, 23804, 30417, 30449, 30505 and 33532 of 2022: COMMON ORDER; Dt.24.03.2023

If the ban on Tobacco and Tobacco products has not been imposed directly by the Parliament by enacting a Legislation on the field, the authorities under the FSSA Act, 2006, cannot do so indirectly, which has not been intended to be done by the Parliament directly. If there is no ban on Tobacco or Tobacco products, such power cannot be read into the FSSA, 2006 or the regulations framed thereunder, by treating the same as "food" under Section 3(j) of the FSSA, 2006.

Ex Consequenti, it is declared that the Commissioner of Food Safety, Andhra Pradesh is neither authorized nor having any jurisdiction to issue the impugned notification, prohibiting the manufacture, storage, distribution, transportation and sale of Gutka/Pan Masala which contains Tobacco and Nicotine as ingredients and Chewing Tobacco products, within the meaning of Sections 3(m) and 3(p) of the COTPA, 2003, in exercise of powers under Section 30(2)(a) of the FSSA, 2006.

2023 0 Supreme(SC) 193; Karan @ Fatiya Vs. The State Of Madhya Pradesh; Criminal Appeal Nos.572-573 of 2019; Decided on : 03-03-2023 (THREE JUDGE BENCH)

On a perusal of the aforesaid Section 18 of the 2015 Act, it is to be noticed that the JJB having found a child to be in conflict with law who may have committed a petty or serious offence and where heinous offence is committed, the child should be below 16 years, can pass various orders under clauses (a) to (g) of sub-section (1) and also sub-section (2). However, the net result is that whatever punishment is to be provided, the same cannot exceed a period of three years and the JJB has to take full care of ensuring the best facilities that could be provided to the child for providing reformative services including education, skill development, counselling and psychiatric support.

2023 0 Supreme(SC) 192; Premchand Vs The State of Maharashtra; Criminal Appeal No. 211 of 2023; Decided On : 03-03-2023

a. section 313, Cr. P.C. [clause (b) of sub-section 1] is a valuable safeguard in the trial process for the accused to establish his innocence;

b. section 313, which is intended to ensure a direct dialogue between the court and the accused, casts a mandatory duty on the court to question the accused generally on the case for the purpose of enabling him to personally explain any circumstances appearing in the evidence against him;

c. when questioned, the accused may not admit his involvement at all and choose to flatly deny or outrightly repudiate whatever is put to him by the court;

d. the accused may even admit or own incriminating circumstances adduced against him to adopt legally recognized defences;

e. an accused can make a statement without fear of being cross-examined by the prosecution or the latter having any right to cross-examine him;

f. the explanations that an accused may furnish cannot be considered in isolation but has to be considered in conjunction with the evidence adduced by the prosecution and, therefore, no conviction can be premised solely on the basis of the section 313 statement(s);

g. statements of the accused in course of examination under section 313, since not on oath, do not constitute evidence under section 3 of the Evidence Act, yet, the answers given are relevant for finding the truth and examining the veracity of the prosecution case;

h. statement(s) of the accused cannot be dissected to rely on the inculpatory part and ignore the exculpatory part and has/have to be read in the whole, inter alia, to test the authenticity of the exculpatory nature of admission; and

i. if the accused takes a defence and proffers any alternate version of events or interpretation, the court has to carefully analyze and consider his statements;

j. any failure to consider the accused’s explanation of incriminating circumstances, in a given case, may vitiate the trial and/or endanger the conviction.

2023 0 Supreme(SC) 174; RAVI DHINGRA Vs. THE STATE OF HARYANA; CRIMINAL APPEAL NO.987 OF 2009 WITH CRIMINAL APPEAL NOS.989-990 OF 2009, CRIMINAL APPEAL NO.986 OF 2009,CRIMINAL APPEAL NO.988 OF 2009 AND CRIMINAL APPEAL NO. 645 OF 2023 (@ SPECIAL LEAVE PETITION (Crl.) No.5296 of 2012); Decided On : 01-03-2023

The use of conjunction "and" has its purpose and object. Section 364-A uses the word "or" nine times and the whole section contains only one conjunction "and", which joins the first and second condition. Thus, for covering an offence under Section 364-A, apart from fulfilment of first condition, the second condition i.e. "and threatens to cause death or hurt to such person" also needs to be proved in case the case is not covered by subsequent clauses joined by "or".

15. The word "and" is used as conjunction. The use of word "or" is clearly distinctive. Both the words have been used for different purpose and object. Crawford on Interpretation of Law while dealing with the subject "disjunctive" and "conjunctive" words with regard to criminal statute made following statement:

"… The court should be extremely reluctant in a criminal statute to substitute disjunctive words for conjunctive words, and vice versa, if such action adversely affects the accused."

xxx

2023 1 KLD 415; 2023 0 Supreme(SC) 175; The State Of Chattisgarh & Anr. Vs Aman Kumar Singh & Ors.; Criminal Appeal Nos… of 2023 (@SLP (Crl.) Nos.1703-1705 of 2022) Uchit Sharma Vs. The State Of Chattisgarh & Ors.; Criminal Appeal Nos…. of 2023 (@SLP(Crl.) Nos.1769-1770 of 2022); Decided on : 01-03-2023

The Constitution Bench of this Court in its decision in Lalita Kumari Vs. Govt. of U.P., (2014) 2 SCC 1, inter alia, while observing that cases in which preliminary inquiry is to be conducted would depend upon the facts and circumstances of each case, also categorized cases **(though not exhaustively)** where preliminary inquiry, before registration of a first information report, could be conducted and included 'corruption cases' in such category. A preliminary inquiry or probe, we believe, becomes indispensable in a complaint of acquisition of disproportionate assets not only to safeguard the interest of the accused public servant, if such complaint were lodged with some malice, but also to appropriately assess the quantum of disproportionate assets should there be some substance in this complaint.

It is true that the FIR could have been drafted better. Since a first information report is the starting point for a long drawn investigative process and such an investigation could be scuttled by an accused taking advantage of inept drafting of such report, this is an area where all the more care and dexterity is called for to prevent many a thing. However, nothing significant turns on the inept drafting of the FIR in this case since it does make out a case of cognizable offence having been committed by AS and YS. Indeed, if at all there are miscalculations arising out of arithmetical errors or misdescription of properties not belonging to AS and YS, they were/are free to point it out while joining the investigation. It is also open to them to point out to the investigating officer that there has been absolutely no suppression or non-disclosure of properties/assets and also that no activity amounting to 'criminal misconduct' had been committed by them. However, they chose to challenge the FIR on the specious ground that the same did not disclose a cognizable offence.

Borrowing the words of K.T. Thomas, J. (as His Lordship then was), it can safely be concluded that in the present case the High Court "sieved the complaint through a cullender of finest gauzes for testing" the veracity of the alleged crime. This approach being clearly impermissible at the stage of considering a challenge to a first information report, we are of the considered opinion that the judgment and order under challenge is indefensible.

what is of substantial importance is that if criminal prosecution is based upon adequate evidence and the same is otherwise justifiable, it does not become vitiated on account of significant political overtones and mala fide motives. We can say without fear of contradiction, it is not in all cases in our country that an individual, who is accused of acts of omission/commission punishable under the P.C. Act but has the blessings of the ruling dispensation, is booked by the police and made to face prosecution. If, indeed, in such a case (where a prosecution should have been but has not been launched) the succeeding political dispensation initiates steps for launching prosecution against such an accused but he/she is allowed to go scot-free, despite there being materials against him/her, merely on the ground that the action initiated by the current regime is mala fide in the sense that it is either to settle scores with the earlier regime or to wreak vengeance against the individual, in such an eventuality we are constrained to observe that it is criminal justice that would be the casualty. This is because, it is difficult to form an opinion conclusively at the stage of reading a first information report that the public servant is either in or not in

possession of property disproportionate to the known sources of his/her income. It would all depend on what is ultimately unearthed after the investigation is complete. Needless to observe, the first information report in a disproportionate assets case must, as of necessity, prima facie, contain ingredients for the perception that there is fair enough reason to suspect commission of a cognizable offence relating to "criminal misconduct" punishable under the P.C. Act and to embark upon an investigation.

https://indiankanoon.org/doc/32895782/; Botla Prasad, vs State Of Telangana on 24 March, 2023; CRIMINAL PETITION NOS.2952 AND 2955 OF 2023

Since the relevant documents can as well be obtained under RTI Act and the petitioner can file relevant application and seek information from the respective authorities, thereafter, it is open for the petitioner to enter into the box if so advised to mark the said document.

Demand and Acceptance of Bribe:

in Neeraj Dutta v. State (Govt. of NCT of Delhi) (2022) SCC Online SC 1724, is that the demand and recovery both must be proved to sustain conviction under the Act.

74. What emerges from the aforesaid discussion is summarised as under:

(a) **Proof of demand and acceptance of illegal gratification by a public servant as a fact in issue by the prosecution is a sine qua non in order to establish the guilt of the accused public servant under Sections 7 and 13(1)(d) (i) and (ii) of the Act.**

(b) In order to bring home the guilt of the accused, the prosecution has to first prove the demand of illegal gratification and the subsequent acceptance as a matter of fact. This fact in issue can be proved either by direct evidence which can be in the nature of oral evidence or documentary evidence.

(c) Further, the fact in issue, namely the proof of demand and acceptance of illegal gratification can also be proved by circumstantial evidence in the absence of direct oral and documentary evidence.

(d) In order to prove the fact in issue, namely, the demand and acceptance of illegal gratification by the public servant, the following aspects have to be borne in mind:

(i) if there is an **offer to pay by the bribe giver** without there being any demand from the public servant and the latter simply-accepts the offer and receives the illegal

gratification, it is a case of acceptance as per Section 7 of the Act. In such a case, there need not be a prior demand by the public servant.

(ii) On the other hand, **if the public servant makes a demand** and the bribe giver accepts the demand and tenders the demanded gratification which in turn is received by the public servant, it is **a case of obtainment.** In the case of obtainment, the prior demand for illegal gratification emanates from the public servant. This is an offence under Section 13(1)(d)(i) and (ii) of the Act.

(iii) **In both cases of (i) and (ii) above, the offer by the bribe giver and the demand by the public servant respectively have to be proved by the prosecution as a fact in issue. In other words, mere acceptance or receipt of an illegal gratification without anything more would not make it an offence under Section 7 or Section 13(1)(d), (i) and (ii) respectively of the Act.** Therefore, under Section 7 of the Act, in order to bring home the offence, there must be an offer which emanates from the bribe giver which is accepted by the public servant which would make it an offence.

Similarly, a prior demand by the public servant when accepted by the bribe giver and in turn there is a payment made which is received by the public servant, would be an offence of obtainment under Section 13(1)(d) and (i) and (ii) of the Act.

(e) The presumption of fact with regard to the demand and acceptance or obtainment of an illegal gratification may be made by a court of law by way of an inference only when the foundational facts have been proved by relevant oral and documentary evidence and not in the absence thereof. On the basis of the material on record, the Court has the discretion to raise a presumption of fact while considering whether the fact of demand has been proved by the prosecution or not. Of course, a presumption of fact is subject to rebuttal by the accused and in the absence of rebuttal presumption stands.

(f) In the event of complaint turns 'hostile', or has died or is unavailable to let in his evidence during trial, demand of illegal gratification can be proved by letting in the evidence of any other witness who can again let in evidence, either orally or by documentary evidence or the presumption can prove the case by circumstantial evidence. The trial does not abate nor does it result in an order of acquittal of the accused public servant.

(g) **In so far as Section 7 of the Act is concerned, on the proof of the facts in issue, Section 20 mandates the court to raise a presumption that illegal gratification was for the purpose of a motive or reward as mentioned in the said Section.** The said presumption has to be raised by the court as a legal presumption or a presumption in law. Of course, the said presumption is also subject to rebuttal. Section 20 does not apply to Section 13(1)(d) (i)and (ii) of the Act.

(h) We clarify that the presumption in law under Section 20 of the Act is distinct from presumption of fact referred to above in point (e) as the former is a mandatory presumption while the latter is discretionary in nature."

(emphasis added)

Related Witness

The position of law as held in Harbans Kaur Vs. State of Haryana [(2005) 9 SCC 195] is clear in stating that there is no proposition of law which doubts the statement of a close relative simply for that reason. There is a note of caution sounded in Bhaskarrao Vs. State of Maharashtra [(2018) 6 SCC 591] which is undoubtedly on point but we may also note the observation of this Court in Rajesh Yadav Vs. State of U.P. [2022 SCC OnLine 150] wherein it has been observed:

"30. Once again, we reiterate with a word of caution, the trial court is the best court to decide on the aforesaid aspect as no mathematical calculation or straightjacket formula can be made on the assessment of a witness, as the journey towards the truth can be seen better through the eyes of the trial judge. In fact, this is the real objective behind the enactment itself which extends the maximum discretion to the court."

Overt Acts

While overt act and active participation may indicate common intention of the person perpetrating the crime, the mere presence in the unlawful assembly may fasten vicariously criminal liability under Section 149. [Lalji Vs. State of U.P. (1989) 1 SCC 437]

When a case involves large number of assailants it is not possible for the witness to describe the part played therein by each of such persons. It is not necessary for the prosecution to prove each of the members' involvement especially regarding which or what act. [Masalti Vs. State of UP AIR 1965 SC 202]

Evidence of hostile witness:

a) Corroborated part of the evidence of a hostile witness regarding the commission of offence is admissible. Merely because there is deviation from the statement in the FIR, the witness's statements cannot be termed totally unreliable;

b) The evidence of a hostile witness can form the basis of conviction.

c) The general principle of appreciating the evidence of eye-witnesses is that when a case involves a large number of offenders, prudently, it is necessary, but not always, for the Court to seek corroboration from at least two more witnesses as a measure of caution. Be that as it may, the principle is quality over quantity of witnesses. [Mrinal Das Vs. State of Tripura (2011) 9 SCC 479]

Effect of omissions, deficiencies:

Evidence examined as a whole, must reflect/ring of truth. The court must not give undue importance to omissions and discrepancies which do not shake the foundations of the prosecution's case. [Rohtash Kumar Vs. State of Haryana (2013) 14 SCC 434; Bhagwan Jagannath Markad Vs. State of Maharashtra (2016) 10 SCC 537; and Karan Singh Vs. State of Uttar Pradesh (2022) 6 SCC 52]

Reliance on single witness:

If a witness is absolutely reliable then conviction based thereupon cannot be said to be infirm in any manner.

[Karunakaran Vs. State of Tamil Nadu (1976) 1 SCC 434; and Sadhuram Vs. State of Rajasthan (2003) 11 SCC 231]

Testimony of a close relative:

A witness being a close relative is not a ground enough to reject his testimony. Mechanical rejection of an even "partisan" or "interested" witness may lead to failure of justice. The principle of "falsus in uno, falsus in omnibus" is not one of general application.

[Bhagwan Jagannath Markad Vs. State of Maharashtra (2016) 10 SCC 537]

Preponderance of probabilities:

To entitle a person to the benefit of a doubt arising from a duality of views, the possible view in favour of the accused must be as nearly reasonably probable as that against him. [Gopal Reddy Vs. State of Andhra Pradesh (1979) 1 SCC 355]

Delay in sending FIR:

Unless serious prejudice is caused, mere delay in sending the FIR to the Magistrate would not, by itself, have a negative effect on the case of the prosecution. [[State of Rajasthan Vs. Doud Khan (2016) 2 SCC 607]

One of the external checks against ante-dating or ante-timing an FIR is the time of its dispatch to the Magistrate or its receipt by the Magistrate. A dispatch of a copy of the FIR forthwith ensures that there is no manipulation or interpolation in the FIR. [Mehraj Vs. State of U.P. (1994) 5 SCC 188; and Ombir Singh Vs. State of U.P. (2020) 6 SCC 378]

Last seen theory :

On its own, last seen theory is considered to be a weak basis for conviction. However, when the same is coupled with other factors such as when the deceased was last seen with the accused, proximity of time to the recovery of the body of deceased etc. The accused is bound to give an explanation under Section 106 of the Evidence Act, 1872. If he does not do so, or furnishes what may be termed as wrong explanation or if a motive is established – pleading securely to the conviction of the accused closing out the possibility of any other hypothesis, then a conviction can be based thereon. [Satpal Singh Vs. State of Haryana (2018) 6 SCC 610; and Ram Gopal Vs. State of M.P. (2023) SCC OnLine 158]

Previous Enimity

in the case of Ramashish Ray v. Jagdish Singh, (2005) 10 SCC 498, previous enmity is a double-edged sword. On one hand, it can provide motive and on the other hand, the possibility of false implication cannot be ruled out.

Difference between 364 IPC & 364A IPC

In Anil vs. Administration of Daman & Diu, (2006) 13 SCC 36, the pertinent observations were made as regards those cases where the accused is convicted for

the offence in respect of which no charge is framed. In the said case, the question was whether appellant therein could have been convicted under Section 364A of the IPC when the charge framed was under Section 364 read with Section 34 of the IPC. The relevant passages which can be culled out from the said judgment of the Supreme Court are as under:

"54. The propositions of law which can be culled out from the aforementioned judgments are:

(i) The appellant should not suffer any prejudice by reason of misjoinder of charges.

(ii) A conviction for lesser offence is permissible.

(iii) It should not result in failure of justice.

(iv) If there is a substantial compliance, misjoinder of charges may not be fatal and such misjoinder must be arising out of mere misjoinder to frame charges.

55. The ingredients for commission of offence under Section 364 and 364-A are different. Whereas the intention to kidnap in order that he may be murdered or may be so disposed of as to be put in danger as murder satisfies the requirements of Section 364 of the Penal Code, for obtaining a conviction for commission of an offence under Section 364-A thereof it is necessary to prove that not only such kidnapping or abetment has taken place but thereafter the accused threatened to cause death or hurt to such person or by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt or causes hurt or death to such person in order to compel the Government or any foreign State or international inter-governmental organisation or any other person to do or abstain from doing any act or to pay a ransom.

- Ministry of Home Affairs WOMEN SAFETY DIVISION- Aadhaar authentication of Prison Inmates -Extra Ordinary- Part II-Section 3-Sub-Section(ii) -06-Mar-2023- CG-DL-E-06032023-244163
- the Surrogacy (Regulation) Amendment Rules, 2023- MINISTRY OF HEALTH AND FAMILY WELFARE (Department of Health Research) NOTIFICATION New Delhi, the 14th March, 2023 G.S.R.179(E)
- The Telangana State Prosecution Rules, 1992 Amendment notified by GOMs No. 16 (Home Courts-A-1 Dept.) dated 21.02.2023

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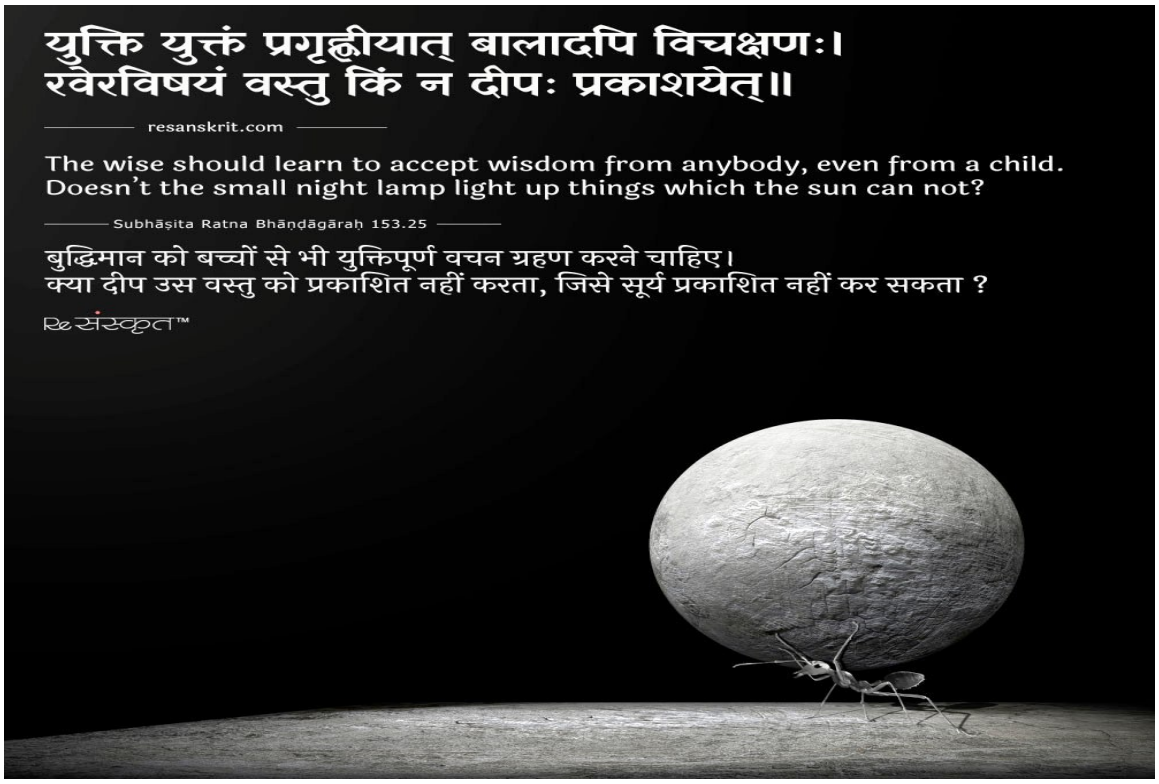
Aano Bhadr Kratvo Yantu Viswatah

(Let Noble Thoughts Come To Me from All Directions)



CITATIONS

2023 0 Supreme(SC) 380; Fedrick Cutinha Vs. State of Karnataka; Criminal Appeal Nos. 2251, 2265 of 2010; Decided On : 18-04-2023

in view of Sub-Section (2) of Section 235 of Cr.P.C. the court is obliged to hear the accused persons after their conviction on the quantum of sentence before passing a sentence against them. Even otherwise as a general rule, the trial court is duty bound to adjourn the matter to a future date after recording the conviction so as to call upon both the sides to hear on the question of sentence before sentencing the accused persons.

2023 0 Supreme(SC) 365; Siju Kurian Vs. State of Karnataka; Criminal Appeal No. 64 of 2021; Decided On : 17-04-2023

When PW-10 and PW-14 have clearly stated that they had seen the accused in the company of the deceased, and there being no satisfactory explanation offered by the accused to the contrary, it has to be necessarily held that accused had failed to discharge the burden cast upon him. Section 106 of the Evidence Act clearly lays down that when any fact is specially within the knowledge of a person, the burden approving that fact is upon him namely, on such person.

Section 27 permits the derivative use of custodial statement in the ordinary course of events. There is no automatic presumption that the custodial statements have been extracted through compulsion. A fact discovered is an information supplied by the accused in his disclosure statement is a relevant fact and that is only admissible in evidence if something new is discovered or recovered at the instance of the accused which was not within the knowledge of the police before recording the disclosure statement of the accused. The statement of an accused recorded while being in police custody can be split into its components and can be separated from the admissible portions. Such of those components or portions which were the immediate cause of the discovery would be the legal evidence and the rest can be rejected vide Mohmed Inayatullah v. State of Maharashtra AIR 1976 SC 483. In this background when we turn our attention to the facts on hand as well as the contention raised by the accused that the confession statement is to be discarded in its entirety cannot be accepted for reasons more than one. Firstly, the conduct of the accused would also be a relevant fact as indicated in Section 8.

It is a trite law that in pursuance to a voluntary statement made by the accused, a fact must be discovered which was in the exclusive knowledge of the accused alone. In such circumstances, that part of the voluntary statement which leads to the discovery of a new fact which was only in the knowledge of the accused would become admissible under Section 27. Such statement should have been voluntarily made and the facts stated therein should not have been in the knowhow of others. In this background when the deposition of PW-10 is perused it would leave no manner of doubt in our mind that statement of the accused (Ex.P-2) having been recorded being voluntary and when the statement is being recorded in the language not known to the accused, the assistance of interpreter if taken by the police cannot be found fault with. The ultimate test of the said statement made by the accused having been noted down as told by the accused or not would be of paramount consideration. If the answer is in the affirmative then necessarily said statement will have to be held as passing the test of law as otherwise not. Merely because the translation was made from Malayalam to Tamil and written down in Kannada would not suggest that such statement be held to be either not being voluntary or the said statement having been recorded improperly. The interpreter having entered the witness box and tendered himself for cross-examination which resulted in nothing worthwhile having been elicited for discarding his evidence, it cannot be gainsaid by

the accused that said statement at Ex.P-2 is to be ignored or rejected or discarded. Merely because PW-10 did not know how to read and write Malayalam does not ipso facto make the contents of Ex.P-2 to be disbelieved. On the other hand, he states that he is from Kerala and he knows how to speak Malayalam

2023 0 Supreme(SC) 368; Yedala Subba Rao & Anr.Vs. Union of India; Criminal Appeal No. 1153 of 2023 (Arising out of Special Leave Petition (Crl.) No.10160 of 2021); Decided On : 17-04-2023

It is pertinent to note that a long confessional statement of accused no.46 has been recorded within inverted commas in the said document, and thereafter, the aforesaid portion has been written. It is not noted in the confessional statement of accused no.46 that he stated that he would show the place where he had planted the landmine. If accused no.46 had made such a statement leading to the discovery of the landmine, the discovery of the fact that the landmine was planted by accused nos.46 at a particular place could have been proved, provided the landmine was to be used in the offence. However, there is no such confessional statement of accused no.46 recorded that he will show the place where landmine was planted by him. The Panchnama shows that the accused no.46 took them to a place and showed landmine. There is no confessional statement made by him giving information that he is in a position to show the place where he had planted landmine. Therefore, prima facie, “the Mediators’ Report and Seizure Panchnama” is not helpful to the prosecution in proving that the landmine was discovered at the instance of the accused no.46.

2023 0 Supreme(SC) 370; Soundarajan Vs. State Rep. by the Inspector of Police Vigilance Anticorruption Dindigul; Criminal Appeal No. 1592 of 2022; 17-04-2023

Under Section 464 of CrPC, omission to frame a charge or any error in charge is never fatal unless, in the opinion of the Court, a failure of justice has in fact been occasioned thereby. In this case, from the perusal of the cross-examination of PW-3 and other prosecution witnesses made by the Advocate for the appellant, it is apparent that the appellant had clearly understood the prosecution case about the first alleged demand made on 6th August 2004 and the subsequent alleged demand and acceptance on 13th August 2004. There is no doubt that this is a case of

omission to frame a proper charge, and whatever charge has been framed is, per se defective. However, by reason of the said omission or defect, the accused was not prejudiced insofar as his right to defend is concerned. Therefore, in this case, the omission to frame charge and/or error in framing charge is not fatal.

We find that, in this case, the charge has been framed very casually. The Trial Courts ought to be very meticulous when it comes to the framing of charges. In a given case, any such error or omission may lead to acquittal and/or a long delay in trial due to an order of remand which can be passed under sub-section (2) of Section 464 of CrPC. Apart from the duty of the Trial Court, even the public prosecutor has a duty to be vigilant, and if a proper charge is not framed, it is his duty to apply to the Court to frame an appropriate charge.

2023 0 Supreme(SC) 371; State of Rajasthan Vs. Asharam @ Ashumal; Criminal Appeal No. 1156 of 2023 (Arising Out of Special Leave Petition (Criminal) No. 2044 of 2022); Decided on : 17-04-2023

Both Sections 311 and 391 of the Cr.P.C. relate to power of the court to take additional evidence; the former at the stage of trial and before the judgment is pronounced; and the latter at the appellate stage after judgment by the trial court has been pronounced. It may not be totally correct to state that the same considerations would apply to both situations as there is a difference in the stages. Section 311 of the Cr.P.C. consists of two parts; the first gives power to the court to summon any witness at any stage of inquiry, trial or other proceedings, whether the person is listed as a witness, or is in attendance though not summoned as a witness. Secondly, the trial court has the power to recall and re-examine any person already examined if his evidence appears to be essential to the just decision of the case. On the other hand, the discretion under Section 391 of the Cr.P.C. should be read as somewhat more restricted in comparison to Section 311 of the Cr.P.C., as the appellate court is dealing with an appeal, after the trial court has come to the conclusion with regard to the guilt or otherwise of the person being prosecuted. The appellate court can examine the evidence in depth and in detail, yet it does not possess all the powers of the trial court as it deals with cases wherein the decision has already been pronounced.

2023 0 Supreme(SC) 361; Shiv Mangal Ahirwar Vs State of Madhya Pradesh; Criminal Appeal No. 814 of 2023; Decided On : 13-04-2023

Sec 302 IPC : the Sessions Court could not have imposed a modified sentence by directing that the appellant shall be imprisoned for the rest of his life, the High Court could have certainly imposed such a punishment.

2023 0 Supreme(SC) 336; Central Bureau of Investigation Vs Vikas Mishra @ Vikash Mishra; Criminal Appeal No. 957 of 2023; Decided On : 10-04-2023

It is true that in the case of Anupam J. Kulkarni (supra), this Court observed that there cannot be any police custody beyond 15 days from the date of arrest. In our opinion, the view taken by this Court in the case of Anupam J. Kulkarni (supra) requires re-consideration. When we put a very pertinent question to Shri Neeraj Kishan Kaul, learned senior counsel appearing on behalf of the respondent-accused that in a given case it may happen that the learned trial/Special Court refuses to grant the police custody erroneously which as such was prayed within 15 days and/or immediately on the date of arrest and thereafter the order passed by the trial/Special Court is challenged by the investigating agency before the higher Court, namely, Sessions Court or the High Court and the higher Court reverses the decision of the learned Magistrate refusing to grant the police custody and by that time the period of 15 days is over, what would be position?

it is observed that initial order of grant of seven days police custody attained finality. However, due to the aforesaid reasons of having got the accused himself hospitalised on 18.04.2021 and thereafter obtaining the interim bail on 21.04.2021, the CBI could not interrogate the accused in the police custody though having a valid order in its favour. Thus, the respondent-accused has successfully avoided the full operation of the order of police custody granted by the learned Special Judge. No accused can be permitted to play with the investigation and/or the court's process. No accused can be permitted to frustrate the judicial process by his conduct. It cannot be disputed that the right of custodial interrogation/investigation is also a very important right in favour of the investigating agency to unearth the truth, which the accused has purposely and successfully tried to frustrate. Therefore, by not permitting the CBI to have the police custody interrogation for the remainder period of seven days, it will be giving a premium to an accused who has been successful in frustrating the judicial process.

2023 0 Supreme(SC) 338; KA Rauf Sherif Vs Directorate of Enforcement & Ors.; Transfer Petition (Criminal) No.89 of 2023; Decided On : 10-04-2023

the lack of jurisdiction of a Court to entertain a complaint can be no ground to order its transfer. A congenital defect of lack of jurisdiction, assuming that it exists, inures to the benefit of the accused and hence it need not be cured at the instance of the accused to his detriment. Therefore, the first ground on which transfer is sought, is liable to be rejected.

An order under Section 167(2) of the Code had to be passed necessarily by the Magistrate **"to whom an accused person is forwarded"**. In fact, Section 167(2) contains the words **"whether he has or has not jurisdiction to try the case".**

2023 0 Supreme(SC) 339; Pramod Singla Vs Union of India and Others; Criminal Appeal No. 1051 of 2023, Special Leave Petition (Crl.) No. 10798 of 2022; 10-04-2023

In cases where illegible documents have been supplied to the detenue, a grave prejudice is caused to the detenue in availing his right to send a representation to the relevant authorities, because the detenue, while submitting his representation, does not have clarity on the grounds of his or her detention. In such a circumstance, the relief under Article 22(5) of the Constitution of India and the relevant statutory provisions allowing for submitting a representation are vitiated, since no man can defend himself against an unknown threat.

preventive detention laws in India are a colonial legacy, and as such, are extremely powerful laws that have the ability to confer arbitrary power to the state. In such a circumstance, where there is a possibility of an unfettered discretion of power by the Government, this Court must analyze cases arising from such laws with extreme caution and excruciating detail, to ensure that there are checks and balances on the power of the Government. Every procedural rigidity, must be followed in entirety by the Government in cases of preventive detention, and every lapse in procedure must give rise to a benefit to the case of the detenue. The Courts, in circumstances of preventive detention, are conferred with the duty that has been given the utmost importance by the Constitution, which is the protection of individual and civil liberties. This act of protecting civil liberties, is not just the saving of rights of individuals in person and the society at large, but is also an act of preserving our Constitutional

ethos, which is a product of a series of struggles against the arbitrary power of the British state.

2023 0 Supreme(SC) 333; Qamar Ghani Usmani Vs The State of Gujarat; Criminal Appeal Nos. 1045-1046 OF 2023 SLP (CRL) NOS. 011196-011197 OF 2022; 10-04-2023

when two extensions granted by the Court which are not challenged and at the time when the default bail application was made on 10.05.2022 there was already an extension and even thereafter, also there was a second extension which was in presence of the accused and thereafter, when the chargesheet has been filed within the period of extension, the accused is not entitled to be released on statutory/default bail as prayed.

2023 0 Supreme(SC) 334; Central Bureau of Investigation Vs Aryan Singh; Criminal Appeal Nos. 1025-1026 of 2023 (@ SLP (Crl.) Nos. 12794-12795 of 2022); 10-04-2023

Whether the criminal proceedings was/were malicious or not, is not required to be considered at this stage. The same is required to be considered at the conclusion of the trial.

2023 0 Supreme(SC) 343; Surendra Singh Vs State of Rajasthan and Anr.; Criminal Appeal No. 1059 of 2023 (@ SLP (Crl.) No.4241 of 2019); Decided On : 11-04-2023

the High Court has not properly and considered the fact that in the report/FIR there were specific allegations against five accused persons and five accused persons were named in the FIR. However, the investigating officer charge- sheeted only two persons. The remaining three accused persons came to be added as accused by the learned trial Court while allowing the application under Section 319 Cr.P.C. As they absconded and therefore their trial came to be ordered to be separated and it is reported that the trial against the remaining accused is still pending who are also facing the charges for the offence under Section 302/149 IPC. In that view of the matter when five persons were specifically named in the FIR and five persons are facing the trial may be separately, Section 149 IPC would be attracted.

In the case of Mizaji and Anr. Vs. The State of U.P. (1959) Supp. (1) SCR 940 this Court had occasion to consider Section 149 of the IPC and the distinction between two parts of Section 149 IPC. It is observed and held as under:

> "This section has been the subject matter of interpretation in the various High Court of India, but every case has to be decided on its own facts. - The first part of the section means that the offence committed in prosecution of the common object must be one which is committed with a view to accomplish the common object. It is not necessary that there should be a preconcert in the sense of a meeting of the members of the unlawful assembly as to the common object; it is enough if it is adopted by all the members and is shared by all of them. In order that the case may fall under the first part the offence committed must be connected immediately with the common object of the unlawful assembly of which the accused were members. Even if the offence committed is not in direct prosecution of the common object of the assembly, it may yet fall under s. 149 if it can be held that the offence was such as the members knew was likely to be committed. The expression I know' does not mean a mere possibility, such as might or might not happen. For instance, it is a. matter of common knowledge that when in a village a body of heavily armed men set out to take a woman by force, someone is likely to be killed and all the members of the unlawful assembly must be aware of that likelihood and would be guilty under the second part 'of s.149. Similarly, if a body of persons go armed to take forcible possession of the land, it would be equally right to say that they have the knowledge that murder is likely to be committed if the circumstances as to the weapons carried and other conduct of the members of the unlawful assembly clearly point to such knowledge on the part of them all. There is a great deal to be said for the opinion of Couch, C. J., in Sabid Ali's case (1) that when an offence is committed in prosecution of the common object, it would generally be an offence which the members of the unlawful assembly knew was likely to be committed in prosecution of the common object. That, however, does not make the converse proposition true; there may be cases which would come within the second part, but not within the first. The distinction between the two parts of s.149, Indian Penal Code cannot be ignored or obliterated. In every case it would be an issue to be determined whether the offence committed falls within the first part of s. 149 as explained above or it was an offence such as the

members of the assembly know to be likely to be committed in prosecution of the common object and falls within the second part."

This Court observed that merely because two other persons forming part of the unlawful assembly were not convicted as their identity was not established, the accused cannot be permitted to say that they are not forming part of the unlawful assembly and they cannot be convicted with the aid of Section 149 IPC. In the said decision it is specifically observed and held that the essential question in a case under Section 147 is whether there was an unlawful assembly as defined under 141, I.P.C., of five or more than five persons. The identity of the persons comprising the assembly is a matter relating to the determination of the guilt of the individual accused, and even when it is possible to convict less than five persons only, Section 147 still applies, if upon the evidence in the case the Court is able to hold that the person or persons who have been found guilty were members of an assembly of five or more persons, known or unknown, identified or unidentified.

2023 0 Supreme(SC) 349; Panchram Vs. State of Chhattisgarh & Anr.; Criminal Appeal No. 1078 of 2023 (Arising out of S.L.P.(Criminal) No.6116 of 2019); 11-04-2023

the scissors which was seized by the police is small scissors which is used by tailors. With the aforesaid evidence on record and the kind of weapon used, in our view the offence will not fall within Section 307 I.P.C. From the reasons for fight as are emerging on record, it doesn't seem to be pre-planned act. It, at the most, can fall within the four corners of Section 326 IPC as a sharp-edged weapon was used. The injuries were not caused with an intention to cause death and were not sufficient to cause death. Hence, in our view the conviction of the appellant with respect Section 307 IPC cannot be sustained however the offence under Section 326 IPC is made out.

2023 0 Supreme(SC) 355; Dr. S.M. Mansoori (Dead) through LRs. Vs Surekha Parmar and Others; Criminal Appeal No. 1088 of 2023, S.L.P. (Crl.) No. 4517 of 2019; 12-04-2023

Going by the assertions in the complaint filed by the appellant, prima facie, it appears that without any authority, the first respondent, along with other police personnel, entered the house of the appellant early in the morning and committed

the offences alleged against them. Looking at the nature of the allegations in the complaint, at this stage, it is impossible to conclude that the acts allegedly done by the first respondent were committed by her while acting or purporting to act in the discharge of her official duty. Therefore, at this stage, we cannot conclude that a sanction under Section 197 of Cr.P.C. was required. In the facts of the case, the final view on this issue can be taken only after the evidence is recorded.

2023 0 Supreme(SC) 356; Sita Ram Vs. The State of Uttar Pradesh; Criminal Appeal No. 1029 of 2023; Decided On : 12-04-2023

It is true that when there are a number of eyewitnesses, the prosecution's case cannot be disbelieved on the ground that few of the eyewitnesses were not examined, especially when the version of the eyewitnesses examined before the Court, inspires confidence. In the present case, version of PW-1 and PW-2 does not inspire confidence. That is how the failure of the prosecution to examine three independent eyewitnesses whose statements were recorded, becomes very relevant. Moreover, one of the three witnesses attended the Court but was not examined. Considering the fact that the testimony of PW-1 and PW-2 who were allegedly injured witnesses, cannot be believed, adverse inference will have to be drawn on account of the prosecution's failure to examine the three eyewitnesses.

https://indiankanoon.org/doc/51844129/; Sarangam Dayakar Rao, vs State Of A.P., 4 April, 2023; CRIMINAL APPEAL No.588 OF 2009; Sarangam Dayakar Rao Vs State of A.P.

coming to the omissions, absolutely, during the course of evidence of PW.5, no omissions are elicited by the learned defence counsel before the Court below. Coming to the evidence of PW.6, she deposed that she did not state before Police that her daughter came to their house and left her son with them stating that accused were not looking after her properly. She volunteers that as the Police did not ask them, she did not reveal. The above is not at all material because some how or the other PWs.5 and 6 came into custody of the son of A-1 and deceased for which there was no explanation from the mouth of A-1 properly. So, even the evidence of PW.6 has no improvements. During the course of cross-examination of PW.7, A-1 agitated about certain omissions and he was able to elicit some omissions from the mouth of PW.18, the SDPO. To ascertain as to whether the so called omissions are

on material aspects, it is pertinent to look into the same. PW.18 during the course of cross-examination stated that PW.7 did not state before him that A-1 sustained loss in his business and on that ground he demanded additional dowry but he stated before him that A-1 demanded for additional dowry. So, what is crucial is the demand for additional dowry but not the reason for such demand. So, the above is not at all an improvement. PW.18, further deposed in cross-examination that PW.7 did not state before him that he paid amount thrice at the rate of Rs.10,000/- each time but he stated that he paid cash twice to A-1 at Rs.10,000/- each. The above is also not a material aspect because the payment of Rs.10,000/- each by PW.7 to A-1 was there even in 161 Cr.P.C statement, according to PW.18. PW.18 further deposed that PW.7 did not state before him that when the victim and A-1 were at railway station, they talked with PW.7 on phone and that A-1 beat the victim but he stated about the victim and A-1‟s presence at the railway station. Though the so called attribution against A-1 that he beat the deceased at railway station was omission but the presence of deceased and A-1 was not an omission on 22.01.2006 at railway station. So, the substratum of the evidence of PW.7 that on 22.01.2006 A-1 made a telephone call to him from one rupee coin box stating that he was sending the deceased to him and that PW.7 requested him not to do so and the so called conversation between him and A-1 was there even before the SDPO during the course of investigation and these are not at all omissions. So, in my considered view, the evidence of PW.7 with regard to certain events happened at railway station on 22.01.2006 in the morning cannot be taken as omissions. Hence, in my considered view, the evidence of PW.7 does not suffer with any omissions. The contradictions under Exs.D-1, D-2 and D-4 are not at all material. Hence, there was consistency between the evidence of PWs.5 to 7 to any extent.

https://indiankanoon.org/doc/43788988/; CRIMINAL PETITION No.15420 of 2013; 17.04.2023; MADDUMALA HASSAN KAMAL BHUSHAN RAI AND 2 OTHERS Vs. M.VIJAYA LAKSHMI AND ANOTHERS

This criminal petition has been pending for the last nine years. Today when the matter is called, neither the learned counsel for the petitioners is present nor any accommodation has been sought on their behalf. At the time of hearing, learned Assistant Public Prosecutor submitted that due to the stay granted by this Court in the above crime, the investigation has been stalled. However, in view of the

judgment of the Hon'ble Supreme Court of India in Asian Resurfacing of Road Agency Private Limited and Another v. Central Bureau of Investigation (2018) 16 SCC 299 , stay is not in force.

{ The Apex Court Judgment applies to those cases where the stay is regarding Trial. It does not cover the Stay of Investigation. This fact appears to have not been brought to the notice of the Hon'ble High Court)

https://indiankanoon.org/doc/104902669/; CRIMINAL PETITION NO.8501 of 2022, 17.04.2023; MD.ASIF AHAMMAD Vs. THE STATE OF ANDHRA PRADESH

the offence under Section 363 IPC is not attracted against the petitioner/A1, since he is the father and is lawful guardian of the children.

It is contended that the mother is entitled to custody of her male child until that child completed the age of 7 years under the Sunni School of Mohammedan law and 2 years under the Shia School of Mohammedan law.

In 'Outlines of Muhammadan Law' by A. A. Fyzee, 3rd Edn. Page 189, it is observed: "The custody of an infant child belongs to the mother: this right is known as hIdens (loosely spelt in India Hizanat) The mother is entitled in Hanafl law to the custody of her male child till the age of 7 years, and of her female child till puberty ... The mother is, of all persons, the best entitled to the custody of her infant child during marriage 1 AIR 1968 Ker 21 and after separation from her husband, unless she be an apostate, or wicked, or un worthy to be trusted. Although the mother has the custody of a child of tender years, this does not imply that the father has no rights whatever."

https://indiankanoon.org/doc/174011363/; K.Lochana Sai Theja vs The State Of Andhra Pradesh, on 12 April, 2023; CRIMINAL PETITION NO.3013 OF 2022

When the question of validity of a document is an issue before the civil court, it would not be permissible to proceed with the criminal trial as it would prejudice the rights and interests of the persons propounding the said document. When such is the case, continuation of the impugned proceedings is nothing but abuse of process of Court.

https://indiankanoon.org/doc/25651443/; **Kanukuntla Shekar vs The State Of Telangana on 12 April, 2023;** CRIMINAL APPEAL No.212 of 2021

bonafide/study certificate issued by PW-15, and as per the said certificate, the date of birth of the victim is 10.04.1997 and it was issued basing on the entry of date of

birth in the admission register. Ex.P-20 can be relied on by the prosecution, if the victim has not passed SSC Board examination. But as per the evidence of PW-1, the victim has passed SSC Board examination, and therefore, the non-production of the Board Certificate before the Court is fatal to the case of the prosecution.

https://indiankanoon.org/doc/127805650/;Sumer Choudhary And Another vs The State Of Telangana on 11 April, 2023; CRIMINAL PETITION No.3281 of 2023

The charge sheet also would disclose that the stolen gold ornaments, a fire arm and four live rounds were recovered from the house of A1 and A8. As the entire investigation was completed, charge sheet was also filed and the matter is ripe for trial, it is considered not fit to release the petitioners on bail at this stage, as their free movement might be a threat to the witnesses.

https://indiankanoon.org/doc/17176410/; G.Laxmi , vs The State Of A.P., Rep By Pp., on 6 April, 2023; CRL.R.C.No. 820 of 2009

There is a concurrent finding of both the Courts regarding the offence under Section 380 of I.P.C. No doubt, the revision petitioner/A-1 is a woman aged about 37 years, but she has committed theft in several houses and has been involved in several criminal cases. The appellate Court also held that when the panch witnesses turned hostile to the prosecution, if it results in dismissal of the case itself, then it gives a wrong signal to the society and hence they cannot be decisive persons to direct final result in the criminal cases. Thus, the said aspect of panch witnesses turning hostile was already dealt with by the appellate Court. Therefore, there is no interference warranted as far as conviction is concerned,

https://indiankanoon.org/doc/87045766/; Mr. Manjeet Singh vs State Of Telangana And Another on 18 April, 2023; CRIMINAL PETITION No. 858 of 2020

To attract an offence under Section 353 of IPC, a person has to assault or use criminal force on any public servant with an intent to prevent such public servant from discharging his official duties and the same would amount to an offence. In the present case, the allegation is that when the legal metrology officials were seizing the billing machines, the petitioner allegedly obstructed along with other staff. Admittedly, inspections are carried on from 4.00 p.m to 5.00 p.m. There is no allegation at any point of time from 4.00 to 5.00 p.m, the petitioner had in any

manner obstructed the official from discharging their official duties by preparing panchanama etc. However, objection to seize the billing machines on the ground that it would stall the entire business in the multiplex will not amount to obstructing the official duties in the present circumstances.

https://indiankanoon.org/doc/101376441/; Sandani Laxmi Yadamma vs The State Of Telangana on 12 April, 2023; CRIMINAL PETITION No.2793 of 2023

As per the contents of the complaint, the petitioners who came to know that the victim girl was sexually assaulted by their son and the victim girl thereby became pregnant, to screen the evidence, they got the pregnancy terminated and that too, while the victim girl was carrying pregnancy of six months. Thus, the acts committed by the petitioners, as per the version of the prosecution, are grave in nature. and also considering the fact that the investigation is still pending, this Court is of the view that the request of the petitioner for pre-arrest bail cannot be honoured.

https://indiankanoon.org/doc/83991884/; Podiami Jaga vs The State Of Telangana on 11 April, 2023; crlp_3063_2023

Considering that the petitioners were residents of Odisha State and commercial quantity of contraband dry ganja of about 25 kgs was seized from their possession and a charge-sheet was already filed by the Police and the matter was coming for trial and the petitioners if released on bail at this stage, it might be difficult to secure their presence for trial, it is considered not a fit case to enlarge the petitioners on bail.

https://indiankanoon.org/doc/107148799/; Karnekota Anita vs The State Of Telangana on 18 April, 2023; CRIMINAL PETITION No.1309 OF 2023

It is not in dispute that these petitioners were married and living separately. The only allegation leveled against the petitioners is that they have supported A1 with regard to demand of additional dowry. Not even a single incident is narrated when these petitioners have at any point of time either confronted or demanded dowry directly either from the 2nd respondent or any of her relatives. A vague allegation saying that these petitioners also supported A1 and demanded for additional dowry will not entail continuance of the prosecution against these petitioners. Such vague allegations cannot be made basis to prosecute the accused.

https://indiankanoon.org/doc/175503179/; G. Ganesh Goud vs The State Of Telangana on 12 April, 2023; CRIMINAL PETITION No.3584 OF 2023

Since the present complaint is filed subsequent to the civil suit, which is filed for recovery of money on the basis of pro-note, which according to the petitioner was subjected to theft, this Court deems it appropriate to direct the Investigating Officer in FIR No.39 of 2023 pending on the file of Station House Officer, Gopalpet Police Station, Wanaparthy District, to conclude the investigation without taking any coercive steps against the petitioner-Accused No.1, in the background of civil cases pending disputes between parties and alleged fabricated documents is subject matter of civil suit.

2023 0 Supreme(SC) 407; Suneetha Narreddy Vs. Y.S. Avinash Reddy and Another; Criminal Appeal No. 1251 of 2023, SLP (Crl) No. 5198 of 2023; Decided On : 24-04-2023

There is absolutely no warrant for the High Court to direct that the investigation of a person who has been interrogated as a suspect in the conspiracy should be in the printed or written form. Similarly, it is wholly inappropriate for the High Court to observe that the questionnaire may also be handed over to the respondent. Such orders of the High Court are liable to gravely prejudice the course of investigation.

2023 0 Supreme(SC) 408; Maghavendra Pratap Singh @ Pankaj Singh Vs. State of Chhattisgarh; Criminal Appeal No. 915 of 2016; Decided On : 24-04-2023

about the search, we do not find the veracity of the Investigating Officer's testimony to be inspiring in confidence on account of various lapses. For he (a) did not examine the owner of the house; (b) did not enter his movement in the case diary; (c) did not record that he took the accused for effecting the recovery; (d) was not able to describe clearly the area from where the recovery was effected; (e) admits both the independent witnesses, who do not belong to the area from where the recoveries were effected; (f) does not associate any of the residents of the area for conducting the search; (g) does not examine any of the residents for carrying out any further investigation and (h) Most importantly he admits that both the memo of arrest as also the recovery not to have been prepared by him or bearing his signature and

the same too, have many corrections and overwriting, thus reducing the correctness and authenticity of this document.

Furthermore, he is not clear about the description of the articles recovered. Illustratively, in the memo, he records one black colour scarf to have been recovered, but on a pointed query put by the Court, he admitted that not to be so but only a black cloth which undoubtedly cannot be equated to a scarf. Furthermore, there needs to be more clarity in his mind about whether the tank from where the articles were recovered was full of water.

It has come on record that the recovered arms and ammunition were first sent to the laboratory at Raipur and, after that, to the laboratory at Chandigarh. However, none had come forward to prove the report received from the said laboratories. Furthermore, there is nothing on the record besides any other scientific evidence linking the accused to the recovered articles.

2023 0 Supreme(SC) 409; Ravinder Singh Vs. The State Govt. of NCT of Delhi; Criminal Appeal No. 1031 of 2023 (@ Special Leave Petition (Crl.) No. 1214 of 2018); Decided On : 25-04-2023

In Gopal Vinayak Godse v. State of Maharashtra AIR 1961 SC 600, this Court held that a sentence of imprisonment for life must, prima facie, be treated as imprisonment for the whole of the remaining period of the convicted person's natural life. In Maru Ram v. Union of India (1981) 1 SCC 107, a Constitution Bench endorsed this view and affirmed that a life sentence is nothing less than life-long imprisonment and would last until the last breath. Again, in Union of India v. V. Sriharan alias Murugan and others (2016) 7 SCC 1, another Constitution Bench reiterated that imprisonment for life means imprisonment for the rest of the life of the convict.

there is no prohibition in the Penal Code, where death penalty or life imprisonment is provided for, that imprisonment cannot be imposed for a specified period within the said life span and when life imprisonment means the whole life span of the convict, the Court which is empowered to impose the said punishment would also have the power to specify the period up to which the said sentence of life should remain, befitting the nature of crime. Again, this edict would hold good for all sentences of life imprisonment.

We must, however, hasten to add that exercise of such power must be restricted to grave cases, where allowing the convict sentenced to life imprisonment to seek release after a 14-year-term would tantamount to trivializing the very punishment imposed on such convict. Needless to state, cogent reasons have to be recorded for exercising such power on the facts of a given case and such power must not be exercised casually or for the mere asking.

2023 0 Supreme(SC) 416; Ritu Chhabaria Vs Union of India & Ors.; Writ Petition (Criminal) No. 60 of 2023; Decided On : 26-04-2023

I. Without completing the investigation of a case, a charge-sheet or prosecution complaint cannot be filed by an investigating agency only to deprive an arrested accused of his right to default bail under Section 167(2) of the CrPC.

II. Such a charge-sheet, if filed by an investigating authority without first completing the investigation, would not extinguish the right to default bail under Section 167(2) CrPC.

III. The trial court, in such cases, cannot continue to remand an arrested person beyond the maximum stipulated time without offering the arrested person default bail.

2023 0 Supreme(SC) 420; Bothilal Vs. The Intelligence Officer Narcotics Control Bureau; Criminal Appeal No. 451 of 2011 with Criminal Appeal No. 1185 of 2011; Decided On : 26-04-2023

the confessional statements were made by the accused to an officer empowered under Section 53 of the NDPS Act and hence, in view of the bar of Section 25 of the Evidence Act, the confessional statements will have to be kept out of consideration.

the prosecution has not proved that the witnesses are dead or cannot be found or are incapable of giving evidence or kept out of the way of the accused or their presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the Court considers unreasonable.

2023 0 Supreme(SC) 431; Bohatie Devi (Dead) Through LR Vs. The State of Uttar Pradesh & Ors.; Criminal Appeal No. 1294 of 2023 (@ SLP (Crl) No. 4394 of 2021) With Criminal Appeal No. 1295 of 2023 (@ SLP (Crl) No. 7708 of 2021); Decided On : 28-04-2023

There cannot be any dispute that even after the chargesheet is filed, it is the right of the investigating officer to further investigate in respect of offence even after a report under sub-section (2) of Section 173 of Cr.PC forwarded to a Magistrate and as

observed and held by this Court the prior approval of the Magistrate is not required. However, as per the settled position of law, so far as the reinvestigation is concerned, the prior permission/approval of the Magistrate is required.

Now, so far as the submission on behalf of the accused relying upon Section 173(3) of Cr.PC is concerned, it provides how to submit/send a report to the Magistrate and who shall send the report to the Magistrate. It provides that where a superior officer of police has been appointed under Section 158, the report, shall be submitted through that officer, and he may, pending the orders of the Magistrate, direct the officer in charge of the police station to make further investigation.

2023 0 Supreme(SC) 434; Shri Sukhbir Singh Badal Vs. Balwant Singh Khera and Ors.; Criminal Appeal No. 1116 of 2023 (@ SLP (Crl.) No. 7872 of 2021) With Dr. Daljit Singh Cheema Vs. Balwant Singh Khera and Ors.; Criminal Appeal No. 1118 of 2023 (@ SLP (Crl.) No. 8257 of 2021) And Shri Parkash Singh Badal Vs. Balwant Singh Khera and Ors.; Criminal Appeal No. 1117 of 2023 (@ SLP (Crl.) No. 7950 of 2021) Decided on : 28-04-2023

In short, a person is said to have made a “false document”, if (i) he made or executed a document claiming to be someone else or authorised by someone else; or (ii) he altered or tampered a document; or (iii) he obtained a document by practising deception, or from a person not in control of his senses.”

https://indiankanoon.org/doc/131171101/; Godela Siva vs The State Of A.P., on 27 April, 2023; CRIMINAL APPEAL NO.1170 OF 2010

There remained nothing in the cross examination of P.W.9 also except giving suggestions which he denied. Therefore, there is consistency in the evidence of P.W.1 and 9 with regard to the fact that P.W.1 identified M.O.1 in the test identification parade when it was mixed with other items. Her evidence that M.O.1 belonged to the deceased was not challenged in her cross examination.

It is to be noticed that it is not a case where P.W.1 lodged any report especially relating to the description of gold ornaments which were in the custody of her husband at the time of his missing. She lodged two reports stating that the deceased was found missing. So, the major concern was about missing of her husband. There was no possibility to make descriptive particulars of gold ornaments. Therefore, when A.1 was arrested by the police in the presence of panch witnesses and when

they found a gold chain in the suitcase of A.1, the seizurenama need not contain the descriptive particulars of M.O.1.

https://indiankanoon.org/doc/55408727/; Crl.A.No.238 of 2017; Kodem Ramu, Kothagudem., vs The State Of Telangana, Rep Pp., on 26 April, 2023

In order to prove the offence under Section 304 of IPC, it is for the prosecution to prove mainly three ingredients (1) the death of the deceased woman was caused by burns or bodily injury or occurred otherwise than under normal circumstances, (2) Such death should have occurred within seven years of marriage; (3) deceased was subjected to cruelty or harassment by the husband or any relative of the husband in connection with the demand for dowry; and such harassment must have committed to the deceased soon before her death.

Admittedly, there are minor discrepancies in the evidences of the prosecution witnesses but they did not go to the root of the case of the prosecution, so as to interfere with the judgment of the trial Court. Moreover, lacunas on the part of the prosecution cannot rule out or brush away the entire case of the prosecution.

https://indiankanoon.org/doc/143255619/; CRIMINAL PETITION Nos. 824 of 2020, 606 of 2021, 11057, 11075, 11372, 6727, 9405 and 11877 of 2022; Yerra Bhumanna vs The State Of Telangana on 26 April, 2023

As stated above, the Government of Telangana in exercise of powers under Section 3 read with 5 of the EC Act that and in terms of the order of the Ministry of Central Affairs Civil Supplies, and Public Distribution, Government of India, GSR No.213(3), dated 20.03.2015, in supercession of the A.P. State Public Distribution System(Control) Order, 2008 issued G.O.Ms.No.29, dated 19.08.2016 promulgating the TSPDS(C) Order, 2016.

24. In view of the same, the principle laid down in Maimuna Begum (supra), is not applicable to the facts of the present case. In the present cases. There are specific allegations of purchase of rice from the cardholders which is after introduction of clause 17 (e) of the Control Order 2016 and the said judgment is applicable only to a case which falls prior to the introduction of the said provision.

13. The rice and paddy are essential commodities under Clause 17(e) of the Order and the same was introduced on 19.08.2016. Purchase of PDS rice from card holders or dealing in any manner is made as an offence. In the present petitions,

offence is one of purchase, search, sale and illegal transportation of PDS rise, which is in contravention of Clause 17(e) of the Order and made punishable criminally.

https://indiankanoon.org/doc/80827197/; Vinnakota Ramani vs The Director General Of Police on 26 April, 2023; WRIT PETITION No.7544 of 2023

the petitioner/party-in-person is given liberty to file an appropriate application in M.C.No.963 of 2022 on the file of the II Additional Family Court, Hyderabad and in CC.No.160 of 2019 on the file of the XIII Additional Chief Metropolitan Magistrate, Nampally, Hyderabad, and seek necessary orders against her husband to ensure his attendance in both the cases from time to time and that he does not violate any orders passed by the Courts below.

https://indiankanoon.org/doc/46880482/; Methre Rajkumar vs The State Of Telangana on 26 April, 2023; CRIMINAL PETITION No.4087 of 2023

The petitioner is facing trial for the allegation that he was found in possession and was transporting 320 kgs of ganja. By the submission of the learned Additional Public Prosecutor, it is clear that the trial proceedings are in progress. The order that is rendered by the trial Court, the certified copy of which is filed by the petitioner himself, goes to show that the delay in trial occurred due to taking of several adjournments by the petitioner. Therefore, having considered these aspects, this Court is of the view that the request of the petitioner cannot be considered.

Conviction based on Individual Acts only

This Court in Darshan Singh and Others vs. State of Punjab, (2009) 16 SCC 290 ruled that accused have to be convicted on the basis of their individual acts and where an accused inflicted simple injuries with lathis etc. he is ordinarily not to be convicted for the offence of murder.

Sec 106 IEA

In State of Rajasthan v. Kashiram (2006) 12 SCC 254 it was held that :

> "23. It is not necessary to multiply with authorities. The principle is well settled. The provisions of Section 106 of the Evidence Act itself are unambiguous and categoric in

laying down that when any fact is especially within the knowledge of a person, the burden of proving that fact is upon him. Thus, if a person is last seen with the deceased, he must offer an explanation as to how and when he parted company. He must furnish an explanation which appears to the court to be probable and satisfactory. If he does so he must be held to have discharged his burden. If he fails to offer an explanation on the basis of facts within his special knowledge, he fails to discharge the burden cast upon him by Section 106 of the Evidence Act. In a case resting on circumstantial evidence if the accused fails to offer a reasonable explanation in discharge of the burden placed on him, that itself provides an additional link in the chain of circumstances proved against him. Section 106 does not shift the burden of proof in a criminal trial, which is always upon the prosecution. It lays down the rule that when the accused does not throw any light upon facts which are specially within his knowledge and which could not support any theory or hypothesis compatible with his innocence, the court can consider his failure to adduce any explanation, as an additional link which completes the chain. The principle has been succinctly stated in Naina Mohd., Re. [AIR 1960 Mad 218 : 1960 Cri LJ 620]"

Sec 27 IEA & Sec 8 IEA

In A.N. Venkatesh & another v. State of Karnataka (2005) 7 SCC 714 it was held to the following effect:

"9. 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 v. State (Delhi Admn.) [(1979) 3 SCC 90 : 1979 SCC (Cri) 656 : AIR 1979 SC 400] . Even if we hold that the disclosure statement made by the accused-appellants (Exts. P-15 and P-16) is not admissible under Section 27 of the Evidence Act, still it is relevant under Section 8.

The evidence of the investigating officer and PWs 1, 2, 7 and PW-4 the spot mahazar witness that the accused had taken them to the spot and pointed out the place where the dead body was buried, is an admissible piece of evidence under Section 8 as the conduct of the accused. Presence of A-1 and A-2 at a place where ransom demand was to be fulfilled and their action of fleeing on spotting the police party is a relevant circumstance and are admissible under Section 8 of the Evidence Act.

Additional Evidence at Appellate Stage

in Rajeswar Prasad Misra v. State of West Bengal and Another (1966) 1 SCR 178 has opined that as additional evidence may be necessary for various reasons, the legislature has refrained from curtailing such discretion of the appellate court. The touchstone of when the additional evidence at the appellate stage may be taken on record is not the impossibility or inability to pronounce the judgment in its absence, but whether there would be a failure of justice without such additional evidence. This discretion is not to be exercised lightly but requires caution and care as it is to be exercised only in cases when the appellate court finds, on good and justifiable grounds, that there would be a failure of justice without the additional evidence being taken on record. However, once this condition is satisfied, there is no restriction on the kind of evidence received, which may be formal or substantial.

In Zahira Habibulla H. Sheikh and Another v. State of Gujarat and Others (2004) 4 SCC 158, Apex Court has elaborately dealt with the aspect of exercise of discretion, highlighting the balance which the courts have to maintain so as to not deny the right to additional evidence to do justice, and the importance of the right to fair hearing of the accused as well the prosecution. The right to fair hearing is inherent to the concept of due process of law and ascertainment of truth.

Sec 311 CrPC

State (NCT of Delhi) v. Shiv Kumar Yadav and Another (2016) 2 SCC 402 emphasises that in exercise of the discretion under Section 311 of the Cr.P.C., the court, while considering an application for recall of witness, should not get swayed by the argument that only the accused who is in custody will suffer by the prolongation of proceedings, as this may not be valid and serving the ends of justice. It is not only the matter of delay

but also the hardship to the victim/witnesses when they are recalled for examination. Recall is certainly permitted if essential for the just decision and for which there should be a tangible reason that fair trial would suffer without it. The discretion is to be exercised judiciously to prevent failure of justice, and must not be exercised arbitrarily. In our opinion, the appellate court must be equally, if not more cautious, of the desire to delay the hearing of the appeal, or the attempt to lead additional evidence to explore a chance of contradictory evidence. While the prayer for leading additional evidence should be permitted to correct a bona fide error or otherwise, and a party may be entitled to further opportunity without any fault on the part of the opposite party, the request for recall should be bona fide and is to be balanced carefully with relevant considerations, including hardship to the witness and delay of the proceedings. Right to speedy trial, including speedy disposal of an appeal, is not the exclusive right of an accused, but an obligation of the court towards the society in general, and the victim in particular. Balance between the rights of an accused and the interests and rights of an individual victim and the society, without compromising the right of the accused to a fair trial, has been highlighted by this Court in Girish Kumar Suneja v. Central Bureau of Investigation (2017) 14 SCC 809 , P. Ponnusamy v. State of Tamil Nadu 2022 SCC Online SC 1543 and State of West Bengal v. Amiya Kumar Biswas (2004) 13 SCC 671 . Every criminal case, it is stated, is a voyage of discovery in which the truth is the quest. [19][See Ritesh Tewari and Another v. State of Uttar Pradesh and Others, (2010) 10 SCC 677.] The process of ascertaining the truth requires compliance of procedures and rules of evidence. In a well-designed system, judicial findings of formal legal truth should coincide with substantive truth. This happens when the facts contested are skillfully explored in accordance with the procedure prescribed by law.

Revision against framing/refusing charges

in Sanjay Kumar Rai v. State of Uttar Pradesh and Another (2021 SCC OnLine SC 367) the Supreme Court had held that “the correct position of law as laid down in Madhu Limaye (supra), thus, is that orders framing charges or refusing discharge are neither interlocutory nor final in nature and are therefore not affected by the bar of Section 397(2) of CrPC.

304(II) or 304A

In the decision in Alister Anthony Pareira v. State of Maharashtra [(2012) 2 SCC 648], the Supreme Court observed that a person responsible for a reckless or rash or negligent act that causes death could be attributed with the knowledge of the consequence and may be fastened with culpable homicide not amounting to murder, punishable under section 304 Part II IPC if he had knowledge that his act was dangerous enough to lead to some untoward incident that can lead to death. The court also proceeded to observe that there is a presumption that a man knows the natural and likely consequences of his acts and that simply because the consequences were unforeseen, the act does not become involuntary. The court observed that each case has to be decided on its own facts. However, in cases where negligence or rashness is the cause of death without anything more, the Supreme Court observed that section 304A might be attracted, but when the rash and negligent act is preceded with a knowledge that such an act is likely to cause death, section 304 Part II IPC can be attracted.

Driving vehicles after consuming alcohol can lead to temporary or partial impairment of cognitive faculties. This disability can lead to error in judgment relating to distance calculation, distinguishing objects, speed control and even other factors that are essential for safe driving. Blurred vision and delayed reaction to sudden stimuli are also known consequences of alcohol consumption. Thus, when a motor vehicle is driven after consuming alcohol, road accidents become a predictable consequence. In such a scenario, attributing knowledge to the driver of the vehicle that death can be a likely consequence of drunken driving is legally tenable.

Right of Audience to Accused during investigation

In the case of Narender G. Goel Vs. State of Maharashtra (2009) 6 SCC 65 the accused has no right to be heard at the stage of investigation and more particularly, at the stage of extension of period for investigation. It is submitted that as observed and held by this Court, the accused is not entitled to have the reasonings for extension of period of investigation because accused has no right to be heard at the stage of investigation.

Bail pending Appeal against conviction for Life Imprisonment

in the case of Batchu Rangarao and ors., Vs., State of Andhra Pradesh reported in [2016(3) ALT (Criminal) 505 (AP)], the Composite High Court of Andhra Pradesh observed that a person who is convicted for life and whose appeal is pending before the Court is entitled to apply for bail after undergoing five (05) years imprisonment following the conviction.

Simultaneous proceedings in Civil and Criminal

a) In Rajeshbhai Muljibhai Patel & others v. State of Gujarat and another1; (paragraphs 20 and 23)

(b) In M.Nagasanjeva Reddy v. State of A.P.2 (paragraph 13).

Relying upon the aforesaid judgments, he contends that when once a document is the subject matter of civil litigation and the civil court seized of the validity of the said document, criminal proceedings cannot be permitted to go on, while the validity of the document is pending adjudication before the civil court.

Purpose of Investigation:

The Investigating Officer is the person tasked with determining a direction, the pace, manner and method of the investigation. In Amarnath Chaubey v. Union of India (2021) 11 SCC 80, it was observed that the police has a primary duty to investigate upon receiving the report of the commission of crime. In Manohar Lal Sharma v. Union of India (2014) 2 SCC 532, this Court observed that one of the responsibilities of the police is protection of life, liberty and property of citizens. The investigation of offences to bring the offender to the book and facilitate the ultimate search for truth is one of the important duties the police has to perform. This is a statutory duty under the Cr.P.C. and is also a constitutional obligation ensuring the maintenance of peace and the upholding of rule of law.

39. On the responsibility cast on an officer investigating a crime, this Court in Common Cause v. Union of India (2015) 6 SCC 332, observed as under :

> "31. There is a very high degree of responsibility placed on an investigating agency to ensure that an innocent person is not subjected to a criminal trial. This responsibility is coupled with an equally high degree of ethical rectitude required of an

investigating officer or an investigating agency to ensure that the investigations are carried out without any bias and are conducted in all fairness not only to the accused person but also to the victim of any crime, whether the victim is an individual or the State."

40. It is well recognised that the Magistrate concerned is not empowered to interfere with the investigation being carried out up until the submission of the report by the said officer. Needless to state then that the role of the Investigating Officer is essential and crucial. Chapter XII of Cr.P.C. titled as "information to the police and their powers to investigate", lays down the procedure and course of action to be taken by the police upon receipt of the commission of an offence cognizable in nature. Section 156 lays down the power of investigation; Section 157 the procedure thereof; Section 160 the power to require attendance of a witness, Section 161 conduct examination of such witness, etc. Section 172 requires such police officer to maintain a case diary and Section 173 lays down the format and the procedure for the report to be issued by such officer.

41. This Court has in Pooja Pal v. Union of India (2016) 3 SCC 135, expounded as under for criminal investigations and its success :

"**96. The avowed purpose of a criminal investigation and its efficacious prospects with the advent of scientific and technical advancements have been candidly synopsised in the prefatory chapter dealing with the history of criminal investigation in the treatise on Criminal Investigation** - Basic Perspectives by Paul B. Weston and Renneth M. Wells:

"Criminal investigation is a lawful search for people and things useful in reconstructing the circumstances of an illegal act or omission and the mental state accompanying it. It is probing from the known to the unknown, backward in time, and its goal is to determine truth as far as it can be discovered in any post-factum inquiry.

Successful investigations are based on fidelity, accuracy and sincerity in lawfully searching for the true facts of an event under investigation and on an equal faithfulness, exactness, and probity in reporting the results of an investigation. Modern investigators are persons who stick to the truth and are absolutely clear about the time and place of an event and the measurable aspects of evidence. They

work throughout their investigation fully recognising that even a minor contradiction or error may destroy confidence in their investigation.

The joining of science with traditional criminal investigation techniques offers new horizons of efficiency in criminal investigation. New perspectives in investigation bypass reliance upon informers and custodial interrogation and concentrate upon a skilled scanning of the crime scene for physical evidence and a search for as many witnesses as possible. Mute evidence tells its own story in court, either by its own demonstrativeness or through the testimony of an expert witness involved in its scientific testing. Such evidence may serve in lieu of, or as corroboration of, testimonial evidence of witnesses found and interviewed by police in an extension of their responsibility to seek out the truth of all the circumstances of crime happening. An increasing certainty in solving crimes is possible and will contribute to the major deterrent of crime—the certainty that a criminal will be discovered, arrested and convicted."

(Emphasis in original)

42. With reference to case diaries, it has been observed by this Court in Bhagwant Singh v. Commission of Police (1983) 3 SCC 344, a two-Judge Bench observed that entries into the police diary shall be with (a) promptness; (b) in sufficient detail; (c) containing all significant facts; (d) in chronological order; and (e) with complete objectivity.

43. This Court in Mohd. Imran Khan v. State (Govt. of NCT of Delhi), (2011) 10 SCC 192, observed as under while noting the effect of objectionable features and infirmities on criminal investigations:

"31. The investigation into a criminal offence must be free from all objectionable features or infirmities which may legitimately lead to a grievance to either of the parties that the investigation was unfair or had been carried out with an ulterior motive which had an adverse impact on the case of either of the parties. The investigating officer is supposed to investigate an offence avoiding any kind of mischief or harassment to either of the party. He has to be fair and conscious so as to rule out any possibility of bias or impartial conduct so that any kind of suspicion to his conduct may be dispelled and the ethical conduct is absolutely essential for investigative professionalism. The investigating officer "is not merely to bolster up a

prosecution case with such evidence as may enable the court to record a conviction but to bring out the real unvarnished truth".

NEWS

- The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Amendment Rules, 2023, published G.S.R. 275(E) dt. 06th April, 2023.
- ACTS - STATE – The Telangana Motor Vehicles Taxation (Amendment) Act, 2023 - Publication ordered as Telangana Act No. 6 of 2023. G.O.Ms.No. 30 LAW (D) DEPARTMENT Dated: 13-04-2023
- THE ANDHRA PRADESH TRANSPORT SUBORDINATE SERVICE RULES, 2009 - "GAZETTED" STATUS CONFERRED TO THE POST OF ASSISTANT MOTOR VEHICLE INSPECTOR
- The Andhra Pradesh rights of person with disabilities rules, 2023 notified
- The Telangana State Prosecution Rules, 1992 Amendment rules kept in abeyance notified by GOMs No. 23 (Home Courts-A-1 Dept.) dated 10.04.2023

ON A LIGHTER VEIN

An investment banker decides she needs in-house counsel, so she interviews a young lawyer. "Mr. Peterson," she says. "Would you say you're honest?"
"Honest?" replies Peterson. "Let me tell you something about honesty. My father lent me $85,000 for my education, and I paid back every penny the minute I tried my first case."
"Impressive. And what sort of case was that?"
"Dad sued me for the money."

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

(An Endeavour for Learning & Excellence)

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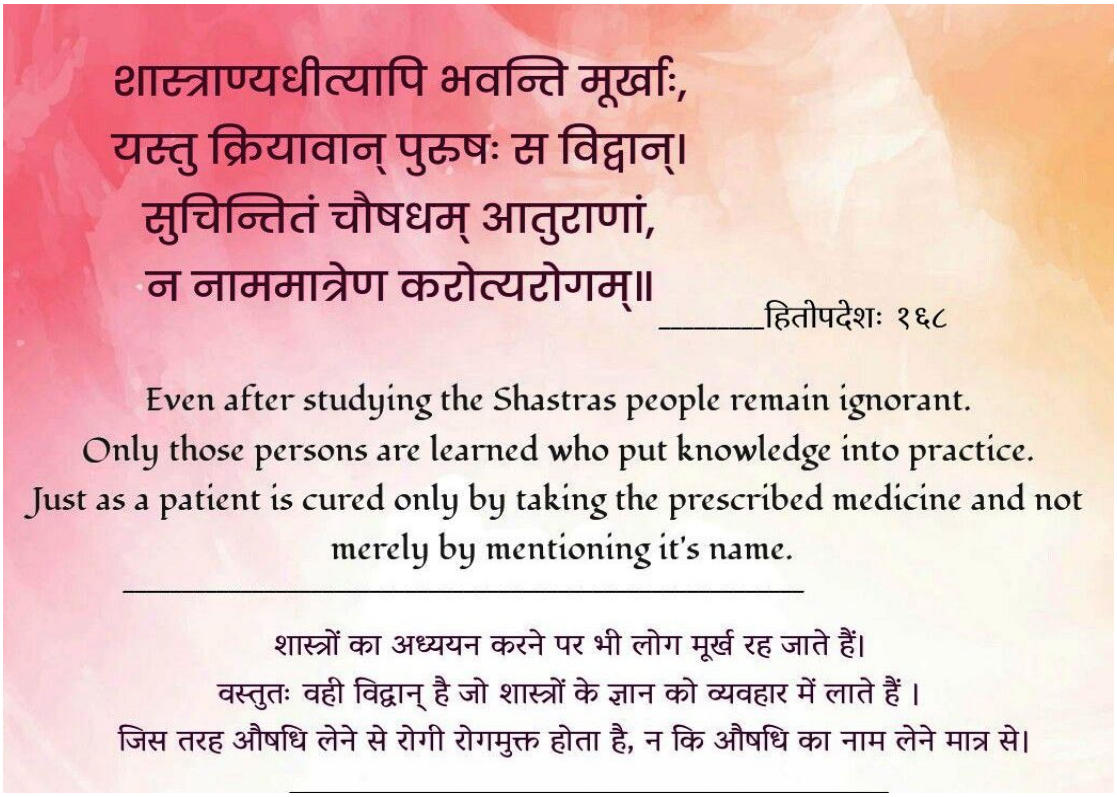
Aano Bhadr Kratvo Yantu Viswatah

(Let Noble Thoughts Come To Me from All Directions)



CITATIONS

2023 0 Supreme(SC) 476; Dinesh Kumar Vs. The State of Haryana; Criminal Appeal No.530 of 2022; Decided On : 04-05-2023

The duty of the presiding judge of a criminal trial is not to watch the proceedings as a spectator or a recording machine but he has to participate in the trial “by evincing intelligent active interest by putting questions to witnesses in order to ascertain the truth.”

This does not mean that in cases where there is a long gap between the time of last seen and the death of the deceased the last seen evidence loses its value. It would not, but then a very heavy burden is placed upon the prosecution to prove that during this period of last seen and discovery of the body of the deceased or the time of the death of the deceased, no other person but the accused could have had an access to the deceased.

As far as the recovery is concerned, the recovery is again weak. The so-called alleged place of crime and the recovery of tractor or the place where the tractor was abandoned had already been disclosed by the co-accused by the time the present

appellant was arrested. Therefore, making a disclosure about the place of occurrence or the place where the tractor was abandoned is of no consequence.

As far as the recovery of watch, currency notes of Rs. 250/-, hair and 'Parna' from the residence of the appellant are concerned, the currency notes and hair have not been identified with the deceased. In a criminal trial, the prosecution has to prove its case beyond reasonable doubt. This heavy burden has to be discharged by the prosecution. It becomes even more difficult in a case of circumstantial evidence.

2023 0 Supreme(SC) 484; Rahul Gupta Vs. State of Rajasthan; Criminal Appeal Nos. 1343-44 of 2023 (@ SLP (Crl) Nos. 012669-012670/2022); 04-05-2023

When the accused are charge-sheeted after the investigation, the High Court ought to have taken note of and/or considered the material collected during the investigation even to find out whether there is any material collected during the investigation involving the accused for the serious offence under Section 302 of IPC and therefore, whether it is a fit case to enlarge the accused on bail or not.

2023 0 Supreme(SC) 496; Sri Gulam Mustafa Vs. The State Of Karnataka & Smt. Jayamma; Criminal Appeal No. 1452 Of 2023 (@ Special Leave Petition (Crl.) No.2480 of 2021); Decided on : 10-05-2023

This Court would indicate that the officers, who institute an FIR, based on any complaint, are duty-bound to be vigilant before invoking any provision of a very stringent statute, like the SC/ST Act, which imposes serious penal consequences on the concerned accused. The officer has to be satisfied that the provisions he seeks to invoke prima facie apply to the case at hand. We clarify that our remarks, in no manner, are to dilute the applicability of special/stringent statutes, but only to remind the police not to mechanically apply the law, dehors reference to the factual position.

2023 0 Supreme(SC) 499; Tarak Nath Keshari Vs. State of West Bengal; Criminal Appeal No. 1444 of 2023 (Arising out of SLP (Crl) D No. 28476 of 2018); Decided On : 10-05-2023

Even if there is minimum sentence provided in Section 7 of the EC Act, in our opinion, the appellant is entitled to the benefit of probation, the EC Act, being of the year 1955 and the Probation of Offenders Act, 1958 being later. Even if minimum sentence is provided in the EC Act, 1955 the same will not be a hurdle for invoking the applicability of provisions of the Probation of Offenders Act, 1958.

2023 0 Supreme(SC) 503; Raj Kumar @ Suman Vs. State (NCT of Delhi); CRIMINAL APPEAL NO. 1471 of 2023 [Arising out of S.L.P.(Crl.)No.11256 of 2018]; 11-05-2023

In many criminal trials, a large number of witnesses are examined, and evidence is voluminous. It is true that the Judicial Officers have to understand the importance of Section 313. But now the Court is empowered to take the help of the prosecutor and the defence counsel in preparing relevant questions. Therefore, when the Trial Judge prepares questions to be put to the accused under Section 313, before putting the questions to the accused, the Judge can always provide copies of the said questions to the learned Public Prosecutor as well as the learned defence Counsel and seek their assistance for ensuring that every relevant material circumstance appearing against the accused is put to him. When the Judge seeks the assistance of the prosecutor and the defence lawyer, the lawyers must act as the officers of the Court and not as mouthpieces of their respective clients. While recording the statement under Section 313 of CrPC in cases involving a large number of prosecution witnesses, the Judicial Officers will be well advised to take benefit of subsection (5) of Section 313 of CrPC, which will ensure that the chances of committing errors and omissions are minimized.

In 1951, while delivering the verdict in the case of Tara Singh (supra) , this Court lamented that in many cases, scant attention is paid to the salutary provision of Section 342 of CrPC of 1898. We are sorry to note that the situation continues to be the same after 72 years as we see such defaults in large number of cases. The National and the State Judicial Academies must take a note of this situation. The Registry shall forward a copy of this decision to the National and all the State Judicial Academies.

2023 0 Supreme(SC) 504; Sanjay Dubey Vs. State of Madhya Pradesh and Another; Criminal Appeal No. 1466 of 2023, Special Leave Petition (Crl.) No. 11377 of 2022; 11-05-2023

It is too well-settled that judgments are not to be read as Euclid’s theorems; they are not to be construed as statutes, and; specific cases are authorities only for what they actually decide.

2023 0 Supreme(SC) 448; Judgebir Singh @ Jasbir Singh Samra @ Jasbir & Ors. Vs. National Investigation Agency; Criminal Appeal No. 1011-1012 of 2023 : 01-05-2023

the scheme of both the Acts makes it clear that once the investigation is completed, the report under Section 173 of the CrPC is to be filed in the Special Court constituted under the Act. Section 16 of the NIA Act leaves no room for any doubt, as it empowers the Special Court to take cognizance of any offence without the accused being committed to it, for trial, upon receiving a complaint of facts that constitute such offence or upon a police report of such facts. Thus, by incorporating Section 16 in the NIA Act the legislature has made the Special Court as the court of original jurisdiction unlike the Sessions Court, which is a court of committal under the Criminal Procedure Code.

The right to be released on default bail continues to remain enforceable if the accused has applied for such bail, notwithstanding pendency of the bail application or subsequent filing of the chargesheet or a report seeking extension of time by the prosecution before the court. However, where the accused fails to apply for default bail when the right accrues to him, and subsequently a chargesheet, or a report seeking extension of time is preferred before the Magistrate or any other competent court, the right to default bail would be extinguished. The court would be at liberty to take cognizance of the case or grant further time for completion of the investigation, as the case may be, though the accused may still be released on bail under other provisions of the CrPC.

2023 0 Supreme(SC) 472; Kailash Vijayvargiya Vs. Rajlakshmi Chaudhuri and others; Criminal Appeal Nos. 1581, 1582 & 1583 of 2021: 04-05-2023

The power under the Code to investigate generally consists of following steps: (a) proceeding to the spot; (b) ascertainment of facts and circumstances of the case; (c) discovery and arrest of the suspected offender; (d) collection of evidence relating to commission of offence, which may consist of examination of various persons, including the person accused, and reduction of the statement into writing if the officer thinks fit; (e) the search of places of seizure of things considered necessary for investigation and to be produced for trial; and (f) formation of opinion as to whether on the material collected there is a case to place the accused before the Magistrate for trial and if so, taking the necessary steps by filing a chargesheet under Section 173.

We were informed that the Magistrate, on remand, has passed an order under Section 156(3) directing registration of the FIR. He has misread the order and directions given by the High Court. In terms of the judgments of this Court, the Magistrate is required to examine, apply his judicious mind and then exercise discretion whether or not to issue directions under Section 156(3) or whether he should take cognizance and follow the procedure under Section 202. He can also direct a preliminary inquiry by the Police in terms of the law laid down by this Court in Lalita Kumari (supra).

We would refrain and not comment on the allegations made as this may affect the case put up by either side. The accused do not have any right to appear before the Magistrate before summons are issued. However, the law gives them a right to appear before the revisionary court in proceedings, when the complainant challenges the order rejecting an application under Section 156(3) of the Code. The appellants, therefore, had appeared before the High Court and contested the proceedings. They have filed several papers and documents before the High Court and this Court. To be fair to them, the copies of the papers and documents filed before the High Court and this Court would also be forwarded and kept on record of the Magistrate who would, thereupon, examine and consider the matter. However, the complainant/informant would be entitled to question the genuineness and the contents of the said documents.

2023 0 Supreme(SC) 512; Directorate of Enforcement Vs. Aditya Tripathi; Criminal Appeal Nos. 1401 & 1402 of 2023: 12-05-2023

the High Court has failed to notice and appreciate that the investigation with respect to the scheduled offences under the PML Act, 2002 by the Enforcement Directorate is still going on. Merely because, for the predicated offences the charge-sheet might have been filed it cannot be a ground to release the accused on bail in connection with the scheduled offences under the PML Act, 2002. Investigation for the predicated offences and the investigation by the Enforcement Directorate for the scheduled offences under the PML Act are different and distinct.

2023 0 Supreme(SC) 523; Kallu vs The State of Uttar Pradesh; Criminal Appeal No. 1446 of 2014: 15-05-2023

Besides that the issue sought to be raised is that PW-2 was an interested witness, hence her statement should not be relied upon. Informant Mullu is not only the son of the deceased but also the real brother of Malkhan and the real uncle of appellant, Kallu. PW-2 Phula is the cousin sister of both Mullu and Malkhan. Therefore, the relationship of Mullu and Phula with the deceased does not affect her credibility. Reference was sought to be made of a case of theft against Jogeshwar, who is the brother of Phula, PW-2. In her cross-examination, PW-2 was put a question that the accused Malkhan had testified against her brother Jogeshwar. However, it was merely a question put during the cross-examination of PW-2. There is no document placed on record to substantiate the plea that there was any dispute in which accused, Malkhan had appeared as a witness. PW-2, Phula is also an eye-witness of the incident. She also corroborated what was stated by PW-1. There was no variation in the statements made by them.

2023 0 Supreme(SC) 538; Captain Manjit Singh Virdi (Retd.) Vs. Hussain Mohammed Shattaf & Ors.; Criminal Appeal No. 1399 of 2023: 18-05-2023

The High Court vide impugned order had summed up the entire evidence in two paras without even referring to the Psychological Evaluation including Psychological Profiling, Polygraph Testing and Brain Electrical Oscillations Signature Profiling (BEOS) tests of the accused and the other aides of respondent no.1 and ordered discharge of Respondent Nos.1 and 2.

Though Psychological Evaluation test report only may not be sufficient to convict an accused but certainly a material piece of evidence. Despite this material on record, the High Court could not have opined that the case was not made out even for framing of charge, for which only prima facie case is to be seen.

If the facts of the case are examined in the light of law laid down by this Court on the subject, it is evident that the High Court has not even referred to the evidence collected by Investigating Agency produced alongwith chargesheet in its entirety. Rather there is selective reference to the statements of some of the persons recorded during investigation. It shows that there was total non-application of mind. The High Court had exercised the jurisdiction in a manner which is not vested in it to scuttle the trial of a heinous crime.

2023 0 Supreme(SC) 539; Gian Chand Vs. State of Himachal Pradesh; Criminal Appeal No. 282 of 2011: 18-05-2023

The first ground of acquittal taken by the Trial Court is the variance between the two versions stated by PW-1, Mohar Singh. In the DDR dated 15.9.1992, he mentioned the danda blow was inflicted by accused, Mohar Lal and a blow by branch was given by the appellant. However, as per his supplementary statement recorded under Section 161 CrPC dated 15.9.1992, he corrected his previous statement whereby he said that Gian Chand, the appellant was the one who had inflicted the danda blow and not Mohar Lal. While deposing before the Court, he has stated that Gian Chand had given the dana blow. The Trial Court has erroneously concluded that the variance between the two versions goes to the very root of the case. It must be noted that PW-1 corrected his statement at the first available opportunity on the same day. Furthermore, appellant Gian Chand and accused Mohar Lal are real brothers. There could be no occasion for the complainant to have changed his version in order to absolve one of the brothers and implicate the other brother, being the author of the fatal head injury suffered by the deceased. The High Court has rightly concluded that the variance appears to be on account of an inadvertent mistake.

On a combined reading of the depositions made by the eye witnesses, it is clear that these do not suffer from any major contradictions. As has been noticed by the High Court, one must bear in mind that the occurrence has taken place on 14.9.1992 whereas the witnesses were making statements in the court on 11.12.1996. Since there is a gap of more than four years, minor contradictions or variations are normal. The Trial Court has erred in basing the acquittal of the accused on these immaterial inconsistencies. When factum of dispute between the parties was even admitted by the accused in their statement, recorded under section 313 Cr.PC.

four different versions are coming from the side of the defence. Firstly, the deceased had died due to fall from the ‘thara’ of his house, secondly, from the ‘danga’ of his house, thirdly, from the ‘danga of the khalian’ and fourthly from the ‘danga of the accused’. Such inherent contradictions cannot result in acquitting the accused.

Chanchalpati Das vs The State Of West Bengal on 18 May, 2023; https://indiankanoon.org/doc/112121899/; Criminal Appeal No. 1592 OF 2023 (@ SLP (CRL.) NO. 6688 OF 2017)

We would like to add that just as bad coins drive out good coins from circulation, bad cases drive out good cases from being heard on time. Because of the proliferation of frivolous cases in the courts, the real and genuine cases have to take a backseat and are not being heard for years together. The party who initiates and continues a frivolous, irresponsible and senseless litigation or who abuses the process of the court must be saddled with exemplary cost, so that others may deter to follow such course. The matter should be viewed more seriously when people who claim themselves and project themselves to be the global spiritual leaders, engage themselves into such kind of frivolous litigations and use the court proceedings as a platform to settle their personal scores or to nurture their personal ego.

https://indiankanoon.org/doc/130220371/; CRLP NO.3060 of 2021: 11.05.2023; Shaik Ameena Rehamani vs State Of AP;

While, it is the case of the Police that the petitioner behaved arrogantly and obstructed the Police from discharging their functions, it could be the other way round also as stated by the petitioner that the Police have forcibly taken her mobile and humiliated her. The petitioner's representations to the Superintendent of Police and others complaining about the behaviour of the 2 nd respondent, gains significance for that matter. Non-furnishing of CCTV footage is also a relevant factor which weighs in her favour. If the petitioner, being an Advocate, acts with self-respect and dignity, it cannot be termed as "arrogance". While the petitioner as an Advocate has to act in accordance with Law, the Police are also expected to behave themselves and discharge their duties, without being swayed away by the "Police power or arrogance".

Going by the contents of the Complaint/Charge Sheet, it is clear that it is the Police, who have taken the mobile from the petitioner on the premise that she is filming/shooting the conversation inside the office of the 2nd respondent and thereafter she allegedly snatched back the same. Such an act, to the mind of this Court, would not amount to assault or use of Criminal force against the 2nd respondent, much less, with an intent to prevent or deter him from discharging his duty. In a spur of movement, if the petitioner pulls/snatches back her mobile, the same would not attract the offence punishable under Section 353 of IPC, as there is

no intention on her part to prevent discharge of duties by a public servant. The other allegation that the petitioner is having arrogant attitude and behaved adamantly, even assuming, the same would not amount to assault or use of Criminal force to attract the offence under Section 353 of IPC.

https://indiankanoon.org/doc/45959955/; CRIMINAL PETITION No.4699 OF 2023 11.05.2023; Kuna Anjan Kumar vs The State Of Telangana, on 11 May, 2023
follow the procedure laid down under Section 41-A Cr.P.C and also the guidelines formulated by the Hon'ble Supreme Court in Arnesh Kumar v. State of Bihar scrupulously. The police shall not take any coercive steps against the petitioners.

(one of the offence is under Sec 467 IPC punishable with Imprisonment for life, or imprisonment for 10 years and fine)

https://indiankanoon.org/doc/95748955/; Sri Chandhavath Raju, vs The State Of Telangana, on 11 May, 2023; WRIT PETITION NO.13381 OF 2023
Mere involvement in a crime would not itself constitute breach of bond furnished by the petitioner as it cannot be treated on par with conviction.

https://indiankanoon.org/doc/100088128/; **Jainapuram Rajendhar vs The State Of Telangana on 11 May, 2023**; WRIT PETITION NO.13343 OF 2023
the petitioner is being prosecuted for the offences punishable under Sections 290, 324, 341 IPC and Section 3(1)(r)(s), 3(2)(va) SC/ST's POA Act. The sentence of imprisonment prescribed for the aforesaid offences is below seven (7) years.
the Station House Officer, Jagtial Town Police Station is directed to follow the procedure laid down under Section 41-A of Cr.P.C. before arresting the petitioner and strictly adhere to the guidelines formulated by the Hon'ble Supreme Court in Arnesh Kumar v. State of Bihar and another. The petitioner shall co-operate with the Investigating Officer by furnishing information and documents as sought by him in concluding the investigation.

https://indiankanoon.org/doc/55726944/; The State Of Telangana vs Shaik Babu on 28 April, 2023; R.T.No.1 of 2020 and Crl.A.No.293 of 2020 (DB)
Exaggerated devotion to the rule of benefit of doubt must not nurture fanciful doubts or lingering suspicion and thereby destroy social defence. Justice cannot be made sterile on the plea that it is better to let hundred guilty escape than punish an innocent. Letting guilty escape is not doing justice according to law. A reasonable

doubt is not an imaginary, trivial or merely possible doubt, but a fair doubt based upon reason and common sense. It must grow out of the evidence in the case. Vague hunches cannot take place of judicial evaluation. A judge does not preside over a criminal trial, merely to see that no innocent man is punished, but he also presides to see that a guilty man does not escape. Both are public duties. Doubts would be called reasonable if they are free from a zest for abstract speculation. Law cannot afford any favourite other than truth.

https://indiankanoon.org/doc/23266294/; Siddeli Anjaiah Goud vs State Of A.P. on 28 April, 2023; CRIMINAL REVISION CASE No.1330 OF 2009

As rightly contended by the learned Assistant Public Prosecutor, conviction can be solely based on the evidence of the victim, if such evidence inspires confidence in the mind of the Court. Further, the victim in a rape cases is not to be treated as an accomplice but could only be characterized as an injured witness.

https://indiankanoon.org/doc/73865225/; Shaik Mohammed Hafeez vs The State Of Telangana on 28 April, 2023; CRIMINAL REVISION CASE No.273 of 2018

Mere expression of any words without any intention to cause alarm would not be sufficient to bring in the application of Section 506 of IPC. But material has to be placed on record to show that the intention is to cause alarm to the complainant.

19. In the instant case, the allegation against the petitioner/accused is that he called PW.1 over telephone and abused him in filthy language addressing him and disturbed the Court work. The allegations in this regard are quite vague and general. The above allegation, taking on its face value does not satisfy the ingredients of Section 506 of IPC. In the entire FIR, there is no whisper of any allegation that the alleged abuse caused any alarm to the complainant and he felt actually threatened. A plain reading of the Ex.P1-complaint in the present case does not disclose anything about the aspect of alarm.

The ability of an individual to identify voice in general and the familiarity of the listener with the known voice and even a confident recognition of a familiar voice by a listener must be established beyond all reasonable doubt by cogent, positive, affirmative and assertive evidence. Voice can also be identified by means of voice identification parade. In the instant case, admittedly, no voice identification parade was conducted by the trial Court to satisfy itself that PWs.2 and 3 were able to identify the voice of the petitioner/accused.

https://indiankanoon.org/doc/190227158/; Nandipati Lakshman Rao, vs The State Of A.P. on 12 May, 2023; CRIMINAL APPEAL No.1654 OF 2006

PW.5 deposed that he acted as mediator in four ACB cases, it is not elicited whether present case is subsequent to other cases or not. Under the circumstances as PW.5 was a public servant, he was bound to assist ACB officials whenever requested. The evidence of PW.5 cannot be tainted as stock witness.

https://indiankanoon.org/doc/80916904/; Suresh Goyal vs Directorate Of Enforcement on 12 May, 2023; CRIMINAL PETITION NO. 2904 OF 2023

Therefore, the underlining conclusion is that irrespective of the nature and gravity of charge, the precedent of another case alone will not be the basis for either grant or refusal of bail though it may have a bearing on principle. But ultimately the consideration will have to be on case-to-case basis on the facts involved therein and securing the presence of the accused to stand trial.

SANTHAKUMARI & ORS. Vs. STATE OF TAMIL NADU & ANR. Crl. Appeal @ SLP (Crl.) No.4230 of 2023; 12.05.2023

by virtue of Section 401(2) of the Code, the accused mentioned in the first information report get the right of hearing before the Revisional Court although the impugned order therein was passed without their participation. The appellant who is an accused person cannot be deprived of hearing on the face of the express provision contained in Section 401(2) of the Code

Courses open to court upon police filing final report:

In **Minu Kumari v. State of Bihar, (2006) 4 SCC 359**, it was observed that upon submission of a report in terms of Section 173 (2) (i) the concerned Magistrate has three courses of action available before him:

(i) Accept the report and proceed further

(ii) Disagree with the report and drop the proceedings.

(iii) Direct further investigation under Section 156 (3) which is the power of the police to investigate a cognizable offence, and require them to make a further report

Ingredients for Section 420 IPC

The ingredients that must be met in order to constitute an offence under the section have been noted by this Court in **Vijay Kumar Ghai and Ors. v. State of West Bengal and Ors., (2022) 7 SCC 124** by a bench of two judges (consisting one of us, Krishna Murari, J.):

"35.To establish the offence of cheating in inducing the delivery of property, the following ingredients need to be proved:

(i) The representation made by the person was false.

(ii) The accused had prior knowledge that the representation he made was false.

(iii) The accused made false representation with dishonest intention in order to deceive the person to whom it was made.

(iv) The act where the accused induced the person to deliver the property or to perform or to abstain from any act which the person would have not done or had otherwise committed.

36. As observed and held by this Court in **R.K. Vijayasarathy v. Sudha Seetharam, (2019) 16 SCC 739 : (2020) 2 SCC (Cri) 454,** the ingredients to constitute an offence under Section 420 are as follows:

(i) a person must commit the offence of cheating under Section 415; and

(ii) the person cheated must be dishonestly induced to:

(a) deliver property to any person; or

(b) make, alter or destroy valuable security or anything signed or sealed and capable of being converted into valuable security. Thus, cheating is an essential ingredient for an act to constitute an offence under Section 420IPC."

Bail to a life convict whose appeal is pending

the judgment of the Composite High Court of Andhra Pradesh in the case of **Batchu Rangarao and ors., Vs., State of Andhra Pradesh reported in [2016(3) ALT (Criminal) 505 (AP)]**, the Court laid down the following guidelines, while considering the bail applications of the present nature:

"(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 failing 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."

Contradiction

In a case reported in **AIR 1958 Bom 225, Syyed Husan Vs State**, their lordship held that the correct way and the proper way of proving a contradiction or omission is to ask the investigating officer (SI) about it in his evidence, as to whether a certain statement was made before him by a witness. If such a procedure is not adopted, it cannot be said that there was proof that in fact the statement concerned was not made by the witness. It is for the trial judge to decide in each case, after comparing the part or parts of the statement recordedby the police with that made in the witness box, to give a ruling having regard to the aforesaid principles whether the recital intended to be used for contradiction satisfies the requirements of law.

Appreciation of Evidence

In **Ganesh K. Gulve etc. v/s. State of Maharashtra** (decided on 21.08.2002 in appeal (Cri) 501 of 1999 as under:- " In order to appreciate the evidence, the Court is required to bear in mind
1. the set up and environment in which the crime is committed.
2. The level of understanding of the witnesses.
3. The over jealousness of some of near relations to ensure that everyone even remotely connected with the crime be also convicted.
4. Everyone's different way of narration of same facts.

These are only illustrative instances. Bearing in mind these broad principles, the evidence is required to be appreciated to find out what part out of the evidence represents the true and correct state of affairs. It is for the courts to separate the grain from the chaff"

Effect of 161 CrPC statements signed by witness

In **State of U.P Vs MK Anthony (1985 SCC (Crl) 105) and State of Rajasthan Vs Teja Ram and others (AIR 1999 SC 1776)** , the apex court observed that section 162 of Cr.P.C., does not provide that, evidence of a witness given in the court becomes inadmissible, if is found that the statement of witnesses recorded in the course of investigation was signed of the witness at the instance of the investigating officer. It merely puts court on caution and may necessitate in depth scrutiny of the evidence

DNA Evidence- Reliability

Even otherwise, on the value of DNA evidence, we may refer to an observation made by this Court, in **Pattu Rajan v. State of T.N. (2019) 4 SCC 771,** as under;

"52. Like all other opinion evidence, the probative value accorded to DNA evidence also varies from case to case, depending on the facts and circumstances and the weight accorded to other evidence on record, whether contrary or corroborative. This is all the more important to remember, given that even though the accuracy of DNA evidence may be increasing with the advancement of science and technology with every passing day, thereby making it more and more reliable, we have not yet reached a juncture where it may be said to be infallible. Thus, it cannot be said that the absence of DNA evidence would lead to an adverse inference against a party, especially in the presence of other cogent and reliable evidence on record in favour of such party."

Referring to the above case, a three-Judge bench in **Manoj v. State of M.P. (2023) 2 SCC 353,** through S. Ravindra Bhat J., observed;

> "158. This Court, therefore, has relied on DNA reports, in the past, where the guilt of an accused was sought to be established. Notably, the reliance was to corroborate. This Court highlighted the need to ensure quality in the testing and eliminate the possibility of contamination of evidence; it also held that being an opinion, the probative value of such evidence has to vary from case to case."

NEWS

- AP- ROC.No.426 / SO / 2021. Dated: 23.03.2023. Amendment To Rule 13(A) Of Writ Proceeding Rules, 1977 - Notified. Notification No.17 / 2023

- AP- ROC.No.426 / SO / 2021. Dated: 23.03.2023. Amendment To Rule 72 Of The High Court Appellate Side Rules - Notified. Notification No.18 / 2023

- A.P- Allowances - Dearness Allowance - Dearness Allowances for the Period from 01.01.2022 - Sanctioned - Orders - Issued (G.O.Ms.No.66, from Finance (PC-TA) Department, dated:01.05.2023)

- AP- Amendment To The First Schedule Under Rule 80 Of The Andhra Pradesh Motor Vehicles Rules, 1989- Final Notification. (G.O.Ms. No.24, Transport, Roads & Buildings (Tr.1), 1st May, 2023.)

- AP- Department for Women, Children, Differently Abled & Senior Citizens - Welfare of Senior Citizens - The Andhra Pradesh Maintenance of Parents and Senior Citizens Rules, 2011 - Rule 22 - State Council of Senior Citizens - Constituted – Orders-Issued.

- AP- Allowances - House Rent allowance - Enhancement of the Rate of HRA from 12% to 16% in the District headquarters of Parvathipuram, Paderu, Anakapalli, Amalapuram, Bhimavaram, Bapatla, Narsaraopeta,Puttaparthy and Rayachoty - Orders - Issued (G.O.Ms.No.69, from Finance (PC-TA) Department, dated:01.05.2023)

- AP- The Andhra Pradesh Maintenance Of Parents And Senior Citizens Rules, 2011 - Establishment Of District Committee Of Senior Citizens For Each District. [G.O.Ms.No.17, Department for Women, Children, Deferently Abled and Senior Citizens (Prog.II), 4th May, 2023.]

- AP- The Andhra Pradesh Maintenance Of Parents And Senior Citizens Rules, 2011 - Rule 22 - State Council Of Senior Citizens - Constituted. [G.O.Ms.No.18, Department for Women, Children, Differently abled and Senior Citizens (Prog.II), 4th May, 2023.]

- AP- Probationers Of IPS Officers Of 2017 And 2018 Batches Of Ap Cadre Confirmation In Indian Police Service - Notification Of Government Of India Republished. [G.O.Rt.No.899, General Administration (SC.C), 11th May, 2023.]

- AP- ROC.No.426 / SO / 2021. Dated: 23.03.2023. Amendment To Rule 122 Of Criminal Rules Of Practice And Circular Orders, 1990 - Notified. Notification No.15 / 2023.

- AP- ROC.No.426 / SO / 2021. Dated: 23.03.2023. Amendment To Rule 8 Of The Andhra Pradesh Civil Rules Of Practice And Circular Orders, 1990 - Notified. Notification No.16 / 2023.

- http://tshcstatus.nic.in is now changed as https://csis.tshc.gov.in

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ON A LIGHTER VEIN

I showed the damaged remains of my luggage to my lawyer and said, "I want to sue the airline."
"You don't have much of a case," he replied

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NOTES

Prosecution Replenish

(An Endeavour for Learning & Excellence)

Vol : XI

July,2023

Aano Bhadr Kratvo Yantu Viswatah

(Let Noble Thoughts Come To Me from All Directions)

Dear officers,

This June had proved the fact that the wants of the God are more than the wishes of the Man (order intended). Prosecution Replenish has lost two of the greatest supporters to it, while one was Sri P.Ravinder Reddy, another is Sri M.Nagaraj.

Sri P.Ravinder Reddy Sir retired as Joint Director of Prosecutions, Telangana State. Sir was the prime and one of the persons who were instrumental in origination of our Prosecution Replenish.

Mr M.Nagaraj was working as Special Prosecutor in Anti Corruption Department. He was a friend, philosopher and guide. He was like a brother.

Both Sir and Nagaraj were in the forefront in extending a helping hand to all in need. They used to thrust me in my pursuits by always standing beside me. I am at loss of words to express gratitude to the Sir and Nagaraj. I would comfort by saying that they were true embodiment of the Sanskrit verse "परोपकारार्थ इदं शरीरम् "

Sri P. Ravinder Reddy
(5.5.1961 – 9-6-2023)

Oh, Sir, dear Sir, how you shaped my life,
With your wisdom, your guidance, and your endless drive,
You opened up my mind to a world of possibilities,
And taught me to chase my dreams with courage and tenacity.

You were more than just a Senior, you were a mentor and a friend,
You believed in me when I didn't believe in myself, and helped me to ascend,
You challenged me to think critically, to question and to explore,
And inspired me to pursue knowledge, and to always strive for more.

You saw potential in me that I didn't know existed,
And pushed me to achieve greatness, to be persistent,
You taught me the value of hard work, and the importance of dedication,
And instilled in me a love of learning, that will last a lifetime, without hesitation.

Oh, Sir, dear Sir, how I owe you so much,
For the lessons you taught me, the wisdom you shared, and the gentle touch,
You have left an indelible mark on my heart and my mind,
And your legacy of excellence, will continue to shine.

So, I thank you, dear Sir, for all that you have done,
For being a beacon of light, a shining sun,
You have inspired me to be the best that I can be,
And for that, I will be forever grateful, eternally.

Sri M. Nagaraj
(26.11.1976 – 25-6-2023)

Oh, my dear brother, how I miss you so,
Your laughter, your smile, your warm embrace,
The memories of our time together,
Are etched in my heart, and can never be erased.

You were a shining light in my life,
A constant source of love and support,
You lifted me up when I was down,
And helped me through life's many reports.

Your kindness and generosity knew no bounds,
You were always there to lend a helping hand,
You made everyone feel loved and appreciated,
And your presence could brighten up any land.

But now you're gone, and my heart is heavy,
I miss your voice, your touch, your face,
But I know that you are in a better place,
And that someday we will meet again in a different space.

Until then, I will hold on to our memories,
And cherish the time we spent together,
I will honor your legacy of love and kindness,
And strive to make the world a better place, forever.

Rest in peace, my dear brother,
You will always be in my heart,
And though we are apart,
Our bond will never be torn apart.

Their Souls live on. We honor their memory by continuing to pursue knowledge, to inspire others, and to make a positive difference in our world. May they rest in peace, knowing that they have left a legacy that will endure for generations to come.

"Shed not for him the bitter tear
Nor give the heart to vain regret.
Tis but mere ashes that lie here.
The gem that filled it sparkles yet."

Rest in peace, dear Sir and brother. You will be forever missed, but never forgotten.

(L.H.Rajeshwer Rao)

2023 0 Supreme(SC) 559; Jitendra Nath Mishra Vs. State of U.P. & Anr.; Criminal Appeal No. 978 of 2022; Decided On : 02-06-2023

the court holding a trial, if it intends to exercise power conferred by section 319, Cr. PC, must not act mechanically merely on the ground that some evidence has come on record implicating the person sought to be summoned; its satisfaction preceding the order thereunder must be more than prima facie as formed at the stage of a charge being framed and short of satisfaction to an extent that the evidence, if unrebutted, would lead to conviction.

https://indiankanoon.org/doc/83614745/; Mohd.Muslim vs State Of Uttar Pradesh (Now Uttarakhand); 15 June, 2023; CRIMINAL APPEAL NO.1089 OF 2011

The delay in sending the dead body of the deceased for Post-mortem, should be explained.

Interpolations on FIR, cast a doubt of its authenticity.

The Material objects recovered from the scene of offence have to be got identified by the accused and evidence connecting the ownership or possession of the material objects with the accused should be produced before the court.

https://indiankanoon.org/doc/193378533/; G. V. Ramana Reddy Vs state of A.P.; CRIMINAL PETITION No.3666 OF 2023; 8 June, 2023;

Sec 41A CrPC Notice issued by the police for the offences punishable under Sections 420, 307, 323, 506 read with 34 IPC.

Anticipatory bail granted to the accused till filing of charge sheet.

https://indiankanoon.org/doc/79332515/; Nagula Sravanthi, vs The State Of Telangana, on 11 May, 2023; WRIT PETITION NO.13349 OF 2023

Mere involvement in a crime would not itself constitute breach of bond furnished by the petitioner as it cannot be treated on par with conviction. Forfeiture

Petitioner herein claims that she is a coolie by profession. On 27.07.2022, she was made to execute a bond of good behaviour for an amount of Rs.1,00,000/-

While so, on 25.04.2023, a warrant for forfeiture of bond of good behaviour was issued by the second respondent alleging that petitioner committed breach of bond by involving in an offence under Section 7-A read with Section 8(e) Prohibition Act, 1955. The basis of the said warrant is the letter addressed by the Prohibition and Excise Station, Mulugu.

https://indiankanoon.org/doc/100088128/; Jainapuram Rajendhar vs The State Of Telangana on 11 May, 2023; W.P.NO.13343 OF 2023

the Station House Officer, Jagtial Town Police Station is directed to follow the procedure laid down under Section 41-A of Cr.P.C. before arresting the petitioner and strictly adhere to the guidelines formulated by the Hon'ble Supreme Court in Arnesh Kumar v. State of Bihar and another. The petitioner shall co-operate with the Investigating Officer by furnishing information and documents as sought by him in concluding the investigation.

2023 0 Supreme(SC) 589; State Of Punjab Vs. Kewal Krishan; Criminal Appeal No. 2128 of 2014; Decided on : 21-06-2023

Ordinarily a person makes a confession either to absolve oneself of the burden of guilt or to seek protection under the hope that the person to whom confession is made would protect him. Normally a confession to absolve oneself of the guilt is made to a person on whom the confessor reposes confidence. The High Court noticed that there was no evidence to demonstrate that the accused had any prior relations with PW-3 or that the accused hoped for, or sought, any help from PW-3 and, therefore, made the confession to him.

Section 106 of the Evidence Act does not absolve the prosecution of discharging its primary burden of proving the prosecution case beyond reasonable doubt. It is only when the prosecution has led evidence which, if believed, will sustain a conviction, or which makes out a prima facie case, the question arises of considering facts of which the burden of proof would lie upon the accused. (See: Shivaji Chintappa Patil v. State of Maharashtra (2021) 5 SCC 626).

In a case based on circumstantial evidence not only do each of the incriminating circumstances have to be proved beyond reasonable doubt but those incriminating circumstances must constitute a chain so far complete that there is no escape from the conclusion that within all human probability it is the accused who has committed the crime and further, cumulatively, they must exclude all hypotheses consistent with the innocence of the accused and inconsistent with his guilt.

https://indiankanoon.org/doc/64266343/; CRL. APPEAL NO.1728 OF 2009; Bassa Babjee Vs State of A.P; 14.06.2023

The act of the accused in pulling her from the pathway into the hayricks and made her to lay down and fell upon her by removing her clothes is nothing but an attempt made by the accused towards the commission of rape. It is not a case of assaulting a woman with criminal force. If the intention of the accused was such that he intended to outrage the modesty, he would have done it on the pathway itself, but he would not have pulled the victim to a hayrick in the lands of Malla Appa Rao.

In my considered view, the evidence on record squarely attracts the essential ingredients of Section 376 r/w 511 of I.P.C. as well as Section 3(1) (xi) of SCs. & Sts. (POA) Act.

2023 0 Supreme(SC) 591; Davinder Singh Vs. State of Punjab; Criminal Appeal No. 12 of 2015; Decided On : 22-06-2023

There is no doubt that the evidence of the prosecutrix will have to be kept at a higher pedestal but then, such a testimony will have to satisfy the conscience of the Court. It has to be seen contextually in the light of the other evidence available.

If they feel no action was taken after the alleged occurrence and the matter was compromised as projected by the prosecution, there would have been other independent witnesses as well. The prosecution has not produced any such witness.

2023 0 Supreme(SC) 586; A. Srinivasulu Vs. The State Rep. By The Inspector Of Police; Criminal Appeal No.2417 of 2010, Criminal Appeal No.16 of 2011, Criminal Appeal No.2444 of 2010; Decided on : 15-06-2023

For invoking Section 73, there must first have been some signature or writing admitted or proved to the satisfaction of the Court, to have been written or made by that person. The Section empowers the Court also to direct any person present in Court to write any words or figures for the purpose of enabling the Court to compare the words or figures.

https://indiankanoon.org/doc/56963238/; CRIMINAL PETITION No.6934 OF 2015; 14.06.2023; Lokireddy Satyanarayana Reddy & others Vs State of A.P

The respondent filed a suit in O.S.No.280 of 2010 for recovery of possession alleging that the petitioners/accused have forged the signatures and created fabricated documents. When the issue as to the genuineness of the documents is pending for consideration in a civil suit, this Court is of the view that the criminal proceedings ought not have been allowed to continue as it would prejudice the interests of the parties and the stand taken by them in the civil suit.

Appreciation of Evidence:

In the case of Rajesh Yadav vs. State of Uttar Pradesh, (2022) 12 SCC 200, on the approach of the court in appreciating the evidence before it:

> "12. Section 3 of the Evidence Act defines "evidence" broadly divided into oral and documentary. "Evidence" under the Act is the means, factor or material, lending a degree of probability through a logical inference to the existence of a fact. It is an "adjective law" highlighting and aiding substantive law. Thus, it is neither wholly procedural nor substantive, though trappings of both could be felt.

13. The definition of the word “proved” though gives an impression of a mere interpretation, in effect, is the heart and soul of the entire Act. This clause, consciously speaks of proving a fact by considering the “matters before it.” The importance is to the degree of probability in proving a fact through the consideration of the matters before the court. What is required for a court to decipher is the existence of a fact and its proof by a degree of probability, through a logical influence.

14. Matters are necessary, concomitant material factors to prove a fact. All evidence would be “matters” but not vice versa. In other words, matters could be termed as a genus of which evidence would be a species. Matters also add strength to the evidence giving adequate ammunition in the Court's sojourn in deciphering the truth. Thus, the definition of “matters” is exhaustive, and therefore, much wider than that of “evidence.” However, there is a caveat, as the court is not supposed to consider a matter which acquires the form of an evidence when it is barred in law. Matters are required for a court to believe in the existence of a fact.

15. Matters do give more discretion and flexibility to the court in deciding the existence of a fact. They also include all the classification of evidence such as circumstantial evidence, corroborative evidence, derivative evidence, direct evidence, documentary evidence, hearsay evidence, indirect evidence, oral evidence, original evidence, presumptive evidence, primary evidence, real evidence, secondary evidence, substantive evidence, testimonial evidence, etc.

16. In addition, they supplement the evidence in proving the existence of a fact by enhancing the degree of probability. As an exhaustive interpretation has to be given to the word “matter”, and for that purpose, the definition of the expression of the words “means and includes”, meant to be applied for evidence, has to be imported to that of a “matter” as well. Thus, a matter might include such of those which do not fall within the definition of Section 3, in the absence of any express bar.

17. What is important for the court is the conclusion on the basis of existence of a fact by analysing the matters before it on the degree of probability. The entire enactment is meant to facilitate the court to come to an appropriate conclusion in proving a fact. There are two methods by which the court is expected to come to such a decision. The court can come to a conclusion on the existence of a fact by merely considering the matters before it, in forming an opinion that it does exist. This belief of the court is based upon the assessment of the matters before it. Alternatively, the court can consider the said existence as probable from the perspective of a prudent man who might act on the supposition that it exists. The question as to the choice of the options is best left to the court to decide. The said decision might impinge upon the quality of the matters before it.

18. The word “prudent” has not been defined under the Act. When the court wants to consider the second part of the definition clause instead of believing the existence of a fact by itself, it is expected to take the role of a prudent man. Such a prudent man has to be understood from the point of view of a common man. Therefore, a Judge has to

transform into a prudent man and assess the existence of a fact after considering the matters through that lens instead of a Judge. It is only after undertaking the said exercise can he resume his role as a Judge to proceed further in the case.

Non-examination of witness

In Rajesh Yadav vs. State of Uttar Pradesh, (2022) 12 SCC 200:

"34. A mere non-examination of the witness per se will not vitiate the case of the prosecution. It depends upon the quality and not the quantity of the witnesses and its importance. If the court is satisfied with the explanation given by the prosecution along with the adequacy of the materials sufficient enough to proceed with the trial and convict the accused, there cannot be any prejudice. Similarly, if the court is of the view that the evidence is not screened and could well be produced by the other side in support of its case, no adverse inference can be drawn. Onus is on the part of the party who alleges that a witness has not been produced deliberately to prove it."

Relatives of Husband

in K. Subba Rao v. The 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."

https://indiankanoon.org/doc/76640285/; Kahkashan Kausar @ Sonam vs The State Of Bihar on 8 February, 2022

Therefore, upon consideration of the relevant circumstances and 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.

Magistrate who recorded 164 CrPC Statement need not be examined

In Kasmira Singh v/s. State of M.P. (A.I.R.) 1952 S.C. 159, It was held that Unlike when a statement is recorded by the police under Section 162, an examination of the magistrate is not necessary to demonstrate a contradiction in cases where the witness contests the fact that the magistrate recorded his statement or if he contests that a particular portion of the statement was not provided by him.

In P.Raja Kumar and others Vs State of A.P - Statement recorded U/S 164 Cr.P.C is not a public document. It is not necessary to summon the magistrate to prove 164 Cr.P.C statement. Magistrate who recorded the statement need not to be examined. Statement U/S 164 is not a substantive evidence and it can't be marked as Exhibit

NEWS

- Roc.No.164/2019-Cps. Dated: 17.04.2023. The High Court Of Andhra Pradesh Rules For Live Streaming And Recording Of Court Proceedings, 2023.
- [G.O.Ms.No.31, Department of Women, Children, Differeently Abled & Senior Citizens (Prog.II), 14th June, 2023.- Prohibition of Child Marriage Rules, 2023.
- The Andhra Pradesh Prohibition Of Child Marriage Rules, 2023, Under The Prohibition Of Child Marriages Act, 2006. Notification.
- MHA Notification S.O. 2742(E) dated 21st June, 2023 - MLAT with the Government of the Kingdom of Belgium for service or execution of summons or search warrant in relation to criminal matters, on any person in Kingdom of Belgium;
- APHC- ROC.No.415/2020-CPS. DATED: 17.04.2023.- Video Conferencing For High Court And District Courts In The State Of Andhra Pradesh - Hon'ble Rules Not Falling Within Jurisdiction Of The Hon'ble Rules Committee Under Section 123 Of Cpc.

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ON A LIGHTER VEIN

A man walked into the local Chamber of Commerce of a small town, obviously desperate. Seeing a man at the counter, the stranger asks, "Is there a criminal attorney in town?" To which the man behind the counter immediately quipped, "Yeah, but we can't prove it yet!"

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Prosecution Replenish

(An Endeavour for Learning & Excellence)

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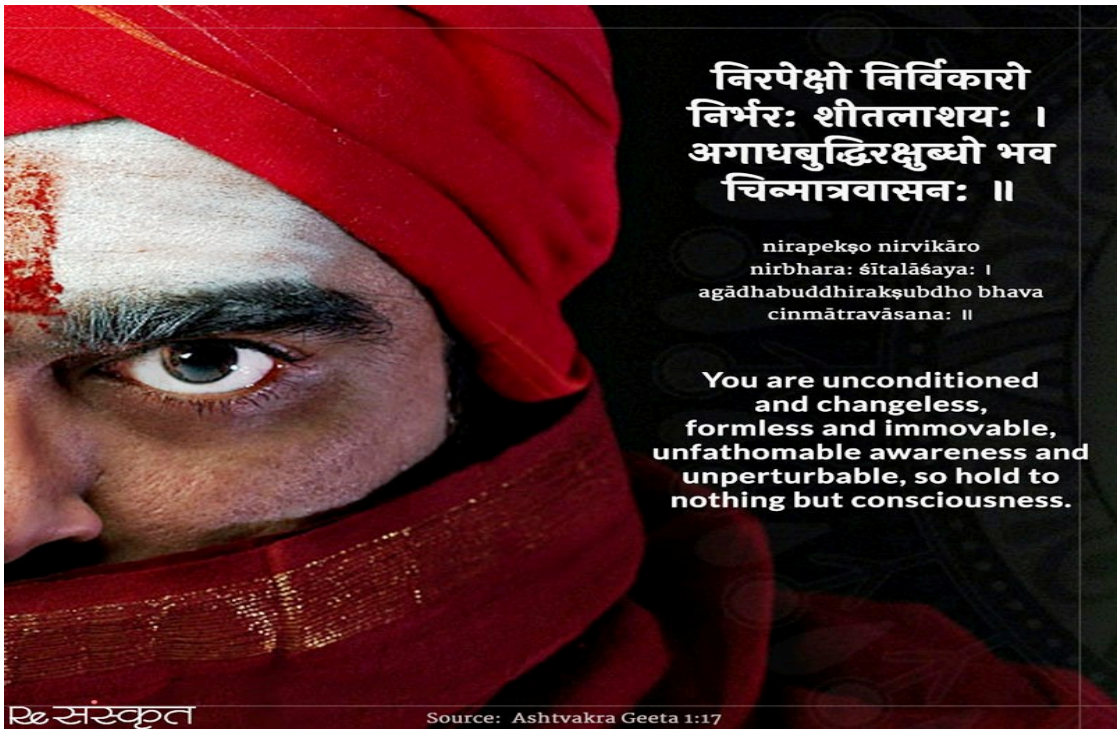
Aano Bhadr Kratvo Yantu Viswatah

(Let Noble Thoughts Come To Me from All Directions)



CITATIONS

2023 0 Supreme(SC) 608; Pradeep Vs. The State of Haryana; Criminal Appeal No. 553 of 2012; Decided On : 05-07-2023

The Judge must be satisfied that the minor is able to understand the questions and respond to them and understands the importance of speaking the truth. Therefore, the role of the Judge who records the evidence is very crucial. He has to make a proper preliminary examination of the minor by putting appropriate questions to ascertain whether the minor is capable of understanding the questions put to him and is able to give rational answers. It is advisable to record the preliminary questions and answers so that the Appellate Court can go into the correctness of the opinion of the Trial Court.

It is a well-settled principle that corroboration of the testimony of a child witness is not a rule but a measure of caution and prudence. A child witness of tender age is easily susceptible to tutoring. However, that by itself is no ground to reject the evidence of a child witness. The Court must make careful scrutiny of the evidence of a child witness. The Court must apply its mind to the question whether there is a possibility of the child witness being tutored. Therefore, scrutiny of the evidence of a child witness is required to be made by the Court with care and caution.

This is a case where an adverse inference will have to be drawn against the prosecution for non-examination of the milkman (the first person whom the child stated about the incident) and the appellant's father (Father of the accused).

2023 0 Supreme(SC) 610; Abdul Ansar Vs. State of Kerala; Criminal Appeal No. 1751 of 2023, SLP (Criminal) No. 2161 of 2023; Decided On : 05-07-2023

By applying principles incorporated in subsection (2) of Section 222 of the Code of Criminal Procedure, 1973 (for short "Cr.P.C.") the Court can consider whether the appellant has committed any other offence which is a minor offence in comparison to the offence for which he is tried.

At that relevant time, the bus was overcrowded. There were a number of passengers waiting at the bus stop. Therefore, it was the duty of the appellant as a conductor to take care of the passengers. Hence, before he rang the bell and gave a signal to the driver to start the bus, he ought to have verified whether all passengers had safely boarded the bus. He could have ascertained this from accused no. 3-cleaner who was standing near the door of the bus. However, he did not take that precaution and care which he was under an obligation to take. Therefore, the appellant acted rashly and negligently as he did not perform his duty of being careful. The appellant knew that at the relevant bus stop, a large number of students were waiting to take the bus to reach their school and therefore, the appellant ought to have verified whether all the passengers had properly boarded the bus before giving the signal to the driver. However, he did not verify whether the passengers had properly boarded the bus. Therefore, he is guilty of negligence as he failed to perform his duty. In fact, this was an act of recklessness on his part. The fact is that due to the negligence on the part of the appellant, human life was endangered. Grievous hurt was caused to PW-1 as she suffered fracture of pelvis.

2023 0 Supreme(SC) 611; State of U.P. vs Sonu Kushwaha; Criminal Appeal No. 1633 of 2023; Decided On : 05-07-2023

The POCSO Act was enacted to provide more stringent punishments for the offences of child abuse of various kinds and that is why minimum punishments have been prescribed in Sections 4, 6, 8 and 10 of the POCSO Act for various categories of sexual assaults on children. Hence, Section 6, on its plain language, leaves no discretion to the Court and there is no option but to impose the minimum sentence as done by the Trial Court. When a penal provision uses the phraseology "shall not be less than….", the Courts cannot do offence to the Section and impose a lesser sentence. The Courts are powerless to do that unless there is a specific statutory provision enabling the Court to impose a lesser sentence. However, we find no such provision in the POCSO Act.

The impact of the obnoxious act on the mind of the victim-child will be lifelong. The impact is bound to adversely affect the healthy growth of the victim. There is no dispute that the age of the victim was less than twelve years at the time of the incident.

2023 0 Supreme(SC) 614; Mohd. Naushad Vs State (Govt. OF NCT OF Delhi); Criminal Appeal No.1269 of 2013 With Criminal Appeal Nos.1270-1271 of 2013 And Criminal Appeal Nos. @ SLP (Crl.) NOS.6447–6451 of 2013; 06-07-2023 (THREE JUDGE BENCH)

the confession of a co-accused can only be used in support of other evidence and cannot be made the foundation of a conviction.

A conjoint reading of Section 164 Cr.P.C. and Sections 24 to 30 of the Indian Evidence Act, makes the confession made by A9 to be entirely admissible in evidence and by virtue of Section 10 of the Evidence Act, in a given case also against a co-accused. The Magistrate was duly empowered to record the confession, though, it would not matter whether he had the jurisdiction in the case or not.

Mere fact that the co-accused stand acquitted through the evidence against all of them would not be a ground to acquit all as held in Gurcharan Singh & Anr. v. State of Punjab, AIR 1956 SC 460 (3-Judge Bench).

2023 0 INSC 612; 2023 0 Supreme(SC) 618; Pratibha Manchanda & Anr. Vs. State of Haryana & Anr.; Criminal Appeal No. 1793 of 2023 [Arising out of Special Leave Petition (Crl.) No.8146 2023] [Arising out of Special Leave Petition (Crl.) D.No.20936 of 2022]; 07-07-2023

The Sub-Registrar and his officials were obligated to verify the ownership rights before registration of the sale deed. As per the Appellants' claim, the prior original sale deeds of the land are still in their possession. The fact that the vendee agreed to pay such massive sums of money to Respondent No. 2 without obtaining the original records as of now casts a shadow over the legitimacy of the transaction.

It is also unclear why, given that when the Subject Land is situated in Gurugram District, the GPA in relation to the property was registered in Kalkaji, New Delhi. It raises some suspicion regarding the genuineness of the GPA. There is, thus, overwhelming and clear cut prima facie evidence to indicate that the version of events provided by Respondent No. 2, the buyers of the property, and the Sub Registrar, should be viewed with scepticism.

It is immaterial that the genuineness of the 1996 GPA is already sub-judice before the Civil Court in the civil suits pending between the parties. The appellants, owing to their age and residential status, cannot be expected to await indefinitely for the outcome of these civil proceedings. Regardless, the pendency of these cases does not estop the issues of forgery and fabrication being considered in the course of criminal investigation. The facts of the case speak for themselves and an element of criminality cannot be ruled out at this stage. Whether or not the alleged offences were committed by Respondent No. 2 and his co-accused in active collusion with each other can be effectively determined by a free, fair, unhampered and dispassionate investigation. In the peculiar facts and circumstances of this case,

custodial interrogation of not only Respondent No. 2 but all other suspects is, therefore, imperative to unearth the truth. Joining the investigation with a protective umbrella provided by pre-arrest bail will render the exercise of eliciting the truth ineffective in such like case. We are, as mentioned, also skeptical, suspicious and incredulous about the verification process of the 1996 GPA carried out by the Sub-Registrar, Kalkaji, New Delhi. Hence, the conduct of the officials of Sub-Registrar Office, Kalkaji, New Delhi is also required to be examined to take the investigation to its logical conclusion.

Land scams in India have been a persistent issue, involving fraudulent practices and illegal activities related to land acquisition, ownership, and transactions. Scammers often create fake land titles, forge sale deeds, or manipulate land records to show false ownership or an encumbrance-free status. Organized criminal networks often plan and execute these intricate scams, exploiting vulnerable individuals and communities, and resorting to intimidation or threats to force them to vacate their properties. These land scams not only result in financial losses for individuals and investors but also disrupt development projects, erode public trust, and hinder socio-economic progress.

2023 0 Supreme(Telangana) 52; Bitra Venkateswara Rao & Another Vs. The State Anti Corruption Bureau, Hyderabad Range, Rep. by Special Public Prosecutor; Criminal Revision Case No.1226 of 2008; Decided On: 03-07-2023

Though there can be no dispute with regard to the competency of the Government to pass such an order, the further steps shall be only in accordance with the procedure prescribed under Section 321 of Cr.P.C. which mandates independent exercise of discretion by the Public Prosecutor incharge of the case subject to the consent of the Court.

In the light of the above settled legal position, it is clear that the decision taken by the Government in G.O.Ms.No.150, Finance (OP.1) Department, dated 07.06.2008, is not conclusive and not binding on the Public Prosecutor much less the Court. Hence, the withdrawal of prosecution of the petitioner is not automatic merely on the basis of G.O.Ms.No.150, Finance (OP.1) Department, dated 07.06.2008 but the same shall be in accordance with the procedure prescribed under Section 321 of Cr.P.C. Admittedly, the Special Public Prosecutor made an application in terms of Section 321 of Cr.P.C. on behalf of the State seeking permission to withdraw the prosecution of the petitioner herein. The learned Special Court, while holding that there was no indication in the application that the learned Public Prosecutor had applied his mind before seeking permission for withdrawal from the prosecution, declined to grant permission to withdraw the prosecution.

However, in the backdrop of the principles laid down by the Hon'ble Supreme Court in Ajit case (State of Kerala v. K.Ajith, AIR 2021 SC 3954) it is to be seen whether the public prosecutor had filed the petition withdrawing from prosecution not merely on the ground of paucity of evidence but also to further the broad ends of public justice; and whether the public prosecutor has formulated an independent opinion before seeking the consent of the court to withdraw from the prosecution; and that the application has been made in good faith, in the interest of public policy and justice, and not to thwart or stifle the process of law;

As seen from the G.O.Ms.No.150 dated 07.06.2008, the reasons put forth there for withdrawing the prosecution against the petitioners herein would not fall under the category of public interest. The learned Prosecutor did not appreciate as to how continuation of the proceedings against the petitioner would cause social injustice or that the application was made in good faith, in the interest of public policy and justice and not to thwart or stifle the process of law. The reasons set out in the G.O. or in the application made by the learned Public prosecutor are all matters of record and do not fall under any of the provisions appended to Section 321 (b) Cr.P.C. The allegations against the petitioners do not relate to possession of disproportionate assets. This is a case of demand and acceptance of bribe and recovery of tainted currency notes from the possession of the petitioners and hence no public interest is involved in the present case. The prosecution did not explain any reason about the consequences that may arise out of the final result of the case.

Therefore, I do not believe that the submissions made by the learned Public Prosecutor are relevant and merit consideration by this Court in an application for withdrawal of prosecution Under Section 321 of the Code of Criminal Procedure. In the considered opinion of this Court, the two main reasons set out by the Government as well as the learned Public Prosecutor viz., there were no disproportionate assets in possession of the petitioners and that the character of the complainant is deceitful are not all grounds for seeking withdrawal of prosecution. Both the reasons are to be adjudged during the course of trial or by the learned trial Court in its findings to be recorded in its judgment or/are grounds for the defence in the trial as well as an argument that may be advanced by the defence which may be based on the evidence that will be produced by the parties. But the prosecution by itself cannot lift a palanquin for the accused and canvass on their behalf. This is not the purport and object of Section 321 Cr.P.C. As held by the Constitution Bench of this Court in Sheonandan Paswan (supra), it is not the duty of this Court, in an application Under Section 321 of the Code of Criminal Procedure, to adjudicate upon evidentiary issues and examine the admissibility or sufficiency of evidence.

2023 0 Supreme(Telangana) 51; Kaka Venkateswar Rao Vs. The State of A.P., rep by its Public Prosecutor; Criminal Appeal No.1816 of 2009; 04-07-2023

The First Information Report Ex.P17 was initially registered under Section 174 Cr.P.C for suspicious death, though complaint was lodged.

(depicting ingredients to attract 304B IPC)

It is not stated as to why two postmortems were conducted on the deceased on 01.04.2007 and again on 02.04.2007. In the postmortem conducted on 01.04.2007, the stomach, liver and kidney and the intestine were sent for the purpose of examination. Report was received by RFSL that there was no chemical poisonous substance in them, which is dated 05.06.2007. However, Ex.P15 was given by P.W.13 dated 07.07.2007 that the cause of death was 'cardiac respiratory failure due to inorganic phosphorous poison'. It is not clear as to what was sent for the purpose of FSL examination on 02.07.2007, on the basis of which Ex.P15 was given that the deceased died of poisoning. Either Ex.P15 nor the evidence of P.Ws.13 and 14 reflect as to what was sent for FSL examination. There was no other FSL examination report other than the FSL report dated 05.06.2007. Ex.P14, wherein APFSL found that there was no poisonous substance.

2023 0 Supreme(Telangana) 50; Shivasani Sai Manideep Vs. The State of A.P., rep by its Public Prosecutor; Criminal Appeal No.125 of 2021: 04-07-2023

The prosecution has failed to prove that PW.1 herein was a minor as on the date of marriage. She moved around freely for 18 days to several places accompanying the appellant and never complained about any force to anyone. According to the evidence of P.W.1, they had resided in three different places prior to the marriage and in the lodge for eight days. In the said circumstances, there cannot be any doubt regarding P.W.1 consenting to stay and move along with the appellant.

The prosecution has failed to prove that the victim girl was a minor. Contradictory evidence is produced by the prosecution regarding the age. Admittedly, neither the municipal certificate nor the hospital certificate where P.W.1 was born is produced. It is well settled law that judicial notice can be taken and margin of error arrived by the ossification test is two years on either side. Even taking into consideration Ex.P17, the age of P.W.1 would have been 19 years. Even if the ossification test was conducted seven months after the incident, still the age is about 18 years when margin of error is considered.

(The Hon'ble Court did not believe the Ex.P11 which is the date of birth certificate given by the Froebel Model High School- Sec 94(2) of JJ Act)

2023 0 INSC 622; 2023 0 Supreme(SC) 637; Arvind Kumar Vs. State of NCT, Delhi; Criminal Appeal No. 2390 of 2010; Decided On : 17-07-2023

Therefore, assuming that the statements attributed to the appellant and PW-12 were in fact made, the conduct of the appellant of making the said statement becomes relevant in view of Section 6. Section 5 of the Evidence Act provides that evidence may be given in a proceeding of the existence or nonexistence of every fact in issue and of such other facts which are declared to be relevant under the provisions of Chapter II of the Evidence Act, 1872. Section 6 is applicable to facts which are not in issue. Such facts become relevant only when the same satisfy the tests laid down in Section 6. Hence, the statement of an accused to which Section 6 is applicable cannot be treated as a confession of guilt. The statement becomes relevant which can be read in evidence as it shows the conduct of the appellant immediately after the incident.

2023 0 INSC 626; 2023 0 Supreme(SC) 641; P. Yuvaprakash Vs. State Rep. By Inspector of Police; Criminal Appeal No(s). 1898 of 2023; 18-07-2023

Section 94 (2)(iii) of the JJ Act clearly indicates that the date of birth certificate from the school or matriculation or equivalent certificate by the concerned examination board has to be firstly preferred in the absence of which the birth certificate issued by the Corporation or Municipal Authority or Panchayat and it is only thereafter in the absence of these such documents the age is to be determined through “an ossification test” or “any other latest medical age determination test” conducted on the orders of the concerned authority, i.e. Committee or Board or Court.

the documents produced, i.e., a transfer certificate and extracts of the admission register, are not what Section 94 (2) (i) mandates; nor are they in accord with Section 94 (2) (ii).

The prosecution did not concededly produce the Judicial Magistrate who recorded the statement; however, that officer was available and was stationed at Erode. She deposed during the trial, as DW-1, and importantly affirmed the veracity of the victim’s statement

2023 4 Supreme 641; 2023 0 Supreme(SC) 601; Ramesh Kumar Vs. The State Of NCT Of Delhi; Criminal Appeal No. 1741 of 2023 [Arising Out Of SLP(Crl.) No.2358 of 2023]; Decided on : 04-07-2023

a reading of the precedents laid down by this Court referred to above makes the position of law clear that the conditions to be imposed must not be onerous or unreasonable or excessive. In the context of grant of bail, all such conditions that would facilitate the appearance of the accused before the investigating officer/court, unhindered completion of investigation/trial and safety of the community assume relevance.

It also does not appear from the materials on record that the complainants have instituted any civil suit for recovery of money allegedly paid by them to the appellant. If at all the offence alleged against the appellant is proved resulting in his conviction, he would be bound to suffer penal consequence(s) but despite such conviction he may not be under any obligation to repay the amount allegedly received from the complainants. This too is an aspect which the High Court exercising jurisdiction under section 438 of the Cr. PC did not bear in mind.

2023 4 Supreme 705; 2023 0 Supreme(SC) 602; Supriya Jain Vs. State Of Haryana and Anr.; Special Leave Petition (Crl) No. 3662 of 2023; 04-07-2023

It is no part of the business of any of the courts to ascertain what the outcome of the trial could be, ~ conviction or acquittal of the accused. The small window that the law, through judicial precedents, provides is to look at the allegations in the FIR and the materials collected in course of investigation, without a rebuttal thereof by the accused, and to form an opinion upon consideration thereof that an offence is indeed not disclosed from it. Unless the prosecution is shown to be illegitimate so as to result in an abuse of the process of law, it would not be proper to scuttle it.

We are aghast to note that an officer of the rank of DSP could be so irresponsible while swearing an affidavit which is proposed to be filed before this Court. An officer, who is a DSP, ought to know that in terms of section 162, Cr. PC, no statement made by a person to a police officer in the course of any investigation under Chapter XII of the Cr. PC, which is reduced to writing, is required to be signed by the person making the statement and that section 180 of the IPC gets attracted only if a statement is refused to be signed which a public servant is legally competent to require the person making the statement to sign.

A copy of this judgment shall be forwarded by the Registry to the Director General of Police, Uttar Pradesh not for the purpose of initiating any action adverse to the interest of the deponent of the reply affidavit but for the purpose of ensuring that police officers at all levels are made aware of the legal provisions and the impact that ignorance of legal provisions could have on pending criminal proceedings adversely affecting the rights of accused, so that there is no recurrence of similar such incident.

2023 0 Supreme(SC) 646; Anbazhagan Vs. The State, Represented By The Inspector Of Police; Criminal Appeal No. 2043 Of 2023, (Arising out of S.L.P. (Criminal) No. 9289 of 2019); Decided On : 20-07-2023

Few important principles of law discernible from the aforesaid discussion may be summed up thus:-

(1) When the court is confronted with the question, what offence the accused could be said to have committed, the true test is to find out the intention or knowledge of the accused in doing the act. If the intention or knowledge was such as is

described in Clauses (1) to (4) of Section 300 of the IPC, the act will be murder even though only a single injury was caused. To illustrate : 'A' is bound hand and foot. 'B' comes and placing his revolver against the head of 'A', shoots 'A' in his head killing him instantaneously. Here, there will be no difficulty in holding that the intention of 'B' in shooting 'A' was to kill him, though only single injury was caused. The case would, therefore, be of murder falling within Clause (1) of Section 300 of the IPC. Taking another instance, 'B' sneaks into the bed room of his enemy 'A' while the latter is asleep on his bed. Taking aim at the left chest of 'A', 'B' forcibly plunges a sword in the left chest of 'A' and runs away. 'A' dies shortly thereafter. The injury to 'A' was found to be sufficient in ordinary course of nature to cause death. There may be no difficulty in holding that 'B' intentionally inflicted the particular injury found to be caused and that the said injury was objectively sufficient in the ordinary course of nature to cause death. This would bring the act of 'B' within Clause (3) of Section 300 of the IPC and render him guilty of the offence of murder although only single injury was caused.

(2) Even when the intention or knowledge of the accused may fall within Clauses (1) to (4) of Section 300 of the IPC, the act of the accused which would otherwise be murder, will be taken out of the purview of murder, if the accused's case attracts any one of the five exceptions enumerated in that section. In the event of the case falling within any of those exceptions, the offence would be culpable homicide not amounting to murder, falling within Part 1 of Section 304 of the IPC, if the case of the accused is such as to fall within Clauses (1) to (3) of Section 300 of the IPC. It would be offence under Part II of Section 304 if the case is such as to fall within Clause (4) of Section 300 of the IPC. Again, the intention or knowledge of the accused may be such that only 2nd or 3rd part of Section 299 of the IPC, may be attracted but not any of the clauses of Section 300 of the IPC. In that situation also, the offence would be culpable homicide not amounting to murder under Section 304 of the IPC. It would be an offence under Part I of that section, if the case fall within 2nd part of Section 299, while it would be an offence under Part II of Section 304 if the case fall within 3rd part of Section 299 of the IPC.

(3) To put it in other words, if the act of an accused person falls within the first two clauses of cases of culpable homicide as described in Section 299 of the IPC it is punishable under the first part of Section 304. If, however, it falls within the third clause, it is punishable under the second part of Section 304. In effect, therefore, the first part of this section would apply when there is ‘guilty intention,’ whereas the second part would apply when there is no such intention, but there is ‘guilty knowledge’.

(4) Even if single injury is inflicted, if that particular injury was intended, and objectively that injury was sufficient in the ordinary course of nature to cause

death, the requirements of Clause 3rdly to Section 300 of the IPC, are fulfilled and the offence would be murder.

(5) Section 304 of the IPC will apply to the following classes of cases: (i) when the case falls under one or the other of the clauses of Section 300, but it is covered by one of the exceptions to that Section, (ii) when the injury caused is not of the higher degree of likelihood which is covered by the expression 'sufficient in the ordinary course of nature to cause death' but is of a lower degree of likelihood which is generally spoken of as an injury 'likely to cause death' and the case does not fall under Clause (2) of Section 300 of the IPC, (iii) when the act is done with the knowledge that death is likely to ensue but without intention to cause death or an injury likely to cause death.

To put it more succinctly, the difference between the two parts of Section 304 of the IPC is that under the first part, the crime of murder is first established and the accused is then given the benefit of one of the exceptions to Section 300 of the IPC, while under the second part, the crime of murder is never established at all. Therefore, for the purpose of holding an accused guilty of the offence punishable under the second part of Section 304 of the IPC, the accused need not bring his case within one of the exceptions to Section 300 of the IPC.

(6) The word 'likely' means probably and it is distinguished from more 'possibly'. When chances of happening are even or greater than its not happening, we may say that the thing will 'probably happen'. In reaching the conclusion, the court has to place itself in the situation of the accused and then judge whether the accused had the knowledge that by the act he was likely to cause death.

(7) The distinction between culpable homicide (Section 299 of the IPC) and murder (Section 300 of the IPC) has always to be carefully borne in mind while dealing with a charge under Section 302 of the IPC. Under the category of unlawful homicides, both, the cases of culpable homicide amounting to murder and those not amounting to murder would fall. Culpable homicide is not murder when the case is brought within the five exceptions to Section 300 of the IPC. But, even though none of the said five exceptions are pleaded or prima facie established on the evidence on record, the prosecution must still be required under the law to bring the case under any of the four clauses of Section 300 of the IPC to sustain the charge of murder. If the prosecution fails to discharge this onus in establishing any one of the four clauses of Section 300 of the IPC, namely, 1stly to 4thly, the charge of murder would not be made out and the case may be one of culpable homicide not amounting to murder as described under Section 299 of the IPC.

(8) The court must address itself to the question of mens rea. If Clause thirdly of Section 300 is to be applied, the assailant must intend the particular injury inflicted on the deceased. This ingredient could rarely be proved by direct evidence.

Inevitably, it is a matter of inference to be drawn from the proved circumstances of the case. The court must necessarily have regard to the nature of the weapon used, part of the body injured, extent of the injury, degree of force used in causing the injury, the manner of attack, the circumstances preceding and attendant on the attack.

(9) Intention to kill is not the only intention that makes a culpable homicide a murder. The intention to cause injury or injuries sufficient in the ordinary cause of nature to cause death also makes a culpable homicide a murder if death has actually been caused and intention to cause such injury or injuries is to be inferred from the act or acts resulting in the injury or injuries.

(10) When single injury inflicted by the accused results in the death of the victim, no inference, as a general principle, can be drawn that the accused did not have the intention to cause the death or that particular injury which resulted in the death of the victim. Whether an accused had the required guilty intention or not, is a question of fact which has to be determined on the facts of each case.

(11) Where the prosecution proves that the accused had the intention to cause death of any person or to cause bodily injury to him and the intended injury is sufficient in the ordinary course of nature to cause death, then, even if he inflicts a single injury which results in the death of the victim, the offence squarely falls under Clause thirdly of Section 300 of the IPC unless one of the exceptions applies.

(12) In determining the question, whether an accused had guilty intention or guilty knowledge in a case where only a single injury is inflicted by him and that injury is sufficient in the ordinary course of nature to cause death, the fact that the act is done without premeditation in a sudden fight or quarrel, or that the circumstances justify that the injury was accidental or unintentional, or that he only intended a simple injury, would lead to the inference of guilty knowledge, and the offence would be one under Section 304 Part II of the IPC.

2023 0 Supreme(SC) 651; Rohit Bishnoi vs. State of Rajasthan & Anr.; CrlA No. 2078 of 2023 (@ SLP (Crl. No. 8935 of 2023) (@Diary No(s). 40947 of 2022) With CrlA Nos. 2079-2080 of 2023 (@ SLP (Crl.) Nos. 3445-3446 of 2023); 24-07-2023

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 a 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,

The Latin maxim “cessante ratione legis cessat ipsa lex” meaning “reason is the soul of the law, and when the reason of any particular law ceases, so does the law itself,” is also apposite.

the Court deciding a bail application cannot completely divorce its decision from 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 with the evidence; criminal antecedents of the accused; and a prima-facie satisfaction of the Court in support of the charge against the accused.

2023 0 Supreme(SC) 655; Chennupati Kranthi Kumar Vs/ The State of Andhra Pradesh & Ors.; Criminal Appeal Nos.1601-1602 of 2023; 25-07-2023

Thereafter, the passport was never impounded in exercise of power under Section 10 of the PP Act. There is nothing on record to show that the passport was seized under Section 102 of Cr.P.C. As there was neither a seizure of the passport nor impounding thereof, the appellant was entitled to return of the passport.

As there was neither a seizure nor impounding of the passport, it was unauthorisedly retained by the 3rd respondent. In fact, the High Court directed the return of the passport subject to a deposit of a sum of 110 lakhs by way of Fixed Deposit Receipt in the name of the 4th respondent. As the High Court permitted the appellant to travel abroad, this condition was imposed to ensure that the appellant comes back as per his undertaking to attend the trial. But, the direction to the appellant to return the passports of the appellants son and wife was not supported by law. Therefore, the High Court ought to have directed the 3rd respondent to return the passport.

https://main.sci.gov.in/supremecourt/2022/10968/10968_2022_6_1501_45633_Judgement_28-Jul-2023.pdf; Criminal Appeal No. 639 Of 2023 Vernon Vs. The State Of Maharashtra & Anr. With Criminal Appeal No.640 Of 2023; 28.07.2023.

We accordingly set aside the impugned judgments and direct that the appellants be released on bail in respect of the cases(s) out of which the present appeals arise, on such terms and conditions the Special Court may consider fit and proper, if the appellants or any one of them are not wanted in respect of any other case. The conditions to be imposed by the Special Court shall include:-

(a) Vernon Gonsalves, appellant in Criminal Appeal No.639 of 2023 and Arun Ferreira, appellant in Criminal Appeal No.640 of 2023, upon being enlarged on bail shall not leave the State of Maharashtra without obtaining permission from the Trial Court.

(b) Both the appellants shall surrender their passports, if they possess so, during the period they remain on bail with the Investigating Officer of the NIA.

(c) Both the appellants shall inform the Investigating Officer of the NIA, the addresses they shall reside in.
(d) Both the appellants shall use only one Mobile Phone each, during the time they remain on bail and shall inform the Investigating Officer of the NIA, their respective mobile numbers.
(e) Both the appellants shall also ensure that their Mobile Phones remain active and charged round the clock so that they remain constantly accessible throughout the period they remain on bail.
(f) During this period, that is the period during which they remain on bail, both the appellants shall keep the location status of their mobile phones active, 24 hours a day and their phones shall be paired with that of the Investigating Officer of the NIA to enable him, at any given time, to identify the appellants' exact location.
(g) Both the appellants shall report to the Station House Officer of the Police Station within whose jurisdiction they shall reside while on bail once a week.

https://main.sci.gov.in/supremecourt/2022/20268/20268_2022_2_1501_45530_Judgement_28-Jul-2023.pdf; Criminal Appeal No. 2195 Of 2023 (Arising Out Of Slp (Crl) No.6537 Of 2022) Sandeep Kumar Vs. The State Of Haryana & Anr.
The entire purpose of criminal trial is to go to the truth of the matter. Once there is satisfaction of the Court that there is evidence before it that an accused has committed an offence, the court can proceed against such a person. At the stage of summoning an accused, there has to be a prima facie satisfaction of the Court. The evidence which was there before the Court was of an eye witness who has clearly stated before the Court that a crime has been committed, inter alia, by the revisionist. The Court need not cross-examine this witness. It can stop the trial at that stage itself if such application had been moved under Section 319. The detail examination of the witness and 10 other witnesses is a subject matter of the trial which has to begin afresh.

Criminal case X Claim petition under MV act
In the case of N.K.V. Bros. (P) Ltd. vs. M. Karumai Anmal reported in AIR 1980 SC 1354, wherein the plea that the criminal case had ended in acquittal and that, therefore, the civil suit must follow suit, was rejected. It was observed that culpable rashness under Section 304-A of IPC is more drastic than negligence under the law of torts to create liability. Similarly, in (2009) 13 SCC 530, in the case of Bimla Devi vs. Himachal Road Transport Corporation ("Bimla Devi"), it was observed that in a claim petition filed under Section 166 of the Motor Vehicles Act, 1988, the Tribunal has to determine the amount of fair compensation to be granted in the event an accident has taken place by reason of negligence of a driver of a motor vehicle. A holistic view of the evidence has to

be taken into consideration by the Tribunal and strict proof of an accident caused by a particular vehicle in a particular manner need not be established by the claimants. The claimants have to establish their case on the touchstone of preponderance of probabilities. The standard of proof beyond reasonable doubt cannot be applied while considering the petition seeking compensation on account of death or injury in a road traffic accident. To the same effect is the observation made by this Court in Dulcina Fernandes vs. Joaquim Xavier Cruz, (2013) 10 SCC 646 which has referred to the aforesaid judgment in Bimla Devi.

Section 10 IEA Vs Section 30 IEA

In State through Superintendent of Police, CBI/SIT v. Nalini & Ors. (1999) 5 SCC 253 (3-Judge bench), this Court culled out principles governing the law of conspiracy, though exhaustive in nature, and held:

> "581. It is true that provision as contained in Section 10 is a departure from the rule of hearsay evidence. There can be two objections to the admissibility of evidence under Section 10 and they are (1) the conspirator whose evidence is sought to be admitted against the co-conspirator is not confronted or cross-examined in court by the co-conspirator and (2) prosecution merely proves the existence of reasonable ground to believe that two or more persons have conspired to commit an offence and that brings into operation the existence of agency relationship to implicate co-conspirator. But then precisely under Section 10 of the Evidence Act, statement of a conspirator is admissible against a coconspirator on the premise that this relationship exists. Prosecution, no doubt, has to produce independent evidence as to the existence of the conspiracy for Section 10 to operate but it need not prove the same beyond a reasonable doubt. Criminal conspiracy is a partnership in agreement and there is in each conspiracy a joint or mutual agency for the execution of a common object which is an offence or an actionable wrong. When two or more persons enter into a conspiracy any act done by any one of them pursuant to the agreement is, in contemplation of law, the act of each of them and they are jointly responsible therefor. This means that everything said, written or done by any of the conspirators in execution of or in reference to their common intention is deemed to have been said, done or written by each of them. A conspirator is not, however, responsible for acts done by a conspirator after the termination of the conspiracy as aforesaid. The court is, however, to guard itself against readily accepting the statement of a conspirator against a co-conspirator. Section 10 is a special provision in order to deal with dangerous criminal combinations. **Normal rule of evidence that prevents the statement of one co-accused being used against another under Section 30 of the Evidence Act does not apply in the trial of conspiracy in view of Section 10 of that Act.** When we say that court has to guard itself against

readily accepting the statement of a conspirator against a co-conspirator what we mean is that court looks for some corroboration to be on the safe side. It is not a rule of law but a rule of prudence bordering on law. All said and done, ultimately it is the appreciation of evidence on which the court has to embark.

In Bhagwandas Keshwani v. State of Rajasthan [(1974) 4 SCC 611, 613 : 1974 SCC (Cri) 647] (SCC at p. 613), this Court said that in cases of conspiracy better evidence than acts and statements of co-conspirators in pursuance of the conspiracy is hardly ever available.

Withdrawal of Prosecution

In State of Kerala v. K.Ajith, AIR 2021 SC 3954 the Apex Court formulated the principles on the withdrawal of a prosecution Under Section 321 of the Code of Criminal Procedure as under:

(i) Section 321 entrusts the decision to withdraw from a prosecution to the public prosecutor but the consent of the court is required for a withdrawal of the prosecution;

(ii) The public prosecutor may withdraw from a prosecution not merely on the ground of paucity of evidence but also to further the broad ends of public justice;

(iii) The public prosecutor must formulate an independent opinion before seeking the consent of the court to withdraw from the prosecution;

(iv) While the mere fact that the initiative has come from the government will not vitiate an application for withdrawal, the court must make an effort to elicit the reasons for withdrawal so as to ensure that the public prosecutor was satisfied that the withdrawal of the prosecution is necessary for good and relevant reasons;

(v) In deciding whether to grant its consent to a withdrawal, the court exercises a judicial function but it has been described to be supervisory in nature. Before deciding whether to grant its consent the court must be satisfied that:

(a) The function of the public prosecutor has not been improperly exercised or that it is not an attempt to interfere with the normal course of justice for illegitimate reasons or purposes;

(b) The application has been made in good faith, in the interest of public policy and justice, and not to thwart or stifle the process of law;

(c) The application does not suffer from such improprieties or illegalities as would cause manifest injustice if consent were to be given;

(d) The grant of consent sub-serves the administration of justice; and

(e) The permission has not been sought with an ulterior purpose unconnected with the vindication of the law which the public prosecutor is duty bound to maintain;

(vi) While determining whether the withdrawal of the prosecution subserves the administration of justice, the court would be justified in scrutinizing the nature and

gravity of the offence and its impact upon public life especially where matters involving public funds and the discharge of a public trust are implicated; and

(vii) In a situation where both the trial judge and the revisional court have concurred in granting or refusing consent, this Court while exercising its jurisdiction Under Article 136 of the Constitution would exercise caution before disturbing concurrent findings. The Court may in exercise of the well-settled principles attached to the exercise of this jurisdiction, interfere in a case where there has been a failure of the trial judge or of the High Court to apply the correct principles in deciding whether to grant or withhold consent.

Importance of Ballistic expert report

in the case of Sukhwant Singh v. State of Punjab, (1995) 3 SCC 367:

"21. ……It hardly needs to be emphasised that in cases where injuries are caused by firearms, the opinion of the ballistic expert is of a considerable importance where both the firearm and the crime cartridge are recovered during the investigation to connect an accused with the crime. Failure to produce the expert opinion before the trial court in such cases affects the creditworthiness of the prosecution case to a great extent."

Payment of alleged Cheated money Vs Bail

In Bimla Tiwari vs. State of Bihar, (2023) SCC OnLine SC 51, this is what the Court said:

"9. We have indicated on more than one occasion that the process of criminal law, particularly in matters of grant of bail, is not akin to money recovery proceedings but what has been noticed in the present case carries the peculiarities of its own.

10. We would reiterate that the process of criminal law cannot be utilised for arm-twisting and money recovery, particularly while opposing the prayer for bail. The question as to whether pre-arrest bail, or for that matter regular bail, in a given case is to be granted or not is required to be examined and the discretion is required to be exercised by the Court with reference to the material on record and the parameters governing bail considerations. Putting it in other words, in a given case, the concession of pre-arrest bail or regular bail could be declined even if the accused has made payment of the money involved or offers to make any payment; conversely, in a given case, the concession of pre-arrest bail or regular bail could be granted irrespective of any payment or any offer of payment.

11. We would further emphasize that, ordinarily, there is no justification in adopting such a course that for the purpose of being given the concession of pre-arrest bail, the person apprehending arrest ought to make payment. Recovery of money is essentially within the realm of civil proceedings."

NEWS

- Notification For Designating Two Nia Special Courts In Andhra Pradesh - Cg-Dl-E-24072023-247567- Dt. 24.07.2023.

- The Andhra Pradesh State Commission For Scheduled Tribes, (Amendment) Act, 2023 (Act No.25 Of 2023) - Date Of Commencement Of Act. [G.O.Ms.No.39, Social Welfare (Tw.Gcc), 4th July, 2023.]

- Visakhapatnam City - Declaring City Task Force Police Station (Ctf) Of Visakhapatnam City To Be A Police Station Under Section 2 (S) Of The Criminal Procedure Code, 1973 To Register And Investigate Cases. [G.O.Ms.No.103, Home (Services-Iii), 24 Th May, 2023.]

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ON A LIGHTER VEIN

A surgeon, an architect and a lawyer are having a heated pub discussion about which of their professions is actually the oldest.
The surgeon says: "Surgery IS the oldest profession. God took a rib from Adam to create Eve and you can't go back further than that."
The architect says: "Hold on! In fact, God was the first architect when he created the world out of chaos in 7 days, and you can't go back any further than THAT!"
The lawyer smiles and says: "Gentlemen, Gentlemen, who do you think created the CHAOS??!!"

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Aano Bhadr Kratvo Yantu Viswatah

(Let Noble Thoughts Come To Me from All Directions)

"निश्चित्वा यः प्रक्रमते नान्तर्वसति कर्मणः ।
अवन्ध्यकालो वश्यात्मा स वै पण्डित उच्यते ॥"

"One who is steadfast in devotion and action,
who has no attachment to success or failure, and
is focused on the welfare of others
is considered to be a learned person."

CITATIONS

2023 0 INSC 682; 2023 0 Supreme(SC) 989; A. Sreenivasa Reddy Vs. Rakesh Sharma & Anr.; Criminal Appeal No. 2339 of 2023 (Arising out of S.L.P. (Criminal) No. 7542 of 2022); 08-08-2023

The appellant was serving as an Assistant General Manager, State Bank of India, Overseas Bank at Hyderabad. State Bank of India is a Nationalised Bank. Although a person working in a Nationalised Bank is a public servant, yet the provisions of Section 197 of the CrPC would not be attracted at all as Section 197 is attracted only in cases where the public servant is such who is not removable from his service save by or with the sanction of the Government.

There is a material difference between the statutory requirements of Section 19 of the PC Act, 1988 on one hand, and Section 197 of the CrPC, on the other. In the prosecution for the offences exclusively under the PC Act, 1988, sanction is mandatory qua the public servant. In cases under the general penal law against the public servant, the necessity (or otherwise) of sanction under Section 197 of the CrPC depends on the factual aspects. The test in the latter case is of the “nexus” between the act of commission or omission and the official duty of the public servant. To commit an offence punishable under law can never be a part of the official duty of a public servant. It is too simplistic an approach to adopt and to reject the necessity of sanction under Section 197 of the CrPC on such reasoning. The “safe and sure test”, is to ascertain if the omission or neglect to commit the act complained of would have made the public servant answerable for the charge of dereliction of his official duty. He may have acted “in excess of his duty”, but if there is a “reasonable connection” between the impugned act and the performance of the official duty, the

protective umbrella of Section 197 of the CrPC cannot be denied, so long as the discharge of official duty is not used as a cloak for illicit acts.

2023 0 INSC 683; 2023 0 Supreme(SC) 690; Mohammad Wajid & Anr. Vs. State Of U.P. & Ors.; Criminal Appeal No. 2340 of 2023 (Arising out of S.L.P. (Criminal) No. 10656 of 2022); Decided on : 08-08-2023

Mere abuse, discourtesy, rudeness or insolence, may not amount to an intentional insult within the meaning of Section 504, IPC if it does not have the necessary element of being likely to incite the person insulted to commit a breach of the peace of an offence and the other element of the accused intending to provoke the person insulted to commit a breach of the peace or knowing that the person insulted is likely to commit a breach of the peace. Each case of abusive language shall have to be decided in the light of the facts and circumstances of that case and there cannot be a general proposition that no one commits an offence under Section 504, IPC if he merely uses abusive language against the complainant.

The FIR in a criminal case is an extremely vital and valuable piece of evidence for the purpose of corroborating the oral evidence adduced at the trial. The object of insisting upon lodging of the FIR to the police in respect of commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of the actual culprits and the part played by them as well as names of the eye witnesses present at the scene of occurrence.

In the aforesaid context, we may clarify that delay in the registration of the FIR, by itself, cannot be a ground for quashing of the FIR. However, delay with other attending circumstances emerging from the record of the case rendering the entire case put up by the prosecution inherently improbable, may at times become a good ground to quash the FIR and consequential proceedings. If the FIR, like the one in the case on hand, is lodged after a period of more than one year without disclosing the date and time of the alleged incident and further without any plausible and convincing explanation for such delay, then how is the accused expected to defend himself in the trial. It is altogether different to say that in a given case, in the course of investigation the investigating agency may be able to ascertain the date and time of the incident, etc. The recovery of few incriminating articles may also at times lend credence to the allegations levelled in the FIR. However, in the absence of all such materials merely on the basis of vague and general allegations levelled in the FIR, the accused cannot be put to trial.

2023 0 INSC 668; 2023 0 Supreme(SC) 679; Sunil Kumar vs State of U.P. & Anr.; Criminal Appeal No. 2255 of 2023 (@ Special Leave Petition (Crl) No. 4405 of 2018); 03-08-2023

Considering the nature of allegations against the appellant which are of very trivial nature and considering the fact that there is no progress made in the proceedings since the chargesheet was filed against the appellant in the year 2015, the Court is of the opinion that continuing the proceedings would be a persecution and harassment to the appellant. As such a petty incident which took place in their office should have been resolved by the parties on that day itself, instead of stretching it so far.

2023 0 INSC 669; 2023 0 Supreme(SC) 680; State of Karnataka Lokayukta Police vs. S. Subbegowda; Criminal Appeal No. 1598 of 2023; Decided On : 03-08-2023

As a matter of fact, such an interlocutory application seeking discharge in the midst of trial would also not be maintainable. Once the cognizance was taken by the Special Judge and the charge was framed against the accused, the trial could neither have been stayed nor scuttled in the midst of it in view of Section 19(3) of the PC Act.

2023 0 INSC 674; 2023 0 Supreme(SC) 684; Wazir Khan Vs State of Uttarakhand; Criminal Appeal Nos. 1922-1923 of 2017; Decided On : 02-08-2023

It is settled law that the prosecution cannot take recourse of Section 106 of the Act, 1872 without laying any foundational facts.

If an offence takes place inside the four walls of a house and in such circumstances where the assailants have all the opportunity to plan and commit the offence at the time and in the circumstances of their choice, it will be extremely difficult for the prosecution to lead evidence to establish the guilt of the accused, if the strict principle of circumstantial evidence, is insisted upon by the Courts. Reference could be made to a decision of this Court in the case of Trimukh Maroti Kirkan vs. State of Maharashtra, 2007 CrLJournal 20, in which this Court observed that a Judge does not preside over a criminal trial merely to see that no innocent man is punished. This Court proceeded to observe that a Judge also presides to see that a guilty man does not escape. Both are public duties. The law does not enjoin a duty on the prosecution to lead evidence of such character, which is almost impossible to be led, or at any rate, extremely difficult to be led. The duty on the prosecution is to lead

such evidence, which it is capable of leading, having regard to the facts and circumstances of the case.

2023 0 INSC 673; 2023 0 Supreme(SC) 685; Delhi Development Authority Vs. Vandana Gupta; Criminal Appeal No. 389 of 2011; Decided On : 02-08-2023

The finding of fact recorded by the trial court with regard to the two directors who came to be acquitted is that there was nothing on record to indicate that they were in charge of the day-to-day affairs/management of the company. It is required to be noted that it is the company as a legal entity which was sought to be prosecuted, and the directors were prosecuted by virtue of their vicarious liability under Section 32 of the Act, 1957. It appears that the two directors (respondents herein), who came to be acquitted were in a position to lead evidence to establish that they were not in day to day affairs/management of the company.

2023 0 INSC 677; 2023 0 Supreme(SC) 686; V. Senthil Balaji Vs. The State Represented By Deputy Director And Ors.; Criminal Appeal Nos. 2284-2285 of 2023 (@ SLP (Criminal) Nos. 8939-8940 of 2023), Criminal Appeal Nos. 2288-2289 of 2023 (@SLP (Criminal) Nos. 652-8653 of 2023), Criminal Appeal No. 2286 of 2023 (@SLP (Criminal) No.7437 of 2023), Criminal Appeal No. 2287 of 2023 (@SLP (Criminal) No.7460 of 2023), Criminal Appeal No. 2290 of 2023 (@SLP (Criminal) No. 8750 of 2023);Decided on : 07-08-2023

Much arguments have been made on the basis of Anupam J. Kulkarni (supra). As rightly submitted by the learned Solicitor General, the facts are different and therefore distinguishable. In the case on hand, there is no custody in favour of the respondents, a fact even acknowledged by the appellant earlier through the arguments of his advocates. The learned Solicitor General is right in his submission that apart from the fact that the word **"custody"** is different from **"detention",** it can only be physical. As pointed out by him even the High Court has observed that the appellant continues to be in judicial custody. Admittedly, physical custody has not been given to the respondents. Admission of the appellant to the hospital of his choice cannot be termed as a physical custody in favour of the respondents. Custody could not be taken on the basis of the interim order passed by the High Court which certainly shall not come in the way of calculating the period of 15 days. An investigating agency is expected to be given a reasonable freedom to do it's part. To say that the respondents ought to have examined the appellant in the hospital, and that too with the permission of the doctors, can never be termed as an adequate compliance.

Any order of the Court is not meant to affect a person adversely despite its ultimate conclusion in his favour. The doctrine actus curiae neminem gravabit would certainly apply in calculating the period of 15 days.

SUMMATION OF LAW:

i. When an arrestee is forwarded to the jurisdictional Magistrate under Section 19(3) of the PMLA, 2002 no writ of Habeus Corpus would lie.

Any plea of illegal arrest is to be made before such Magistrate since custody becomes judicial.

ii. Any non-compliance of the mandate of Section 19 of the PMLA, 2002 would enure to the benefit of the person arrested. For such non compliance, the Competent Court shall have the power to initiate action under Section 62 of the PMLA, 2002.

iii. An order of remand has to be challenged only before a higher forum as provided under the CrPC, 1973 when it depicts a due application of mind both on merit and compliance of Section 167(2) of the CrPC, 1973 read with Section 19 of the PMLA 2002.

iv. Section 41A of the CrPC, 1973 has got no application to an arrest made under the PMLA 2002.

v. The maximum period of 15 days of police custody is meant to be applied to the entire period of investigation – 60 or 90 days, as a whole.

vi. The words “such custody” occurring in Section 167(2) of the CrPC, 1973 would include not only a police custody but also that of other investigating agencies.

vii. The word “custody” under Section 167(2) of the CrPC, 1973 shall mean actual custody.

viii. Curtailment of 15 days of police custody by any extraneous circumstances, act of God, an order of Court not being the handy work of investigating agency would not act as a restriction.

ix. Section 167 of the CrPC, 1973 is a bridge between liberty and investigation performing a fine balancing act.

x. The decision of this Court in Anupam J. Kulkarni (supra), as followed subsequently requires reconsideration by a reference to a larger Bench.

the Registry is directed to place the matter before Hon’ble the Chief Justice of India for appropriate orders to decide the larger issue of the actual import of Section 167(2) of the CrPC, 1973 as to whether the 15 days period of custody in favour of

the police should be only within the first 15 days of remand or spanning over the entire period of investigation – 60 or 90 days, as the case may be, as a whole.

2023 0 Supreme(SC) 676; Avtar Singh & Anr. Vs. State of Punjab; Criminal Appeal No. 1050 Of 2013; Decided On : 02-08-2023

no external/internal injury was found on her body and even on her private parts. The doctor, Renu Kumari (PW1) opined that the prosecutrix was well built and well nourished. She further stated that the prosecutrix was used to sexual intercourse. This is not to say that the version of a victim of a sexual offence ought to be disbelieved only because she has had an active sexual life.

Though in the chemical examiner's report, it had come that the clothes of the prosecutrix handed over to the police were having stains of semen, however, no scientific evidence was produced to link the same with the accused.

2023 0 INSC 703; 2023 0 Supreme(SC) 718; Sathyan Vs. State Of Kerala; Criminal Appeal No. 2363 of 2023(arising out of SLP (Crl.) No. 9710/2023 [@Diary No. 16317/2022]); Decided on : 11-08-2023

it can no longer be said to be res integra that the person receiving the information of the crime or detecting the occurrence thereof, can investigate the same. Questioning such investigation on the basis of bias or such like factor, would depend on the facts and circumstances of each case. It is not amenable to a general unqualified rule that lends itself to uniform application.

Conviction being based solely on the evidence of police officials is no longer an issue on which the jury is out. In other words, the law is well settled that if the evidence of such a police officer is found to be reliable, trustworthy then basing the conviction thereupon, cannot be questioned, and the same shall stand on firm ground

It is clear from the above propositions of law, as reproduced and referred to, that the testimonies of official witnesses can nay be discarded simply because independent witnesses were not examined. The correctness or authenticity is only to be doubted on "any good reason" which, quite apparently is missing from the present case. No reason is forthcoming on behalf of the Appellant to challenge the veracity of the testimonies of PW – 1 and PW – 2, which the courts below have found absolutely to be inspiring in confidence. Therefore, basing the conviction on the basis of testimony

of the police witnesses as undertaken by the trial court and is confirmed by the High Court vide the impugned judgment, cannot be faulted with.

Other grounds urged such as interpolation in the Mahazar, are in the attending facts, not of such significance so as to vitiate the entire case of the prosecution. Also, it has concurrently been found by both the learned courts below that such interpolation i.e., quantity of the sample being initially noted as 375ML and subsequently been corrected to 180 ML, with the latter indeed being the correct quantity stands corroborated by the unharmed sample, in sealed condition reaching the laboratory for chemical analysis as also the report generated therefrom which notes the sample to be corresponding to the latter, corrected quantity.

2023 0 INSC 705; 2023 0 Supreme(SC) 703; Manoj Kumar Soni Vs. The State of Madhya Pradesh; Criminal Appeal No. 1030 of 2023With Kallu @ Habib Vs The State of Madhya Pradesh; Criminal Appeal No. 1458 of 2023; Decided On : 11-08-2023

A presumption of fact under Section 114(a), Evidence Act must be drawn considering other evidence on record and without corroboration from other cogent evidence, it must not be drawn in isolation.

even if we assume the veracity of the claim that the items sold to Manoj were indeed stolen articles, it would not be sufficient to attract Section 411, IPC; what was further necessary to be proved is continued retention of such articles with a dishonest intent and knowledge or belief that the items were stolen. No evidence worthy of consideration was adduced by the prosecution to prove that Manoj had retained the articles either with dishonest intent and with knowledge or belief of the same being stolen property.

the conviction of Kallu under Section 120-B, IPC stands completely vitiated because of the simple reason that one cannot alone conspire. There is no evidence to even remotely suggest that there existed any agreement between Kallu and the co-accused while none of the others, except Kallu, has been convicted for criminal conspiracy.

2023 0 INSC 675; 2023 0 Supreme(SC) 683;Kishore Balkrishna Nand Vs State of Maharashtra and Another; Criminal Appeal No. 2291 of 2011; Decided On : 02-08-2023

Exception 8 to Section 499 clearly indicates that it is not a defamation to prefer in good faith an accusation against any person to any of those who have lawful

authority over that person with regard to the subject-matter of accusation. Even otherwise by perusing the allegations made in the complaint, we are satisfied that no case for defamation has been made out.

2023 0 INSC 734; 2023 0 Supreme(SC) 764; Pesala Nookaraju Vs. The Government Of Andhra Pradesh & Ors.; Criminal Appeal No. OF 2023 (Arising out of S.L.P. (Criminal) No. 9492 of 2023); Decided On : 16-08-2023

In the case on hand, the detaining authority has specifically stated in the grounds of detention that selling liquor by the appellant detenu and the consumption by the people of that locality was harmful to their health. Such statement is an expression of his subjective satisfaction that the activities of the detenu appellant is prejudicial to the maintenance of public order. Not only that, the detaining authority has also recorded his satisfaction that it is necessary to prevent the detenu appellant from indulging further in such activities and this satisfaction has been drawn on the basis of the credible material on record. It is also well settled that whether the material was sufficient or not is not for the Courts to decide by applying the objective basis as it is matter of subjective satisfaction of the detaining authority.

2023 0 INSC 738; 2023 0 Supreme(SC) 770; Harendra Rai Vs. The State Of Bihar & Ors.; Criminal Appeal No.1726 Of 2015; Decided On : 18-08-2023 THREE JUDGE BENCH

The obvious question pops up in the mind of any prudent person, as to why he was instrumental, when he was not guilty of the offence to which he was being tried. The obvious answer to this would reasonably come to mind of any prudent person that his guilty mind was fearful about the result. All these aspects leave no room for doubt that the subsequent conduct of Respondent No.2 is one of the major circumstances pointing towards his guilt for the incident that occurred at 9AM on 25.3.1995.

We may quote a Latin Maxim which aptly means that a person who receives advantage must also bear the burden, **“qui sentit commodom, sentire debit et onus”.**

The deplorable conduct of the Presiding Officer of the Trial Court also resulted in the miscarriage of justice at various steps of the trial, but the most objectionable aspect is that one person Kishori Rai, a seizure list witness (who was not included as a witness in the chargesheet by the Investigating Officer) had filed an application before the Trial Court seeking his examination as well as examination of other two persons namely Nagendra Singh and Sanjeev Kumar Singh (who had signed said

Bayan Tahriri as attesting persons but were not included as witnesses in the chargesheet by the Investigating Officer) as witnesses during the trial. However, the said application was rejected by the Trial Court, vide order dated 18.10.2008, on flimsy grounds like, the application has not been moved through Public Prosecutor, the seizure list is not on record, the person Kishori Rai is not a witness of the chargesheet. The Presiding Officer of the Trial Court adopted such a pathetic approach despite noticing the detailed order dated 13.03.2007 passed by the Division Bench of the High Court in the Habeas Corpus Petition.

the marking of a piece of evidence as 'exhibit' at the stage of evidence in a Trial proceeding is only for the purpose of identification of evidence adduced in the trial and for the convenience of the Court and other stakeholders in order to get a clear picture of what is being produced as evidence in a Trial proceeding.

In the present case, the FIR, being a public document and a dying declaration of the informant, is the foundation of the entire prosecution case.

Insofar as the Public Prosecutors are concerned, a lot of comments have been made, not only by this Court but also by the Law Commission, highlighting the role and importance of a Public Prosecutor. We may quote with profit the role of the Prosecutors as stated in the **197th Law Commission of India Report on Public Prosecutors' Appointments (2006):**

> "The Prosecutor has a duty to the state, to the accused and the Court. The Prosecutor is all times a minister of justice, though seldom so described. It is not the duty of the prosecuting counsel to secure a conviction, not should any prosecutor even feel pride or satisfaction in the mere fact of success."

In the present case, unfortunately the Trial Court as well as the High Court failed to exercise their powers under the aforesaid provisions to summon the witnesses of the charge-sheet to prove the police papers. Despite applications being filed to summon persons who were not shown as witnesses to the charge-sheet, the Trial Court repeatedly rejected the said applications in 2006 and again in 2008 on the flimsy grounds that were not named in the charge-sheet or that the Public Prosecutor had not filed such application in gross violation of Section 311 CrPC.

2023 0 INSC 745; 2023 0 Supreme(SC) 775; Bachpan Bachao Andolan Vs. Union Of India & Ors.; Writ Petition (Civil) No. 427 of 2022; Decided on : 18-08-2023

In crimes against children, it is not only the initiating horror or trauma that is deeply scarring; that is aggravated by the lack of support and handholding in the days that follow. In such crimes, true justice is achieved not merely by nabbing the culprit and bringing him to justice, or the severity of punishment meted out, but the support, care, and security to the victim (or vulnerable witness), as provided by the state and all its authorities in assuring a painless, as less an ordeal an experience as is possible, during the entire process of investigation, and trial. The support and care provided through state institutions and offices is vital during this period. Furthermore, justice can be said to have been approximated only when the victims are brought back to society, made to feel secure, their worth and dignity, restored. Without this, justice is an empty phrase, an illusion. The POCSO Rules 2020, offer an effective framework in this regard, it is now left to the State as the biggest stakeholder in it – to ensure its strict implementation, in letter and spirit.

After due consultations, frame such rules, or guidelines, as are necessary, relating to the educational qualifications and/or training required of a support person [over and above the stipulation in Rule 5(6)], and parameters to identify the eligible institutions or NGOs in the state, which can be accredited to depute qualified support persons, and consequently be added to the District Child Protection Unit (DCPU) directory as contemplated in Rule 5(1);

2023 0 Supreme(SC) 779; XYZ Vs. THE STATE OF GUJARAT & ORS.; CRIMINAL APPEAL NO. /2023 (@ SLP (Crl.) Dy. No. 33790/2023); Decided On : 21-08-2023

Importantly, it is the woman alone who has the right over her body and is the ultimate decision-maker on the question of whether she wants to undergo an abortion.

In the context of abortion, the right of dignity entails recognising the competence and authority of every woman to take reproductive decisions, including the decision to terminate the pregnancy. Although human dignity inheres in every individual, it is susceptible to violation by external conditions and treatment imposed by the State. The right of every woman to make reproductive choices without undue interference from the state is central to the idea of human dignity. Deprivation of access to reproductive healthcare or emotional and physical well-being also injures the dignity of women.

Subsequently to the medical procedure to be carried out either today or tomorrow, in the event, the foetus is found to be alive, the hospital shall give all necessary

medical assistance including incubation either in that hospital or any other hospital where incubation facility is available in order to ensure that the foetus survives. Further, in case the foetus survives, then State shall take steps for ensuring that the child could be adopted in accordance with law.

It is needless to observe that in the event tissues are drawn for the purpose of DNA test the same shall be handed over to the investigating agency by the concerned hospital.

https://indiankanoon.org/doc/82614044/; Shaik Hussain Bee vs State of A.P; 14 August, 2023; Criminal Appeal No.201 of 2016

To convict an accused under Section 306 I.P.C., the State of mind to commit a particular crime must be visible concerning determining the culpability. The present one is not a case where the accused has, by her acts or omission or by a continued course of conduct, created such circumstances that the deceased was left with no other option except to commit suicide, in which case instigation may have been inferred. A word uttered in a fit of anger or emotion without intending the consequences actually to follow cannot be said to be instigation.

https://indiankanoon.org/doc/39334506/; Crl.P.No.1768 of 2019; K.JAGGA RAO Vs State of A.P; 14 August, 2023

The first schedule to Code of Criminal Procedure shows that the said offence is non-cognizable, bailable and is triable by Magistrate of the First Class.

Chapter XIV of Code of Criminal Procedure provides for conditions requisite for initiation of proceedings. Section 198 Sub-Section (1) proviso (c) Cr.P.C. provides that for a prosecution of an accused for an offence under Section 494 I.P.C. it shall be initiated by a complaint made by the aggrieved person namely the wife or on her behalf by her father, mother and other relations mentioned therein. Section 2(d) of Code of Criminal Procedure defines a 'complaint' showing that a complaint shall be made to a Magistrate and it does not include a police report. Thus, a complaint is different from police report. In terms of Section 198 of Code of Criminal Procedure, prosecution for the offence under Section 494 I.P.C. could be initiated only by a complaint filed before the learned Magistrate. In the case at hand, the proceedings that were initiated before learned Magistrate were not out of a complaint filed before him.

The case emerged on a police report. On these suppositions, one could say that the very initiation of prosecution is incorrect and against law. However, State of Andhra Pradesh passed Act 3 of 1992. By virtue of that, entry relating to Section 494 I.P.C. as mentioned in Schedule-1 of Code of Criminal Procedure at Column Nos.4 and 5 certain changes were brought in. This amendment made the offence under Section 494 I.P.C. cognizable and non-bailable. Be it noted that in terms of Section 2(c) of Code of Criminal Procedure, a cognizable offence means a case in which a police officer is entitled to arrest accused without any warrant issued by the Court. Be it also noted that Section 198 Cr.P.C. was not amended for Andhra Pradesh State. A plain reading of these provisions give an impression that Section 198 Cr.P.C. bar still holds good and therefore a prosecution for an offence under Section 494 I.P.C. could be done only by a complainant through her complaint and not by way of a police report/charge sheet. It seems this view was followed in B.Parvathi v. State of Andhra Pradesh. However, these aspects were clarified and law was laid down by the Hon'ble Supreme Court of India in A.Subhash Babu v. State of A.P. 2020 (2) ALT (Cri) 141 At para No.46 of the judgment, their Lordships have laid the law that by virtue of the said amendment for State of Andhra Pradesh carried out in the first schedule of the Code of Criminal Procedure, the bar contained in Section 198 Cr.P.C. for the offence under Section 494 I.P.C. gets lifted. In that view of the matter, one could say that prosecution in this State for an offence under Section 494 I.P.C. is possible either by a complaint or by a police report.

even after complete investigation of the case the investigative officer himself had mentioned that he was unable to collect any evidence about solemnization of second marriage. It is undisputed that none of the listed witnesses in the charge sheet is a witness to the second marriage. The material on record does not indicate even the date on which the second marriage was solemnized and the place at which it was solemnized and the persons who solemnized it. The charge sheet is absolutely silent about the form of marriage and the ceremonies that were observed in solemnizing the alleged second marriage. Thus, everything that is relevant for proving a second marriage is absent in the case. However, the evidence collected intended to demonstrate the second marriage by some other evidence such as that there were children born to the accused through second wife and that they were living like wife and husband to the knowledge of others and that the school records and birth registers would show accused as father of those children. It is on such material the

prosecution wanted to prosecute the accused. Thus, the question is whether there is legal evidence to continue the prosecution and if there is no legal evidence whether that could be said to be a prosecution to meet the ends of justice. In similar fact situation, after a very detailed analysis of statute and the binding precedent, the learned Judge of this Court in B.Parvathis's case (supra 1) held that in a prosecution for an offence under Section 494 I.P.C. the factum of the second marriage has to be established with acceptable legal evidence and that the factum of second marriage was to be proved with such evidence showing that the solemnization of it was in accordance with particular customs or ceremonies and further the prosecution had to adduce evidence that the first marriage and second marriage are valid marriages solemnized as per the ceremonies prevailing in the community. When the charge sheet failed to show and when the evidence collected failed to show solemnization of second marriage and the form of its solemnization and the ceremonies that were performed, then it is a case of absence of prima facie case and absence of legal evidence.

https://indiankanoon.org/doc/135154852/; Smt. Eslavath Sugunamma vs The State Of Telangana on 11 May, 2023; WRIT PETITION NO.13380 OF 2023

on 09.03.2023, a notice for forfeiture of bond of good behaviour was issued by the second respondent alleging that petitioner committed breach of bond by involving in an offence under provisions of Prohibition Act, 1955. The basis of the said notice is letter addressed by the Prohibition and Excise Station, Gudur, Warangal District.

Mere involvement in a crime would not itself constitute breach of bond furnished by the petitioner as it cannot be treated on par with conviction. Thus, on both counts, i.e., on facts and in law, the impugned warrant dated 02.05.2023 is unsustainable.

https://main.sci.gov.in/supremecourt/2018/14968/14968_2018_11_1501_46430_Judgement_25-Aug-2023.pdf; Central Bureau of Investigation Vs. Narottam Dhakad & Anr; CRLA NO.2592 OF 2023 & CRLA NO.2593 OF 2023; Central Bureau of Investigation Vs Sunil Singh & Anr.

coming to the issue of the language of the final report/charge sheet under Section 173, there is no specific provision in CrPC which requires the investigating agency/ officer to file it in the language of the Court determined in accordance with Section 272 of CrPC. Even if such a requirement is read into Section 173, per se, the proceedings will not be vitiated if the report is not in the language of the Court. The

test of failure of justice will have to be applied in such a case as laid down in Section 465 of CrPC

What is meant by "a failure of justice" occasioned on account of such error, omission or irregularity?

The Supreme Court has observed in Shamnsaheb M. Multtani vs. State of Karnataka, (2001) 2 SCC 577 : 2001 SCC (Cri) 358, thus: (SCC p. 585, Para 23)

"23. We often hear about 'failure of justice' and quite often the submission in a criminal court is accentuated with the said expression. Perhaps it is too pliable or facile an expression which could be fitted in any situation of a case. The expression 'failure of justice' would appear, sometimes, as an etymological chameleon [the simile is borrowed from Lord Diplock in Town Investments Ltd. vs. Deptt. of the Environment, (1977) 1 All ER 813 : 1978 AC 359 : (1977) 2 WLR 450 (HL)]. The criminal court, particularly the superior court should make a close examination to ascertain whether there was really a failure of justice or whether it is only a camouflage."

Reasonable duobt

this Court in Para 13 in the case of Dharm Das Wadhwani vs. State of Uttar Pradesh, AIR 1975 SC 241:

"13. The question then is whether the cumulative effect of the guilt pointing circumstances in the present case is such that the court can conclude, not that the accused may be guilty but that he must be guilty. We must here utter a word of caution about this mental sense of 'must' lest it should be confused with exclusion of every contrary possibility. We have in S.S. Bobade vs. State of Maharashtra, AIR 1973 SC 2622, explained that proof beyond reasonable doubt cannot be distorted into a doctrine of acquittal when any delicate or remote doubt flits past a feeble mind. These observations are warranted by frequent acquittals on flimsy possibilities which are not infrequently set aside by the High Courts weakening the credibility of the judicature. The rule of benefit of reasonable doubt does not imply a frail willow bending to every whiff of hesitancy. Judges are made of sterner stuff and must take a practical view of legitimate inferences flowing from evidence, circumstantial or direct. At the same time, it may be affirmed, as pointed out by this Court in Kali Ram

vs. State of Himachal Pradesh, AIR 1973 SC 2773, that if a reasonable doubt arises regarding the guilt of the accused, the benefit of that cannot be withheld from him."

Evidence of Police officers

in Pramod Kumar v. State (Govt. of NCT of Delhi), (2013) 6 SCC 588.

13. This Court, after referring to State of U.P. v. Anil Singh [1988 Supp SCC 686 : 1989 SCC (Cri) 48], State (Govt. of NCT of Delhi) v. Sunil [(2001) 1 SCC 652 : 2001 SCC (Cri) 248] and Ramjee Rai v. State of Bihar [(2006) 13 SCC 229 : (2007) 2 SCC (Cri) 626] has laid down recently in Kashmiri Lal v. State of Haryana [(2013) 6 SCC 595 : 2013 AIR SCW 3102] that there is no absolute command of law that the police officers cannot be cited as witnesses and their testimony should always be treated with suspicion. Ordinarily, the public at large show their disinclination to come forward to become witnesses. If the testimony of the police officer is found to be reliable and trustworthy, the court can definitely act upon the same. If, in the course of scrutinising the evidence, the court finds the evidence of the police officer as unreliable and untrustworthy, the court may disbelieve him but it should not do so solely on the presumption that a witness from the Department of Police should be viewed with distrust. This is also based on the principle that quality of the evidence weighs over the quantity of evidence.

23. Referring to State (Govt. of NCT of Delhi) v. Sunil, (2001) 1 SCC 652, in Kulwinder Singh v. State of Punjab, (2015) 6 SCC 674 this court held that: –

"23. … That apart, the case of the prosecution cannot be rejected solely on the ground that independent witnesses have not been examined when, on the perusal of the evidence on record the Court finds that the case put forth by the prosecution is trustworthy. When the evidence of the official witnesses is trustworthy and credible, there is no reason not to rest the conviction on the basis of their evidence."

24. We must note, that in the former it was observed:-

"21… At any rate, the court cannot start with the presumption that the police records are untrustworthy. As a proposition of law the presumption should be the other way around. That official acts of the police have been regularly performed is a wise principle of presumption and recognised even by the legislature… If the court has any good reason to suspect the truthfulness of such records of the police the court could certainly take into account the fact that no other independent person was present at

the time of recovery. But it is not a legally approvable procedure to presume the police action as unreliable to start with, nor to jettison such action merely for the reason that police did not collect signatures of independent persons in the documents made contemporaneous with such actions."

25. Recently, this Court in Mohd. Naushad v. State (NCT of Delhi), 2023 SCC OnLine SC 784 had observed that the testimonies of police witnesses, as well as pointing out memos do not stand vitiated due to the absence of independent witnesses.

"APPRECIATION OF ORAL EVIDENCE

in the case of Balu Sudam Khalde and Another vs. State of Maharashtra, 2023 SCC OnLine SC 355, has summarized as principles of appreciation of ocular evidence in a criminal case, which we can usefully reproduce hereinafter:

Para 25. The appreciation of ocular evidence is a hard task. There is no fixed or straightjacket 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. "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 timesense 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 sub-conscious 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 : ((1983) 3 SCC 217 : AIR 1983 SC 753) Leela Ram v. State of Haryana, (1999) 9 SCC 525 : AIR 1999 SC 3717 and Tahsildar Singh v. State of UP (AIR 1959 SC 1012)]

Marking of document not proof

in the case of Arbada Devi Gupta vs Birendra Kumar Jaiswal and Anr., (2003) 8 SCC 745, in paragraph 16 has held as follows:

"16. ……..The legal position is not in dispute that mere production and marking of a document as exhibit by the Court cannot be held to be a due proof of its contents. Its execution has to be proved by admissible evidence that is by the 'evidence of those persons who can vouchsafe for the truth of the facts in issue'……."

Right to pregnancy and to terminate pregnancy:

in the case of X vs. The Principal Secretary, Health and Family Welfare Department, Government of NCT of Delhi and Ors., AIR 2022 SC 4917; this Court, in another three-judge Bench lead by Dr. D.Y. Chandrachud, J. (as the learned Chief Justice then was) observed that a woman can become pregnant by choice irrespective of her marital status. In case the pregnancy is warranted, it is equally shared by both the partners. However, in case of an unwanted or incidental pregnancy, the burden invariably falls on the pregnant woman affecting her mental and physical health. Article 21 of the Constitution recognizes and protects the right of a woman to undergo termination of pregnancy if her mental or physical health is at stake. Importantly, it is the woman alone who has the right over her body and is the ultimate decision-maker on the question of whether she wants to undergo an abortion.

NEWS

- The Digital Personal Data Protection Act, 2023 published in Extra Ordinary- Part II-Section 1 in CG-DL-E-12082023-248045.

- The Registration of Births and Deaths (Amendment) Act, 2023- Extra Ordinary- Part II-Section 1- CG-DL-E-12082023-248044- Published

- The Forest (Conservation) Amendment Act, 2023 -Extra Ordinary-Part II-Section 1-CG-DL-E-05082023-247866- Published

- TSHC releases circular intimating that the proceedings of the all Courts of the High Court for the State of Telangana will be held in hybrid mode (both virtual and physical) and their links.

- TSHC releases time lines to be followed by courts for issuance of Certified copies.

- AP GOV- issued GOMs no. 416 & 417 dated 29.08.2023, regarding the compounding of Excise cases. The Gazette publications have also been issued.

- HIGH COURT FOR THE STATE OF TELANGANA:: HYDERABAD ROC.NO. 1399/S0/2023 DATE:09.08.2023 CIRCULAR No. 12/S0/2023 Sub:- High Court for the State of Telangana - Supreme Court of India - Judgment dated 31.07.2023 in Criminal Appeal No (s).2207 of 2023 in Special Leave Petition (SLP) (Crl) No. 3433 of 2023 between MD. Asfak Alam Vs The State of Jharkhand & Anr. - Certain directions on Section 41 of Cr.P.C with regard to arrest of accused by police officers - Instructions - Issued.

- HIGH COURT FOR THE STATE OF TELANGANA:: HYDERABAD ROC. NO . 207 /S0/2023 DATE:09.08.2023 CIRCULAR No.13/S0/2023 Sub:- High Court for the State of Telangana - Supreme Court of India - Letter of the Assistant Registrar, Supreme Court of India forwarded the Certified copy of the Order dated 15.12.2022 in Civil Appeal No (s).9322 of 2022 arising out of SLP (C) No.32448 of 2018 between Gohar Mohammed Vs Uttar Pradesh State Road Transport Corporation & Others - Certain directions issued in registering the MVOPs by the Chairman, Motor Accident Claim Tribunals / Principal District Judges in the State on filing of FAR by the Police personnel Instructions - Issued.

- High Court of Andhra Pradesh - Order dated 25.07.2023 passed in Suo Motu Writ Petition (Criminal) No. 4 of 2021 by the Hon'ble Supreme Court of India Observation regarding imposition of conditions for grant of bail Certain directions Issued - Reg.

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AND ALSO ON OUR WEBSITE- http://prosecutionreplenish.com/

ON A LIGHTER VEIN

What's the different between a cat and a comma?

A cat has claws at the end of paws; A comma is a pause at the end of a clause.

Did you hear about the two people who stole a calendar?

They each got six months.

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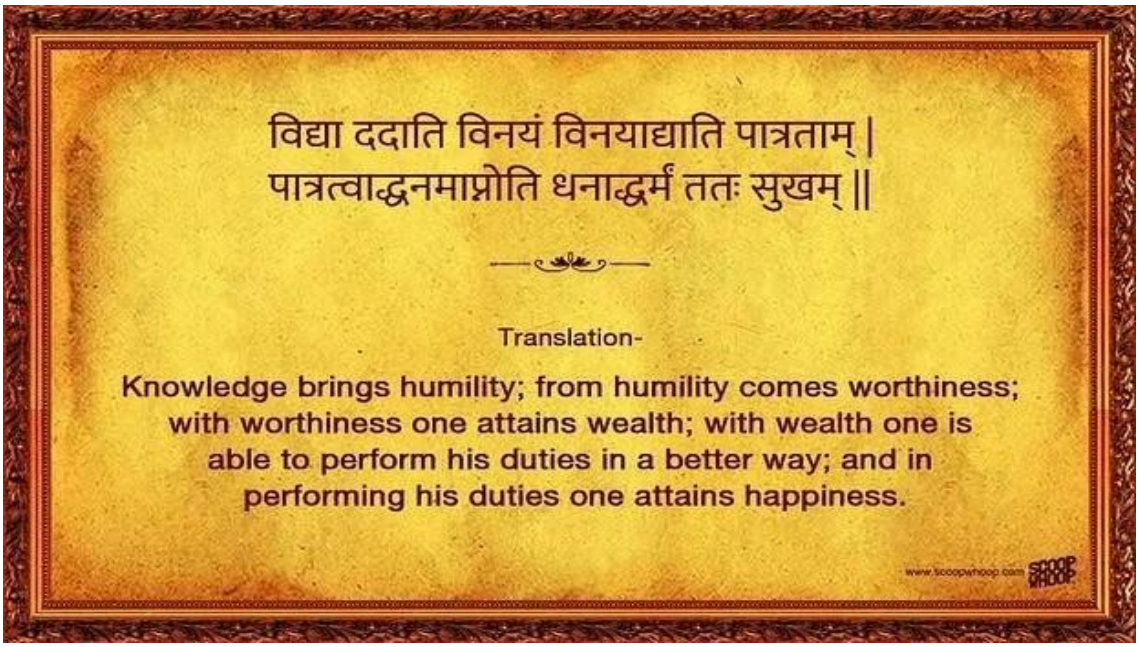
Aano Bhadr Kratvo Yantu Viswatah
(Let Noble Thoughts Come To Me from All Directions)



CITATIONS

2023 0 INSC 821; 2023 0 Supreme(SC) 851; Bhaktu Gorain & Anr. Vs. The State of West Bengal; Criminal Appeal No. 20 of 2014; Decided On : 12-09-2023

The submission on behalf of the appellants is that they never had any common intention to kill the deceased and that they simply wanted to teach a lesson to the deceased so that she may not indulge in her practices of witchcraft in future.

The submission is devoid of any merit as admittedly an altercation had taken place between the parties on the previous night in which all the five accused persons were present and it is in furtherance of the said quarrel that all of them had appeared in the morning with reinforced vengeance. The very fact that they had assembled in the morning and surrounded (gheraoed) the deceased with deadly weapons is sufficient indication to infer that they had surrounded (gheraoed) in a pre-planned manner with a pre-determined mind. Thus, the submission that they had no common intention stands completely ruled out. Moreover, the nature of injuries which have been caused on the head of the deceased with the deadly weapons proves that they had assembled with the common intention and not merely to threaten her or to deter her from practicing witchcraft.

Notwithstanding that two of the accused persons Bandhu Gorain (A-3) and Rajen Gorain (A-5) had no weapons with them or might not have assaulted the deceased but certainly they were part of the team that surrounded (gheraoed) the deceased with the common intention to kill after they had an altercation with her the previous night on the subject of practicing witchcraft.

2023 0 INSC 833; 2023 0 Supreme(SC) 973; People's Union for Civil Liberties and Another Vs The State of Maharashtra and Others; Criminal Appeal Nos. 1255, 1256, 1367 of 1999, Contempt Petition (Civil) No. 47 of 2011, Writ Petition (Civil) No. 316 of 2008, T.C. (C) No. 27 of 2011; Decided On : 13-09-2023

The Amicus Curiae has prepared the following suggestions on the basis of which appropriate guidelines can be formulated for conducting media briefings:

"1. Each district or town ought to have a Media Briefing Cell (MBC) for interactions with the media. Such interaction/Press Releases must be in writing and with the authorization of a senior police officer. Press Briefs must be prepared on each case, which will be the basis of any media briefings.

2. The briefing of the press can be done at any stage after an FIR has been registered, an arrest effected or a raid conducted. However, at the earliest stages, very little information must be parted with, as facts would need full and complete confirmation.

3. Notwithstanding anything else, the primary concern of the police ought to be the fair administration of justice without compromising on individual rights of privacy or of presumption of innocence.

4. Information ought not to be released which would portray the police as insensitive or vindictive or which would suggest the pre-judging of an issue.

5. The location of the offence, especially in the context of harassment, domestic violence, stalking etc., ought to be avoided as it would compromise the victim.

6. In no circumstances may the identity of victims of sexual offences and juvenile cases be divulged by the police. The same may apply to the victims of continuing offences, i.e. abductions and kidnapping. The police would also be careful to share details of ongoing operations or investigative strategy that would alert the offenders or compromise witnesses confidential informants.

7. The Press Briefs will be maintained as permanent records of the media interactions of the police, with one copy at the Police Station in question, one at the MBC and one at the District Headquarters. All such briefs will be provided online as well.

8. Any breach of the above Guidelines must be strictly dealt with departmentally, so that any such misadventure may be deterred."

We direct that all the Directors General of Police shall, within a period of one month from the date of this order, communicate to the Union Ministry of Home Affairs their suggestions for the preparation of appropriate guidelines. Thereafter, the Union Ministry of Home Affairs shall proceed to prepare the guidelines after considering the views which have been received from the Directors General of Police and after consulting other stake holders including representative segments of the print and electronic media who may have

suggestions on the issue. Organisations representing the print and electronic media should also be consulted.

2023 0 INSC 812; 2023 0 Supreme(SC) 842; N. Ramkumar Vs. The State Rep. By Inspector Of Police; Criminal Appeal No.2006 of 2023; Decided on : 06-09-2023

the fact that the legislature has used two different terminologies, 'intent' and 'knowledge' and separate punishments are provided for an act committed with an intent to cause bodily injury which is likely to cause death and for an act committed with a knowledge that his act is likely to cause death without intent to cause such bodily injury as is likely to cause death, it would be unsafe to treat 'intent' and 'knowledge' in equal terms. They are not different things. Knowledge would be one of the circumstances to be taken into consideration while determining or inferring the requisite intent. Where the evidence would not disclose that there was any intention to cause death of the deceased but it was clear that the accused had knowledge that his acts were likely to cause death, the accused can be held guilty under second part of Section 304 IPC. It is in this background that the expression used in Indian Penal Code namely "intention" and "knowledge" has to be seen as there being a thin line of distinction between these two expressions. The act to constitute murder, if in given facts and circumstances, would disclose that the ingredients of Section 300 are not satisfied and such act is one of extreme recklessness, it would not attract the said Section. In order to bring a case within Part 3 of Section 300 IPC, it must be proved that there was an intention to inflict that particular bodily injury which in the ordinary course of nature was sufficient to cause death. In other words, that the injury found to be present was the injury that was intended to be inflicted.

It is a trite law that "culpable homicide" is a genus and "murder" is its species and all "murders" are "culpable homicides, but all "culpable homicides" are not "murders" as held by this court in Rampal Singh Vs. State of Uttar Pradesh (2012) 8 SCC 289. The intention of the accused must be judged not in the light of actual circumstances, but in the light of what is supposed to be the circumstances.

2023 0 INSC 817; 2023 0 Supreme(SC) 849; CBI Vs. R.R. Kishore; Criminal Appeal No. 377 of 2007, Criminal Appeal No. 2763 of 2023, SLP (Crl.) No. 4364 of 2011; Decided On : 11-09-2023(Constitution Bench)

it is crystal clear that once a law is declared to be unconstitutional, being violative of Part-III of the Constitution, then it would be held to be void ab initio, still born, unenforceable and non est in view of Article 13(2) of the Constitution and its interpretation by authoritative pronouncements. **Thus, the declaration made by the Constitution Bench in the case of**

Subramanian Swamy (supra) will have retrospective operation. Section 6A of the DSPE Act is held to be not in force from the date of its insertion i.e. 11.09.2003.

2023 0 INSC 858; 2023 0 Supreme(SC) 995; H.D. Sundara and Others Vs. State of Karnataka; Criminal Appeal No. 247 of 2011; Decided On : 26-09-2023

In many cases, the learned Trial Judge who eventually passes the order of acquittal has an occasion to record the oral testimony of all material witnesses. Thus, in such cases, the Trial Court has the additional advantage of closely observing the prosecution witnesses and their demeanour. While deciding about the reliability of the version of prosecution witnesses, their demeanour remains in the back of the mind of the learned Trial Judge. As observed in the commentary by Sarkar on the Law of Evidence, the demeanour of a witness frequently furnishes a clue to the weight of his testimony. This aspect has to be borne in mind while dealing with an appeal against acquittal.

2023 0 INSC 826; 2023 0 Supreme(SC) 859; Rupesh Manger (Thapa) Vs. State of Sikkim; Criminal Appeal Nos. 2069-2070 of 2022; Decided On : 13-09-2023

It is settled that the standard of proof to prove the lunacy or insanity is only ‘reasonable doubt’.

The doctrine of burden of proof in the context of the plea of insanity may be stated in the following propositions: (1) The prosecution must prove beyond reasonable doubt that the accused had committed the offence with the requisite mens rea and the burden of proving that always rests on the prosecution from the beginning to the end of the trial. (2) There is a rebuttable presumption that the accused was not insane, when he committed the crime, in the sense laid down by Section 84 of the Indian Penal Code: the accused may rebut it by placing before the court all the relevant evidence-oral, documentary or circumstantial, but the burden of proof upon him is no higher than that rests upon a party to civil proceedings. (3) Even if the. accused was not able to establish conclusively that he was insane at the time he committed the offence, the evidence placed before the court by the accused or by the prosecution may raise a reasonable doubt in the mind of the court as regards one or more of the ingredients of the offence, including mens rea of the accused and in that case the court would be entitled to acquit the accused on the ground that the general burden of proof resting on the prosecution was not discharged.

2023 0 INSC 829; 2023 0 Supreme(SC) 861; Javed Shaukat Ali Qureshi Vs. State of Gujarat; Criminal Appeal No. 1012 of 2022; Decided on : 13-09-2023

When there is similar or identical evidence of eyewitnesses against two accused by ascribing them the same or similar role, the Court cannot convict one accused and acquit the

other. In such a case, the cases of both the accused will be governed by the principle of parity. This principle means that the Criminal Court should decide like cases alike, and in such cases, the Court cannot make a distinction between the two accused, which will amount to discrimination.

2023 0 INSC 793; 2023 0 Supreme(SC) 822; Munna Pandey Vs. State Of Bihar; Criminal Appeal Nos. 1271-1272 of 2018; Decided On : 04-09-2023 THREE JUDGE BENCH

There is in our opinion nothing in Section 162 of the CrPC which prevents a Trial Judge from looking into the papers of the chargesheet suo motu and himself using the statement of a person examined by the police recorded therein for the purpose of contradicting such person when he gives evidence in favour of the State as a prosecution witness. The Judge may do this or he may make over the recorded statement to the lawyer for the accused so that he may use it for this purpose. We also wish to emphasise that in many sessions cases when an advocate appointed by the Court appears and particularly when a junior advocate, who has not much experience of the procedure of the Court, has been appointed to conduct the defence of an accused person, it is the duty of the Presiding Judge to draw his attention to the statutory provisions of Section 145 of the Evidence Act, as explained in Tara Singh v. State reported in AIR 1951 SC 441 and no Court should allow a witness to be contradicted by reference to the previous statement in writing or reduced to writing unless the procedure set out in Section 145 of the Evidence Act has been followed. It is possible that if the attention of the witness is drawn to these portions with reference to which it is proposed to contradict him, he may be able to give a perfectly satisfactory explanation and in that event the portion in the previous statement which would otherwise be contradictory would no longer go to contradict or challenge the testimony of the witness.

What is important to note in the aforesaid decision of this Court is the principle of law that if the witness was not confronted with that part of the statement with which the defence wanted to contradict him, then the Court cannot suo motu make use of statements to police not proved in compliance with Section 145 of the Evidence Act. Therefore, it is of utmost importance to prove all major contradictions in the form of material omissions in accordance with the procedure as established under Section 145 of the Evidence Act and bring them on record. It is the duty of the defence counsel to do so.

The role of a judge in dispensation of justice after ascertaining the true facts no doubt is very difficult one. In the pious process of unravelling the truth so as to achieve the ultimate goal of dispensing justice between the parties the judge cannot keep himself unconcerned and oblivious to the various happenings taking place during the progress of trial of any case. No doubt he has to remain very vigilant, cautious, fair and impartial, and not to give even a slightest of impression that he is biased or prejudiced either due to his own personal

convictions or views in favour of one or the other party. This, however, would not mean that the Judge will simply shut his own eyes and be a mute spectator, acting like a robot or a recording machine to just deliver what stands feeded by the parties.

This Court has condemned the passive role played by the Judges and emphasized the importance and legal duty of a Judge to take an active role in the proceedings in order to find the truth to administer justice and to prevent the truth from becoming a casualty. A Judge is also duty bound to act with impartiality and before he gives an opinion or sits to decide the issues between the parties, he should be sure that there is no bias against or for either of the parties to the lis. For a judge to properly discharge this duty the concept of independence of judiciary is in existence and it includes ability and duty of a Judge to decide each case according to an objective evaluation and application of the law, without the influence of outside factors.

If the Courts are to impart justice in a free, fair and effective manner, then the presiding judge cannot afford to remain a mute spectator totally oblivious to the various happenings taking place around him, more particularly, concerning a particular case being tried by him. The fair trial is possible only when the court takes active interest and elicit all relevant information and material necessary so as to find out the truth for achieving the ultimate goal of dispensing justice with all fairness and impartiality to both the parties.

2023 0 INSC 795; 2023 0 Supreme(SC) 833; PACL Vs. Central Bureau of Investigation; I.A. Nos. 46851, 156411 of 2022, T.C. (Crl) Nos. 1, 3 of 2016, W.P. (Crl) No. 326 of 2023; Decided On : 05-09-2023

Most of the complaints have been given subsequent to the case registered by the CBI in which few other persons are also arrayed as accused persons. One cannot apply one bail order to all the other subsequent cases. We do not have the adequate particulars pertaining to the subsequent cases filed, like the charge-sheet pertaining to the case registered by different investigating agencies. It is not as if the applicants are unable to approach the concerned courts for seeking bail.

2023 0 INSC 839; 2023 0 Supreme(SC) 979; Rajesh & Anr. Vs. The State of Madhya Pradesh; Criminal Appeal No(s). 793-794 of 2022 With Criminal Appeal No. 795 of 2022; Decided On : 21-09-2023. THREE JUDGE BENCH

it is essential under Section 27 of the Evidence Act that the person concerned must be ‘accused of an offence’ and being in the ‘custody of a police officer’, he or she must give information leading to the discovery of a fact and so much of that information, whether it amounts to a confession or not, that relates distinctly to the fact discovered, may be proved against him. In effect, both aspects, viz, being in ‘the custody of a police officer’ and being

'accused of an offence', are indispensable pre-requisites to render a confession made to the police admissible to a limited extent, by bringing into play the exception postulated under Section 27 of the Evidence Act.

In Yakub Abdul Razak Memon vs. State of Maharashtra through CBI, Bombay, (2013) 13 SCC 1, this Court noted that the primary intention behind the 'panchnama' is to guard against possible tricks and unfair dealings on the part of the officers entrusted with the execution of the search and also to ensure that anything incriminating which may be said to have been found in the premises searched was really found there and was not introduced or planted by the officers of the search party. It was further noted that the legislative intent was to control and check these malpractices of the officers, by making the presence of independent and respectable persons compulsory for search of a place and seizure of an article. It was pointed out that a panchnama can be used as corroborative evidence in the Court when the respectable person who is a witness thereto gives evidence in the Court of law under Section 157 of the Evidence Act. This Court noted that Section 100(4) to Section 100(8) Cr.P.C. stipulate the procedure with regard to search in the presence of two or more respectable and independent persons, preferably from the same locality, so as to build confidence and a feeling of safety and security amongst the public. The following mandatory conditions were culled out from Section 100 Cr.P.C. for the purposes of a valid panchnama :

(a) All the necessary steps for personal search of officer (Inspecting officer) and panch witnesses should be taken to create confidence in the mind of court as nothing is implanted and true search has been made and things seized were found real.

(b) Search proceedings should be recorded by the I.O. or some other person under the supervision of the panch witnesses.

(c) All the proceedings of the search should be recorded very clearly stating the identity of the place to be searched, all the spaces which are searched and descriptions of all the articles seized, and also, if any sample has been drawn for analysis purpose that should also be stated clearly in the Panchanama.

(d) The I.O. can take the assistance of his subordinates for search of places. If any superior officers are present, they should also sign the Panchanama after the signature of the main I.O.

(e) Place, Name of the police station, Officer rank (I.O.), full particulars of panch witnesses and the time of commencing and ending must be mentioned in the Panchnama.

(f) The panchnama should be attested by the panch witnesses as well as by the concerned IO.

(g) Any overwriting, corrections, and errors in the Panchnama should be attested by the witnesses.

(h) If a search is conducted without warrant of court Under Section 165 of the Code, the I.O. must record reasons and a search memo should be issued.

It was held that a panchnama would be inadmissible in a Court of law if it is recorded by the Investigating Officer in a manner violative of Section 162 Cr.P.C. as the procedure requires the Investigating Officer to record the search proceedings as if they were written by the panch witnesses themselves and it should not be recorded in the form of examining witnesses, as laid down in Section 161 Cr.P.C. This Court concluded, by stating that the entire panchnama would not be liable to be discarded in the event of deviation from the procedure and if the deviation occurred due to a practical impossibility, then the same should be recorded by the Investigating Officer so as to enable him to answer during the time of his examination as a witness in the Court of law.

Before parting with the case with our verdict, we may note with deep and profound concern the disappointing standards of police investigation that seem to be the invariable norm. As long back as in the year 2003, the Report of Dr. Justice V.S. Malimath's 'Committee on Reforms of Criminal Justice System' had recorded thus :

> 'The manner in which police investigations are conducted is of critical importance to the functioning of the Criminal Justice System. Not only serious miscarriage of justice will result if the collection of evidence is vitiated by error or malpractice, but successful prosecution of the guilty depends on a thorough and careful search for truth and collection of evidence which is both admissible and probative. In undertaking this search, it is the duty of the police to investigate fairly and thoroughly and collect all evidence, whether for or against the suspect. Protection of the society being the paramount consideration, the laws, procedures and police practices must be such as to ensure that the guilty are apprehended and punished with utmost dispatch and in the process the innocent are not harassed. The aim of the investigation and, in fact, the entire Criminal Justice System is to search for truth. ……The standard of police investigation in India remains poor and there is considerable room for improvement. The Bihar Police Commission (1961) noted with dismay that "during the course of tours and examination of witnesses, no complaint has been so universally made before the Commission as that regarding the poor quality of police investigation". Besides inefficiency, the members of public complained of rudeness, intimidation, suppression of evidence, concoction of evidence and malicious padding of cases…..'

Echoing the same sentiment in its Report No.239 in March, 2012, the Law Commission of India observed that the principal causes of low rate of conviction in our country, inter alia, included inept, unscientific investigation by the police and lack of proper coordination between police and prosecution machinery. Despite passage of considerable time since these gloomy insights, we are dismayed to say that they remain sadly true even to this day.

This is a case in point. A young boy in the first flush of youth was cruelly done to death and the wrongdoers necessarily had to be brought to book for the injustice done to him and his family. However, the manner in which the police tailored their investigation, with complete indifference to the essential norms in proceeding against the accused and in gathering evidence; leaving important leads unchecked and glossing over other leads that did not suit the story that they had conceived; and, ultimately, in failing to present a cogent, conceivable and fool-proof chain of events pointing to the guilt of the appellants, with no possibility of any other hypothesis, leaves us with no option but to extend the benefit of doubt to the appellants. The higher principle of 'proof beyond reasonable doubt' and more so, in a case built on circumstantial evidence, would have to prevail and be given priority. It is high time, perhaps, that a consistent and dependable code of investigation is devised with a mandatory and detailed procedure for the police to implement and abide by during the course of their investigation so that the guilty do not walk free on technicalities, as they do in most cases in our country. We need say no more.

2023 0 INSC 844; 2023 0 Supreme(SC) 982; P. Sarangapani (Dead) Through Lr Paka Saroja vs State of Andhra Pradesh; Criminal Appeal No. 2173 of 2011; Decided On : 21-09-2023

It is well settled proposition of law that the death of the complainant or non-availability of the complainant at the time of trial could be said to be fatal to the case of prosecution, nor could it be said to be a ground to acquit the accused. It is always open for the prosecution to prove the contents of the complaint and other facts in issue by leading other oral or documentary evidence, in case of death of or non-availability of the complainant.

once the undue advantage i.e., any gratification whatever, other than the legal remuneration is proved to have been accepted by the accused, the Court is entitled to raise the presumption under Section 20 that he accepted the undue advantage as a motive or reward under Section 7 for performing or to cause performance of a public duty improperly or dishonestly. No doubt, such presumption is rebuttable.

https://indiankanoon.org/doc/164345391/; Yadati Sunil Yadav vs CBI; on 15 September, 2023; I.A.No.1 OF 2023 in CRIMINAL PETITION No.7937 OF 2023 and CRIMINAL PETITION No.7937 of 2023

As reiterated by the two-Judge Bench of this Court in Prasanta Kumar Sarkar Vs. Ashish Chatterjee And Another, it is well-settled that the factors to be borne in mind while considering an application for bail are:

(i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;

(ii) nature and gravity of the accusation;
(iii) severity of the punishment in the event of conviction;
(iv) danger of the accused absconding or fleeing, if released on bail;
(v) character, behaviour, means, position and standing of the accused;
(vi) likelihood of the offence being repeated;
(vii) reasonable apprehension of the witnesses being influenced; and
(viii) danger, of course, of justice being thwarted by grant of bail.

"4. Apart from the above, certain other which may be attributed to be relevant considerations may also be noticed at this juncture, though however, the same are only illustrative and not exhaustive, neither there can be any. The considerations being:

(a) While granting bail the court has to keep in mind not only the nature of the accusations, but the severity of the punishment, if the accusation entails a conviction and the nature of evidence in support of the accusations.

(b) Reasonable apprehensions of the witnesses being tampered with or the apprehension of there being a threat for the complainant should also weigh with the court in the matter of grant of bail.

(c) While it is not expected to have the entire evidence establishing the guilt of the accused beyond reasonable doubt but there ought always to be a prima facie satisfaction of the court in support of the charge.

(d) 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."

https://indiankanoon.org/doc/71162301/; Parasuraman Karthik Iyer vs Directorate Of Enforcement on 8 September, 2023; CRIMINAL REVISION CASE No.378 OF 2023 ALONG WITH WRIT PETITION Nos.19163, 21448 & 20835 OF 2023 AND CRIMINAL REVISION CASE No.509 OF 2023

the Apex Court in Senthil Balaji categorically held that Section - 41A of the Cr.P.C. has got no application to an arrest made under the PMLA.

Crl.P No.1499 of 2020; Dt.23.09.2023;Pattivada Balaji vs. State of Andhra Pradesh.; https://hcservices.ecourts.gov.in/ecourtindiaHC/cases/display_pdf.php?filename=U%2BbhtlrLe2adAHN8Tz%2F1dziQA9btbOKmHgp7Mlt%2BwD3HldXUKLxakaIQXDUJ0Y2h&caseno=CRLP/1499/2020&cCode=1&appFlag=;

Though, such evidence either oral or documentary was not mentioned in the list of witness/documents filed with the police report (charge sheet) under Section 173 CrPC,

copies of the statements or documents be furnished to the accused, to enable him to avail the right of cross-examination.

The list of witnesses/documents filed with the Police report (Charge sheet) filed by the police is only a practice. It does not prevent the Prosecution or Magistrate/Court from examining any other witnesses or receiving documents if they help the Court to arrive at a just decision in the case.

The right of the accused be protected by instructing the Prosecution to provide the copies of the statements of the witnesses if any, or documents, which were recorded/collected during investigation, but not mentioned in the list of witnesses and documents filed with the Police report (Charge sheet), to the accused, before examining the proposed witnesses. The probative value of the said additional evidence be decided later only, in the judgment. In the case on hand, the prosecution might have filed the application under Section 311 CrPC, it can be considered as an application under Section 254 CrPC. It is a settled proposition of law that a party cannot be denied relief on the ground of quoting a wrong provision if, he is otherwise entitled to the relief under a different provision in the Code.

Fair trial is not a favour afforded to the accused. It is a legally enforceable right guaranteed by the State to its citizens, for whom the State itself exists. Fair trial means it is not only fair to the accused; it should be fair to the prosecution and the society at large.

Culpable Homicide Vs Murder

in a recent judgment in the case of Anbazhagan vs. The State represented by the Inspector of Police in Criminal Appeal No.2043 of 2023 disposed of on 20.07.2023 has defined the context of the true test to be adopted to find out the intention or knowledge of the accused in doing the act as under:

> "60. Few important principles of law discernible from the aforesaid discussion may be summed up thus:
>
> (1) When the court is confronted with the question, what offence the accused could be said to have committed, the true test is to find out the intention or knowledge of the accused in doing the act. If the intention or knowledge was such as is described in Clauses (1) to (4) of Section 300 of the IPC, the act will be murder even though only a single injury was caused. To illustrate: 'A' is bound hand and foot. 'B' comes and placing his revolver against the head of 'A', shoots 'A' in his head killing him instantaneously. Here, there will be no difficulty in holding that the intention of 'B' in shooting 'A' was to kill him, though only single injury was caused. The case would, therefore, be of murder falling within Clause (1) of Section 300 of the IPC. Taking another instance, 'B' sneaks into the bed room of his enemy 'A' while the latter is

asleep on his bed. Taking aim at the left chest of 'A', 'B' forcibly plunges a sword in the left chest of 'A' and runs away. 'A' dies shortly thereafter. The injury to 'A' was found to be sufficient in ordinary course of nature to cause death. There may be no difficulty in holding that 'B' intentionally inflicted the particular injury found to be caused and that the said injury was objectively sufficient in the ordinary course of nature to cause death. This would bring the act of 'B' within Clause (3) of Section 300 of the IPC and render him guilty of the offence of murder although only single injury was caused.

(2) Even when the intention or knowledge of the accused may fall within Clauses (1)to (4) of Section 300 of the IPC, the act of the accused which would otherwise be murder, will be taken out of the purview of murder, if the accused's case attracts any one of the five exceptions enumerated in that section. In the event of the case falling within any of those exceptions, the offence would be culpable homicide not amounting to murder, falling within Part 1 of Section 304 of the IPC, if the case of the accused is such as to fall within Clauses (1) to (3) of Section 300 of the IPC. It would be offence under Part II of Section 304 if the case is such as to fall within Clause (4) of Section 300 of the IPC. Again, the intention or knowledge of the accused may be such that only 2nd or 3rd part of Section 299 of the IPC, may be attracted but not any of the clauses of Section 300 of the IPC. In that situation also, the offence would be culpable homicide not amounting to murder under Section 304 of the IPC. It would be an offence under Part I of that section, if the case fall within 2nd part of Section 299, while it would be an offence under Part II of Section 304 if the case fall within 3rd part of Section 299 of the IPC.

(3) To put it in other words, if the act of an accused person falls within the first two clauses of cases of culpable homicide as described in Section 299 of the IPC it is punishable under the first part of Section 304. If, however, it falls within the third clause, it is punishable under the second part of Section 304. In effect, therefore, the first part of this section would apply when there is 'guilty intention,' whereas the second part would apply when there is no such intention, but there is 'guilty-knowledge'.

(4) Even if single injury is inflicted, if that particular injury was intended, and objectively that injury was sufficient in the ordinary course of nature to cause death, the requirements of Clause 3rdly to Section 300 of the IPC, are fulfilled and the offence would be murder.

(5) Section 304 of the IPC will apply to the following classes of cases : (i) when the case falls under one or the other of the clauses of Section 300, but it is covered by one of the exceptions to that Section, (ii) when the injury caused is not of the higher degree of likelihood which is covered by the expression 'sufficient in the ordinary course of nature to cause death' but is of a lower degree of likelihood which is generally-spoken of as an injury 'likely to cause death' and the case does not fall under Clause (2) of Section 300 of the IPC, (iii)when the act is done

with the knowledge that death is likely to ensue but without intention to cause death or an injury likely to cause death.

To put it more succinctly, the difference between the two parts of Section 304 of the IPC is that under the first part, the crime of murder is first established and the accused is then given the benefit of one of the exceptions to Section 300 of the IPC, while under the second part, the crime of murder is never established at all. Therefore, for the purpose of holding an accused guilty of the offence punishable under the second part of Section 304 of the IPC, the accused need not bring his case within one of the exceptions to Section 300 of the IPC.

(6) The word 'likely' means probably and it is distinguished from more 'possibly'. When chances of happening are even or greater than its not happening, we may say that the thing will 'probably happen'. In reaching the conclusion, the court has to place itself in the situation of the accused and then judge whether the accused had the knowledge that by the act he was likely to cause death.

(7) The distinction between culpable homicide (Section 299 of the IPC) and murder (Section 300 of the IPC) has always to be carefully borne in mind while dealing with a charge under Section 302 of the IPC. Under the category of unlawful homicides, both, the cases of culpable homicide amounting to murder and those not amounting to murder would fall. Culpable homicide is not murder when the case is brought within the five exceptions to Section 300 of the IPC. But, even though none of the said five exceptions are pleaded or prima facie established on the evidence on record, the prosecution must still be required under the law to bring the case under any of the four clauses of Section 300 of the IPC to sustain the charge of murder. If the prosecution fails to discharge this onus in establishing any one of the four clauses of Section 300 of the IPC, namely, 1stly to 4thly, the charge of murder would not be made out and the case may be one of culpable homicide not amounting to murder as described under Section 299 of the IPC.

(8) The court must address itself to the question of mens rea. If Clause thirdly of Section 300 is to be applied, the assailant must intend the particular injury inflicted on the deceased. This ingredient could rarelybe proved by direct evidence. Inevitably, it is a matter of inference to be drawn from the proved circumstances of the case. The court must necessarily have regard to the nature of the weapon used, part of the body injured, extent of the injury, degree of force used in causing the injury, the manner of attack, the circumstances preceding and attendant on the attack.

(9) Intention to kill is not the only intention that makes a culpable homicide a murder. The intention to cause injury or injuries sufficient in the ordinary cause of nature to cause death also makes a culpable homicide a murder if death has actually been caused and intention to

cause such injury or injuries is to be inferred from the act or acts resulting in the injury or injuries.

(10) When single injury inflicted by the accused results in the death of the victim, no inference, as a general principle, can be drawn that the accused did not have the intention to cause the death or that particular injury which resulted in the death of the victim. Whether an accused had the required guilty intention or not, is a question of fact which has to be determined on the facts of each case.

(11) Where the prosecution proves that the accused had the intention to cause death of any person or to cause bodily injury to him and the intended injury is sufficient in the ordinary course of nature to cause death, then, even if he inflicts a single injury which results in the death of the victim, the offence squarely falls under Clause thirdly of Section 300 of the IPC unless one of the exceptions applies.

(12) In determining the question, whether an accused had guilty intention or guilty knowledge in a case where only a single injury is inflicted by him and that injury is sufficient in the ordinary course of nature to cause death, the fact that the act is done without premeditation in a sudden fight or quarrel, or that the circumstances justify that the injury was accidental or unintentional, or that he only intended a simple injury, would lead to the inference of guilty knowledge, and the offence would be one under Section 304 Part II of the IPC."

Distinguish between motive, intention and knowledge

In the case of Basdev Vs. State of Pepsu AIR 1956 SC 488 at page 490 the following observations have been made:

"Of course, we have to distinguish between motive, intention and knowledge. Motive is something which prompts a man to form an intention and knowledge is an awareness of the consequences of the act. In many cases intention and knowledge merge into each other and mean the same thing more or less and intention can be presumed from knowledge. The demarcating line between knowledge and intention is no doubt thin but it is not difficult to perceive that they connote different things. Even in some English decisions, the three ideas are used interchangeably and this has led to a certain amount of confusion."

Legal Sanity Vs Medical Sanity

In Surendra Mishra vs. State of Jharkhand, (2011) 11 SCC 495, Hari Singh Gond vs. State of M.P. (2008) 16 SCC 109 and Bapu vs. State of Rajasthan, (2007) 8 SCC 66 this Court has held that an accused who seeks exoneration from liability of an act under Section 84 of IPC has to prove legal insanity and not medical insanity. Since the term insanity or unsoundness of mind has not

been defined in the Penal Code, it carries different meaning in different contexts and describes varying degrees of mental disorder. A distinction is to be made between legal insanity and medical insanity. The court is concerned with legal insanity and not with medical insanity.

Use of 161 CrPC statements for contradiction

This Court in Dandu Lakshmi Reddy v. State of A.P., (1999) 7 SCC 69, it was held:-

> "20. It must now be remembered that the said procedure can be followed only when a witness is in the box. Barring the above two modes, a statement recorded under Section 161 of the Code can only remain fastened up at all stages of the trial in respect of that offence. In other words, if the court has not put any question to the witness with reference to his statement recorded under Section 161 of the Code, it is impermissible for the court to use that statement later even for drawing any adverse impression regarding the evidence of that witness. What is interdicted by Parliament in direct terms cannot be obviated in any indirect manner."

DNA

In Manoj and others vs. State of Madhya Pradesh, (2023) 2 SCC 353, a 3-Judge Bench of this Court refused to rely on DNA evidence, inter alia, as the genuineness of its recovery was suspect. Presently also, as the source and origin of the DNA evidence, viz., the hair, is rendered suspect, the end result of that DNA analysis serves no real purpose in establishing the prosecution's case.

Audience to Victim

Apex Court in Jagjeet Singh Vs. Ashish Mishra AIR 2022 SC 1918 and catena of decisions categorically held that victim/interested person is entitled for audience at every stage. 'Victim' means a person who has suffered loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression victim includes his/her guardian or legal heir.

Examination of witness not listed in charge sheet

The High Court of Andhra Pradesh in J.B. Roy vs The State of Andhra Pradesh{ AIR 1968 AP 236.} at para-No.7 held as under: "....The list of witnesses usually is given by the Police along with the charge-sheet because of the prevalent practice. The practice is undoubtedly desirable but no provision of the Code compels the prosecution to furnish any such list along with the charge-sheet. Nor furnishing of such a list of witnesses along with charge-sheet can mean that the prosecution has relinquished its right to call for any other witness whose name is not mentioned in the list. Nor binds the court to record only the statements of such persons whose

names appear in the list. It does not disable the prosecution or the Court from examining any other witness if it is found desirable or necessary for the purposes of the case.

Experts Speak

Query : Can L & O Police investigate the offences committed under Wild Life Protection Act?

Reply : As per the judgment of Apex Court in between **Moti Lal vs Central Bureau Of Investigation on 9 April, 2002;** Appeal (crl.) 476 of 2002; the L & O police can also investigate the cases under Wild life Protection Act. It was held that

"The scheme of Section 50 of the Wild Life Act makes it abundantly clear that Police Officer is also empowered to investigate the offences and search and seize the offending articles. For trial of offences, Code of Criminal Procedure is required to be followed and for that there is no other specific provision to the contrary. Special procedure prescribed is limited for taking cognizance of the offence as well as powers are given to other officers mentioned in Section 50 for inspection, arrest, search and seizure as well of recording statement. The power to compound offences is also conferred under Section 54. Section 51 provides for penalties which would indicate that certain offences are cognizable offences meaning thereby police officer can arrest without warrant."

NEWS

- Govt of A.P - Public Services - Personal Files - Annual Confidential Report to the Government Employees of the cadre of Group-I, Equivalent cadre and above level officials - Introducing Online Portal - Approved - Orders – issued- GOMs no. 103 GENERAL ADMINISTRATION (SER-C) DEPARTMENT Dated:27.09.2023
- HIGH COURT FOR THE STATE OF TELANGANA :: HYDERABAD NOTICE-with effect from 1 st September, 2023, the proceedings of the all Courts of the High Court for the State of Telangana will be held in hybrid mode (both virtual and physical).
- HIGH COURT OF ANDHRA PRADESH:: AMARAVATI- ROC.NO.520/SO/ 2023 Date.30.08.2023 - CIRCULAR NO./2023-High Court of Andhra Pradesh — Order dated 26-07-2023 in Criminal Petition No.6755 of 2014 passed by the High Court of Andhra Pradesh — Certain directions to ACB/CBI courts –Issued

- HIGHCOURTOFANDHRAPRADESH::AMARAVATI,**ROC.NO.509/SO/2023; 11.09.2023- CIRCULAR NO. /3/2023-** High Court of Andhra Pradesh- Order dated 11.08.2023 of the Hon'ble Supreme Court of India passed in Writ Petition (Criminal) No.99 of 2015 *(Pradyuman Bisht vs. Union of India)* –Security measures to be taken in the High Court and District Judiciary as well as digitization in line with the guidelines issued therein -as directed meeting held - Minutes received -certain directions issued - Reg.

- **TELANGANA -** LAW OFFICERS - State of Telangana - State Public Prosecutor, High Court for the State of Telangana -Appointment of Sri Mantheni Rajender Reddy, as State Public Prosecutor in the High Court for the State of Telangana – Orders- Issued- G.O.Rt.No.406. LAW (f) DEPARTMENT- Dated:06 -09-2023

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ON A LIGHTER VEIN

LAWYER: Now sir, I'm sure you are an intelligent and honest man

WITNESS: Thank you. If I weren't under oath, I'd return the compliment.

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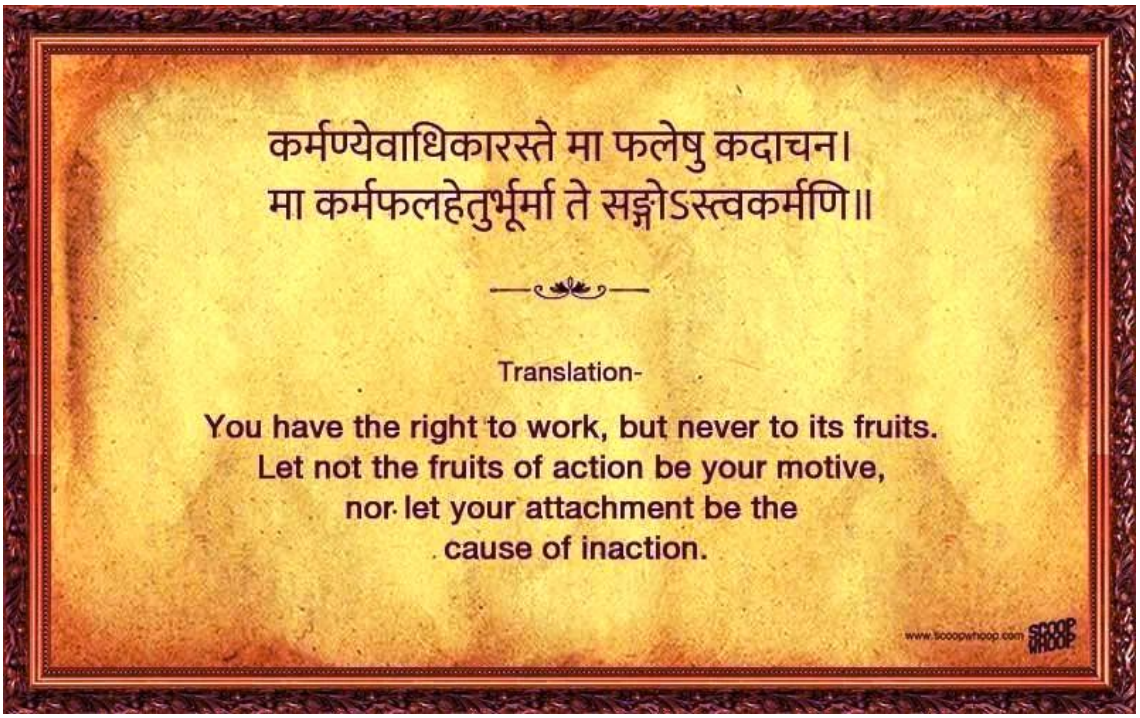
Aano Bhadr Kratvo Yantu Viswatah
(Let Noble Thoughts Come To Me from All Directions)



CITATIONS

2023 0 INSC 903; 2023 0 Supreme(SC) 1034; State of Rajasthan Versus Gautam S/o Mohanlal; Criminal Appeal No.3168 of 2023 (Arising out of Special Leave Petition (Crl.) No.11331 of 2019); Decided on : 11-10-2023

As far as the serious offences under Section 376 of IPC and the POCSO Act are concerned, the fact that the respondent–accused is not a habitual offender is entirely irrelevant….As law prescribes a minimum sentence, the fact that the respondent–accused was suffering incarceration from 8th May 2014 is not material. The caste of the accused is, per se, not a consideration for showing leniency in the cases of such offences. Here, we are dealing with a case where the victim was five to six years old. In a given case, the financial condition of an accused can be one of the considerations for not exceeding the minimum sentence. Still, again, when it comes to such a serious offence against a girl aged five to six, the financial condition of the accused should not normally weigh in the mind of the Court. In this case, the victim's family is from the same economic strata as the respondent.

While dealing with the issue of sentence, in such a case, the mitigating circumstances which weigh in favour of the accused must be balanced with the impact of the offence on the victim, her family and society in general. The rights of the accused must be balanced with the effect of the crime on the victim and her family. This is a case which impacts the society. If undue leniency is shown to the respondent in the facts of the case, it will undermine the common man's confidence in the justice delivery system. The punishment must be

commensurate with the gravity of the offence. When it comes to sentencing, the Court is not only concerned with the accused but the crime as well.

An accused has no caste or religion when the Court deals with his case. We fail to understand why the caste of the accused has been mentioned in the cause title of the judgments of the High Court and the Trial Court. The caste or religion of a litigant should never be mentioned in the cause title of the judgment. We have already observed in our order dated 14th March 2023 that such practice should never be followed.

Whenever a child is subjected to sexual assault, the State or the Legal Services Authorities should ensure that the child is provided with a facility of counselling by a trained child counsellor or child psychologist. It will help the victim children to come out of the trauma, which will enable them to lead a better life in future. The State needs to ensure that the children who are the victims of the offence continue with their education. The social environment around the victim child may not always be conducive to the victim's rehabilitation. Only the monetary compensation is not enough. Only the payment of compensation will not amount to rehabilitation in a true sense. Perhaps the rehabilitation of the girl victims in life should be part of the “Beti Bachao Beti Padhao” campaign of the Central Government. As a welfare State, it will be the duty of the Government to do so. We are directing that the copies of this judgment should be sent to the Secretaries of the concerned departments of the State.

2023 0 INSC 895; 2023 0 Supreme(SC) 1027; Kamal Prasad and Others Vs The State of Madhya Pradesh (Now State of Chhattisgarh); Criminal Appeal No. 1578 of 2012;Decided On : 10-10-2023

The testimony of PW-3 at whose instance the FIR was recorded, shows that out of fear and having sustained numerous injuries, he ran from the place of occurrence and hid in the house of Baisakhu Kewat and only emerged therefrom two hours later. In such a situation, delay in filing of the FIR cannot be said to be fatal to the case of the prosecution more so in view of the injuries sustained by him; the place of occurrence being a remote village area and that the version of events was dictated to the police by this witness only upon their reaching his place of shelter. To us it does not appear to be a case of prior consultation; discussion; deliberation or improvements.

Significantly, this part of his testimony goes un-refuted. Even a suggestion of such statement being false was not given by any one of the accused in cross-examination. Having perused the same and also the cross-examination forming part of the record, we do not find anything emanating therefrom which would credibly suggest that the time gap between the occurrence of incidence and registration of the FIR is unjustified.

In our considered view, both these defence witnesses do not conclusively establish the plea of alibi, based on the principle of preponderance of probability as their statements stand unsupported by any other corroborative evidence.

We find that for the plea of alibi to be established, something other than a mere ocular statement ought to have been present.

2023 0 INSC 887; 2023 0 Supreme(SC) 1023; Chandra Pratap Singh Vs. State of M.P.: Criminal Appeal No. 1209 of 2011; Decided On : 09-10-2023

In view of the wide powers conferred by Section 386 of Cr.P.C. even an Appellate Court can exercise the power under Section 216 of altering or adding the charge. However, if the Appellate Court intends to do so, elementary principles of natural justice require the Appellate Court to put the accused to the notice of the charge proposed to be altered or added when prejudice is likely to be caused to the accused by alteration or addition of charges. Unless the accused was put to notice that the Appellate Court intends to alter or add a charge in a particular manner, his advocate cannot effectively argue the case. Only if the accused is put to notice by the Appellate Court that the charge is intended to be altered in a particular manner, his advocate can effectively argue that even the altered charge was also not proved…We may add here that the Court can give the notice of the proposed alteration or addition of the charge even by orally informing the accused or his advocate when the appeal is being heard. In a given case, the Court can grant a short time to the advocates for both sides to prepare themselves for addressing the Court on the altered or added charge.

Obviously, the Trial Court's conviction of the appellant under Section 302 with the aid of Section 149 of IPC could not be sustained. As per Section 141 of IPC, unlawful assembly must be of five or more persons. As the High Court confirmed the conviction of only four and acquitted all others, the offence of unlawful assembly was not made out, and therefore, the offences under Sections 148 and 149 were not made out.

2023 0 INSC 888; 2023 0 Supreme(SC) 1025; Rajesh Jain Vs. Ajay Singh; Criminal Appeal No. 3126 of 2023 (@ Special Leave Petition (Crl.) No.12802 of 2022); Decided on : 09-10-2023

There are two senses in which the phrase 'burden of proof ' is used in the Indian Evidence Act, 1872 (Evidence Act, hereinafter). One is the burden of proof arising as a matter of pleading and the other is the one which deals with the question as to who has first to prove a particular fact. The former is called the 'legal burden' and it never shifts, the latter is called the 'evidential burden' and it shifts from one side to the other. [See Kundanlal v. Custodian Evacuee Property (AIR 1961 SC 1316)]

Einstein had famously said:

> "If I had an hour to solve a problem, I'd spend 55 minutes thinking about the problem and 5 minutes thinking about solutions".

Exaggerated as it may sound, he is believed to have suggested that quality of the solution one generates is directly proportionate to one's ability to identify the problem. A well-defined problem often contains its own solution within it.

2023 0 INSC 878; 2023 0 Supreme(SC) 1015; Ranjan Kumar Chadha Vs. State of Himachal Pradesh; Criminal Appeal Nos. 2239-2240 of 2011; Decided On : 06-10-2023

We also take notice of the fact that except suggestions put to the witness, there is no other form of cross examination.

Section 50 could be said to be violated where a third option is also offered, be it that of being searched by the superintendent of police or by the police officer himself.

Ordinarily, it could be said or argued that “to search any person” would mean, to search the articles on the person or body of the person to be searched and would normally not include the articles which are not on the body of the person to be searched. When we are deliberating on the scope and true purport of Section 50 of the NDPS Act, we should bear in mind that the main object of Section 50 of the NDPS Act is to avoid the allegation of planting something or fabricating evidence by the prosecution or the authorized officer.

The aforesaid observations make it clear that when search of an arrested person is to be carried out, then the procedure prescribed under Section 50 is to be followed and not in those cases where search is to be carried out of any building, a conveyance or any premises which may be public or private where bags and baggage containing narcotic drugs are lying.

On its plain reading, Section 50 would come into play only in the case of a search of a person as distinguished from search of any premises etc. However, if the empowered officer, without any prior information as contemplated by Section 42 of the Act makes a search or causes arrest of a person during the normal course of investigation into an offence or suspected offence and on completion of that search, a contraband under the NDPS Act is also recovered, the requirements of Section 50 of the Act are not attracted.

However, when an empowered officer carrying on the investigation including search, seizure or arrest under the provisions of the Code of Criminal Procedure, comes across a person being in possession of the narcotic drug or the psychotropic substance, then he must follow from that stage onwards the provisions of the NDPS Act and continue the investigation as provided thereunder. If the investigating officer is not an empowered officer then it is expected of him that he must inform the empowered officer under the NDPS Act, who should thereafter proceed from that stage in accordance with the provisions of the NDPS Act.

Two principles of construction - one relating to casus omissus and the other in regard to reading the statute as a whole - appear to be well settled. Under the first principle a casus omissus cannot be supplied by the Court except in the case of clear necessity and when reason for it is found in the four corners of the statute itself but at the same time a casus omissus should not be readily inferred and for that purpose all the parts of a statute or section must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof so that the construction to be put on a particular provision makes a consistent enactment of the whole statute. This would be more so if literal construction of a particular clause leads to manifestly absurd or anomalous results which could not have been intended by the legislature.

2023 0 INSC 879; 2023 0 Supreme(SC) 1016; Balvir Singh Vs. State Of Uttarakhand ; Criminal Appeal No. 301 of 2015 With Criminal Appeal No. 2430 of 2014; Decided on : 06-10-2023

Even where there are facts especially within the knowledge of the accused, which could throw a light upon his guilt or innocence, as the case may be, the accused is not bound to allege them or to prove them. But it is not as if the section is automatically inapplicable to the criminal trials, for, if that had been the case, the Legislature would certainly have so enacted. We consider the true rule to be that Section 106 does not cast any burden upon an accused in a criminal trial, but that, where the accused throws no light at all upon the facts which ought to be especially within his knowledge, and which could support any theory of hypothesis compatible with his innocence, the Court can also consider his failure to adduce any explanation,

this Court observed in the case of Dharam Das Wadhwani v. State of Uttar Pradesh: “The rule of benefit of reasonable doubt does not imply a frail willow bending to every whiff of hesitancy. Judges are made of sterner stuff and must take a practical view of legitimate inferences flowing from evidence, circumstantial or direct.” The role of courts in such circumstances assumes greater importance and it is expected that the courts would deal with such cases in a more realistic manner and not allow the criminals to escape on account of procedural technicalities, perfunctory investigation or insignificant lacunas in the evidence as otherwise the criminals would receive encouragement and the victims of crime would be totally discouraged by the crime going unpunished. The courts are expected to be sensitive in cases involving crime against women.

2023 0 INSC 919; 2023 0 Supreme(SC) 1045; X Vs. Union of India and Anr.; Miscellaneous Application No. 2157 of 2023 in Writ Petition (Civil) No. 1137 of 2023; Decided on : 16-10-2023 (THREE JUDGE BENCH)

The position of law can therefore be summarized as follows:

Length of the pregnancy	Requirements for termination
Up to twenty weeks	Opinion of one RMP in terms of Section 3(2)
Between twenty and twenty-four weeks	Opinion of two RMPs in terms of Section 3(2) read with Rule 3B.
Beyond twenty-four weeks	If the termination is required to save the life of the pregnant woman, the opinion of one RMP in terms of Section 5
	If there are substantial foetal abnormalities, with the approval of the Medical Board in terms of Section 3(2B) read with Rule 3A(a)(i)

As noticed above, the length of the pregnancy has crossed twenty-four weeks. It is now approximately twenty-six weeks and five days. A medical termination of the pregnancy cannot be permitted for the following reasons:

a. Having crossed the statutory limit of twenty-four weeks, the requirements in either of Section 3(2B) or Section 5 must be met;

b. There are no “substantial foetal abnormalities” diagnosed by a Medical Board in this case, in terms of Section 3(2B). This Court called for a second medical report from AIIMS to ensure that the facts of the case were accurately placed before it and no foetal abnormality was detected; and

c. Neither of the two reports submitted by the Medical Boards indicates that a termination is immediately necessary to save the life of the petitioner, in terms of Section 5.

2023 0 INSC 927; 2023 0 Supreme(SC) 1062; Initiatives for Inclusion Foundation & Anr. Vs. Union Of India & Ors.; Writ Petition (Civil) No. 1224 of 2017; Decided On : 19-10-2023 Directions on SEXUAL HARASSMENT AT WORKPLACE PREVENTION, PROHIBITION AND REDRESSAL ACT.

2023 0 INSC 933; 2023 0 Supreme (SC) 1068; Paranagouda and Another Vs. The State of Karnataka and Another; Criminal Appeal No. 3274 of 2023 (@ Special Leave Petition (Crl.) No.12216 of 2022); Decided On : 19-10-2023

Omission to frame charge does not disable the court from convicting the accused for the offence which is found to have been proved on the evidence on record. The code has ample provisions to meet a situation like the one before us. From the statement of charge framed

under Section 304B and in the alternative Section 306, it is clear that all the facts and ingredients for framing the charge for offence under Section 306 existed. The mere omission on the part of the trial judge to mention Section 306 IPC with 498A would not preclude this Court from convicting the accused for the said offence when found proved. In the charge framed under Section 304B of IPC, it has been clearly mentioned that the accused has subjected the deceased to such cruelty and harassment as to drive her to commit suicide by self-immolation and as such non-framing of the specific charge would not be fatal in the instant case as no injustice is being caused to the accused.

In the aforesaid background and the evidence on record as already noticed by us hereinabove, it can be safely noted that High Court ought to have examined as to whether accused could have been convicted for an offence for which no charge was framed and not undertaking of such an exercise would result in failure of justice? Thus, it will have to be seen from the facts unfolded in the present case as to whether the accused was aware of the basic ingredients of the offence for which they are being tried and whether the main facts sought to be established against them were explained to them clearly and whether they got a fair chance to defend themselves. If the answer is in the affirmative, then necessarily this Court will have to proceed further and examine as to whether accused can be convicted for the offence not charged and if the answer is in the negative it would result in acquittal of the accused for said offence. In the instant case the dying declaration of the deceased would clearly indicate that deceased was mentally traumatized and she was unable to tolerate the torture and harassment meted out by the accused person on account of which she committed suicide. It is this taunting or mental torture which she could not withstand and forced her to commit suicide by self-immolation. In that view of the matter, we are of the considered opinion that accused persons are liable to be convicted for the offence punishable under Section 306 IPC though charge was not framed.

2023 0 INSC 943; 2023 0 Supreme(SC) 1077; Munilakshmi Vs. Narendra Babu and Another; Criminal Appeal No. 3297 of 2023, Special Leave Petition (Crl) No. 3312 of 2021; Decided On : 20-10-2023

A major challenge before this Court is to ensure a fair trial amidst the hostility of witnesses. Undoubtedly, witnesses play a very vital role in bringing justice home, especially in the adversarial system of court trials where the onus lies on the prosecution to prove the guilt of the accused by bringing persons acquainted with the facts before the courts of justice. Their testimony determines the fate of a trial before the court of law, without which the court would be like a sailor in an ocean sans the radar and the compass. [Mohd. Ashraf, Peculiarities of Indian Criminal Justice System Towards Witnesses: An Analysis (2018) 26 ALJ 64]. If a witness turns hostile for extenuating reasons and is reluctant to depose the unvarnished

truth, it will cause irreversible damage to the administration of justice and the faith of the society at large in the efficacy and credibility of the criminal justice system will stand eroded and shattered.

Daragoni Srinu , Vikram, Mahaboobnagar Dist. Vs. PP. Hyd; I. A. No.2 Of 2023 In Criminal Appeal No.305 Of 2015; 19th October, 2023

Earlier bail application was dismissed on the wrong information furnished by the prosecution. As discussed supra, vide order dated 15.09.2023 in I.A.No.1 of 2023 in Crl.A.No.305 of 2015, we have dismissed the bail application field by the petitioner herein relying on the information furnished by prosecution but two cases are pending out of 18 cases, the petitioner was acquitted in 15 cases and convicted in two cases and one case is pending. The same is factually incorrect. We have also considered the other aspects.

Avisetti Prasada Rao, A20, vs The State Of Andhra Pradesh, on 17 October, 2023; Criminal Appeal No.674 OF 2007; https://indiankanoon.org/doc/45305372/

The prosecution has committed an error in not bringing the sanction orders on record. The application or non- application of mind in granting sanction and whether the acts alleged in the present case were connected with their official duties or not would have been part of the record.

It would not amount to opinion of the witness but would be on the basis of record. The documents were marked through witness but nothing was adduced from the witnesses to know whether the contents of documents were correct or not.

Merely marking documents will not suffice to read into the contents of the said documents and infer that the accused were responsible.

As seen from the documents filed, there are 'Q' markings of signatures indicating that all the disputed documents such as cheques, bills etc., were sent to a hand writing expert but no opinion was produced by the prosecution. No reasons are given by the prosecution for such non filing of opinion.

The documents have been marked as mentioned in the above table which the prosecution relies on to state that A1 and A2 have opened the accounts. However, the documents are not certified under the Bankers Book Evidence Act. None of these Bank witnesses have made any endorsements on the account opening forms and specimen signature cards of the alleged College Accounts.

Marripally Ramesh vs The State Of Telangana on 3 October, 2023; CRIMINAL APPEAL Nos.3104, 3105 and 3112 of 2018; https://indiankanoon.org/doc/109747737/

The statement recorded under Section 164 Cr.P.C is a weak piece of evidence and solely relying on the 164 Cr.P.C. statement, the Court cannot convict the accused and if at all the Court feels that the witnesses, who have given statements under Section 164 Cr.P.C., resiled from their statements, the utmost remedy available to the trial Court is to punish the witnesses for the offences of perjury.

D.Gireesha vs The State Of Telangana on 5 October, 2023; CRIMINAL PETITION No.1020 OF 2023; https://indiankanoon.org/doc/71545941/

When a patient dies or suffers some mishap, there is a tendency to blame the doctor for this. Things have gone wrong and, therefore, somebody must be punished for it. However, it is well known that even the best professionals, what to say of the average professional, sometimes have failures. A lawyer cannot win every case in his professional career but surely he cannot be penalized for losing a case provided he appeared in it and made his submissions.

To fasten liability in criminal proceedings e.g. under Section 304A IPC the degree of negligence has to be higher than the negligence which is enough to fasten liability in civil proceedings. Thus for civil liability it may be enough for the complainant to prove that the doctor did not exercise reasonable care in accordance with the principles mentioned above, but for convicting a doctor in a criminal case, it must also be proved that this negligence was gross amounting to recklessness.

Coming to offence under Section 201 I.P.C., according to the complainant, there is screening of the evidence by not informing local authorities for the Post Mortem examination and for making belated entries in the case sheet. For these allegations, there is absolutely no material to show that there was any falsifying of hospital record to screen away the offences.

in view of the failure of the police to adhere to the principles laid down by the Hon'ble Supreme Court in Jacob Mathew's case prior to registration of the crime against the petitioner, this Court is of the considered opinion that it is a fit case to quash all further proceedings against the petitioner

Banoth Ranga vs State Of Telangana, Rep Pp., on 6 October, 2023; CRLA NO.1042 OF 2015; https://indiankanoon.org/doc/148286183/; (DB)

Test Identification parade of the articles as per Rule 35 of the Cr.P.C., was not conducted by the police. Therefore, recovery of gold ornaments which are not tallying with the evidence of Pw.2 is no way helpful to the prosecution to connect the accused with the death of the deceased.

Mohd. Mazher Ahmed Ansari, vs State Of Telangana, on 13 October, 2023; WRIT PETITION No.12662 of 2023;https://indiankanoon.org/doc/149428506/;

It is settled legal position that involvement of a person in a solitary criminal case is not sufficient to classify such a person as a habitual offender under Clause (A) of Standing Order 601 of A.P.Police Manual.

Marri Shyam Kumar Reddy vs The State Of Telangana on 4 October, 2023; CRIMINAL PETITION No.8962 OF 2023; https://indiankanoon.org/doc/18779314/;

For the purpose of guidance, the trial Court is directed to follow the guidelines as specified in Meenakshi and others v. State of Karnataka 2 at paragraph No.8 while examining the petitioners under Section 313 of Cr.P.C.

On perusal of impugned proceeding i.e., examination of the petitioners under Section 313 of Cr.P.C., it is evident that some set of questions were put to the petitioners in causal manner and that each of the questions are running in paragraphs and found to be the entire deposition of each of the evidence of prosecution was asked in paragraphs, for which, it would be hard for the petitioners to answer them in a proper manner, in a single word or sentence.

Pingili Lalithamma And Another vs The State Of Telangana And Another on 4 October, 2023; CRIMINAL PETITION No.9127 OF 2017; https://indiankanoon.org/doc/75278110/;

Further, the intention to cheat should be from the inception of the transaction. Subsequently, if there is a breach of any contract or any agreement, it cannot be said that it falls within the four corners of cheating as defined under Sections 415 and 420 I.P.C.

Devineni Jathin Chakravarthy, vs The Union Of India, on 4 October, 2023; WP No.27568 of 2023; https://indiankanoon.org/doc/183355905/;

On the ground of pendency of the proceedings in criminal cases, respondent No.2 cannot deny for issuance of passport to the petitioner herein. There is no provision in the Passports Act or Rules/Regulations that passport cannot be granted on the ground of pendency of criminal cases.

Mohammed Ahmeduddin Khan vs The State Of Telangana on 6 October, 2023; Criminal Petition No.3734 OF 2019; https://indiankanoon.org/doc/128046635/;

Learned Magistrate ought to have examined the witnesses before issuing summons to these petitioners. The necessity to examine witnesses as contemplated under section 200 Cr.P.C would arise since the complainant has filed a protest petition questioning the deletion of names of petitioners. There is no provision for filing a protest petition under Cr.P.C., however

such protest petition can be treated as a complaint filed under section 190(1)(a) Cr.P.C. For taking cognizance on a complaint filed under section 190(1)(a) Cr.P.C, procedure prescribed under section 200 of Cr.P.C has to be followed.

The learned Magistrate has not followed procedure contemplated. Cognizance can be taken against accused who were either deleted from the array of accused or any other person as accused following the procedure prescribed under section 200 Cr.P.C. The complainant also had the option of invoking section 319 Cr.P.C. Accordingly the cognizance order against the petitioners is set aside.

Sri. Gatla Subash vs The State Of Telangana on 10 October, 2023; CRIMINAL PETITION Nos. 824 of 2020, 606 of 2021,11057, 11075, 11372, 6727, 9405 and 11877 of 2022; https://indiankanoon.org/doc/106227240/;

the principle laid down in Maimuna Begum (supra), is not applicable to the facts of the present case. In the present cases. There are specific allegations of purchase of rice from the cardholders which is after introduction of clause 17 (e) of the Control Order 2016 and the said judgment is applicable only to a case which falls prior to the introduction of the said provision.

The rice and paddy are essential commodities under Clause 17(e) of the Order and the same was introduced on 19.08.2016. Purchase of PDS rice from card holders or dealing in any manner is made as an offence. In the present petitions, offence is one of purchase, search, sale and illegal transportation of PDS rise, which is in contravention of Clause 17(e) of the Order and made punishable criminally.

In the said circumstances, the cases registered after 19.08.2016 cannot be quashed and it is for the petitioners herein to workout their remedies before the trial Court.

Delay in registration of FIR:

The Apex Court in Apren Joseph vs. State of Kerala, (1973) 3 SCC 114 has observed that "Undue unreasonable delay in lodging the FIR" and "inevitably gives rise to suspicion which puts the Court on guard to look for the possible motive and the explanation for the delay and consider its effect on the trustworthiness or otherwise of the prosecution version." The Bench of three learned Judges further observed that no time duration, in the abstract could be fixed as the 'reasonable time' to give information to the police and therefore, the same is a question to be determined as per facts and circumstances of each case.

Further, referring to Ram Jag vs. State of U.P. (1974) 4 SCC 201, this Court in State of M.P. vs. Ratan Singh, (2020) 12 SCC 630 observed that Courts when faced with the question of delay in registration

of FIR are duty-bound to determine whether the explanation afforded is plausible enough based on the given facts and circumstances of each case.

This Court recently in Bhagwan Singh vs. Dilip Singh alias Depak and Another, 2023 SCC Online 1059 has observed that if the prosecution attempts to 'improvise its case stage by stage and step by step' during the intervening period, it would be open for the accused to contend that the delay was fatal to the proceedings and the same was done to stave off proceedings against the accused.

The plea of alibi.

The Apex Court in Binay Kumar Singh vs. State of Bihar, (1997) 1 SCC 283 has noted the principle as:

> "23. The Latin word alibi means "elsewhere" and that word is used for convenience when an accused takes recourse to a defence line that when the occurrence took place he was so far away from the place of occurrence that it is extremely improbable that he would have participated in the crime."

The principles regarding the plea of alibi, as can be appreciated from the various decisions [Dhananjoy Chatterjee vs. State of West Bengal, (1994) 2 SCC 220, Binay Kumar Singh (supra), Jitender Kumar vs. State of Haryana, (2012) 6 SCC 204, Vijay Pal vs. State (Govt. of NCT of Delhi), (2015) 4 SCC 749, Darshan Singh vs. State of Punjab, (2016) 3 SCC 37, Mukesh vs. State (NCT of Delhi), (2016) 6 SCC 1, Pappu Tiwari vs. State of Jharkhand, 2022 SCC Online SC 109] of this Court, are:

19.1 It is not part of the General Exceptions under the IPC and is instead a rule of evidence under Section 11 of the Indian Evidence Act, 1872.

19.2 This plea being taken does not lessen the burden of the prosecution to prove that the accused was present at the scene of the crime and had participated therein.

19.3 Such plea is only to be considered subsequent to the prosecution having discharged, satisfactorily, its burden.

19.4 The burden to establish the plea is on the person taking such a plea. The same must be achieved by leading cogent and satisfactory evidence.

19.5 It is required to be proved with certainty so as to completely exclude the possibility of the presence of the accused at the spot of the crime. In other words, a standard of 'strict scrutiny' is required when such a plea is taken.

Difference between Sec 34 and 149 IPC

In the case of Chittarmal vs. State of Rajasthan, (2003) 2 SCC 266 this Court dealt with the conversion of charge from Section 302 read with Section 149 of IPC, to Section 302, read with Section 34 of IPC. Paragraph 14 of the said decision reads thus:

"14. It is well settled by a catena of decisions that Section 34 as well as Section 149 deal with liability for constructive criminality i.e. vicarious liability of a person for acts of others. Both the sections deal with combinations of persons who become punishable as sharers in an offence. Thus they have a certain resemblance and may to some extent overlap. **But a clear distinction is made out between common intention and common object in that common intention denotes action in concert and necessarily postulates the existence of a prearranged plan implying a prior meeting of the minds, while common object does not necessarily require proof of prior meeting of minds or pre-concert. Though there is a substantial difference between the two sections, they also to some extent overlap and it is a question to be determined on the facts of each case whether the charge under Section 149 overlaps the ground covered by Section 34. Thus, if several persons numbering five or more, do an act and intend to do it, both Section 34 and Section 149 may apply. If the common object does not necessarily involve a common intention, then the substitution of Section 34 for Section 149 might result in prejudice to the accused and ought not, therefore, to be permitted.** But if it does involve a common intention then the substitution of Section 34 for Section 149 must be held to be a formal matter. Whether such recourse can be had or not must depend on the facts of each case. **The non-applicability of Section 149 is, therefore, no bar in convicting the appellants under Section 302 read with Section 34 IPC, if the evidence discloses commission of an offence in furtherance of the common intention of them all.** [See Barendra Kumar Ghosh vs. King Emperor, AIR 1925 PC 1 : 26 Cri. L.J. 431, Mannam Venkatadari vs. State of A.P. (1971) 3 SCC 254 : 1971 SCC (Cri) 479 : AIR 1971 SC 1467, Nethala Pothuraju vs. State of A.P. (1992) 1 SCC 49 : 1992 SCC (Cri) 20 : AIR 1991 SC 2214 and Ram Tahal vs. State of U.P. (1972) 1 SCC 136 : 1972 SCC (Cri) 80 : AIR 1972 SC 254]."
(Emphasis added)

FACT DISCOVERED U/Sec.27 IEA

The Apex court in Mehboob Ali & Another Vs. State of Rajasthan (2016) 14 SCC 640 has held:

"12. Section 25 of the Evidence Act provides that no confession made to a police officer shall be proved as against a person accused of any offence. Section 26 provides that no confession made by any person while he is in the custody of a police officer, unless it be made in the immediate

presence of a Magistrate, shall be proved as against such person. Section 27 is in the form of a proviso, it lays down how much of an information received from accused may be proved.

For application of Section 27 of the Evidence Act, admissible portion of confessional statement has to be found as to a fact which were the immediate cause of the discovery, only that would be part of legal evidence and not the rest. In a statement if something new is discovered or recovered from the accused which was not in the knowledge of the police before disclosure statement of the accused is recorded, is admissible in the evidence.

Section 27 of the Evidence Act refers when any "fact" is deposed. Fact has been defined in Section 3 of the Act. Same is quoted below:

"'Fact'.— 'Fact' means and includes—

(1) any thing, state of things, or relation of things, capable of being perceived by the senses;

(2) any mental condition of which any person is conscious.

Illustrations

(a) That there are certain objects arranged in a certain order in a certain place, is a fact.

(b) That a man heard or saw something, is a fact.

(c) That a man said certain words, is a fact.

(d) That a man holds a certain opinion, has a certain intention, acts in good faith or fraudulently, or uses a particular word in a particular sense, or is or was at a specified time conscious of a particular sensation, is a fact.

(e) That a man has a certain reputation, is a fact.

'Relevant'.—One fact is said to be relevant to another when the one is connected with the other in any of the ways referred to in the provisions of this Act relating to the relevancy of facts."

Multiple Dying Declaration

In Uttam v. State of Maharashtra, (2022) 8 SCC 576 (2-Judge Bench) this court observed:

"15. In cases involving multiple dying declarations made by the deceased, the question that arises for consideration is as to which of the said dying declarations ought to be believed by the court and what would be the guiding factors for arriving at a just and lawful conclusion. The problem becomes all the more knotty when the dying declarations made by the deceased are found to be contradictory. Faced with such a situation, the court would be expected to carefully scrutinise the evidence to find out as to which of the dying declarations can be corroborated by other material evidence produced by the prosecution. Of equal significance is the condition of the deceased at the relevant point in time, the medical evidence brought on record that would indicate the physical and mental fitness of the deceased, the scope of the close relatives/family members

having influenced/tutored the deceased and all the other attendant circumstances that would help the court in exercise of its discretion."

Percentage of Burn injuries

In P.V. Radhakrishna v. State of Karnataka, (2003) 6 SCC 443(2-Judge Bench) it was observed that there cannot be any hard and fast rule, lending itself to uniform application on the question whether the percentage of burns suffered is a determinative factor to affect the credibility of the dying declaration. The same would depend on the nature of the burns, the body parts affected, and the effect thereof on mental faculties, as well as other factors.

DNA TEST

In the case of Anil @ Anthony Arikswamy Joseph Vs. State of Maharashtra : (2014) 4 SCC 69, the following has been held in paragraph 18 as under:-

"18. Deoxyribonucleic acid, or DNA, is a molecule that encodes the genetic information in all living organisms. DNA genotype can be obtained from any biological material such as bone, blood, semen, saliva, hair, skin, etc. Now, for several years, DNA profile has also shown a tremendous impact on forensic investigation. Generally, when DNA profile of a sample found at the scene of crime matches with the DNA profile of the suspect, it can generally be concluded that both the samples have the same biological origin. DNA profile is valid and reliable, but variance in a particular result depends on the quality control and quality procedure in the laboratory." (Emphasis supplied)

Cancellation of Bail

The expression "cogent and overwhelming circumstances for cancellation of bail" has been well-illustrated by this Court in a catena of decisions including Dolat Ram and Others vs. State of Haryana, (1995) 1 SCC 349 which are:

(i) Evasion or attempt to evade the due course of justice or abusing or attempt to abuse the concession of bail granted.

(ii) Possibility of the accused to abscond.

(iii) Development of supervening circumstances impeding upon the principles of fair trial.

(iv) The link between the gravity of the offence, the conduct of the accused, and the societal impact on the Court's interference.

In Vipan Kumar Dhir vs. State of Punjab and Another, (2021) 15 SCC 518 this Court explained the impact of supervening circumstances developing post the grant of bail, such as interference in the administration of justice, abuse of concession of bail, etc., which are aversive to a fair trial and would warrant cancellation of bail.

Recall of a given up witness:

1993 0 CrLJ 1169; 1992 0 Supreme(Raj) 269; Syed Firozuddin Vs. State of Rajasthan ; S.B. Cr. Misc. Application No. 974 of 1992; Decided On : July 29, 1992

The Court also examined the situation when a particular witness is left either by the prosecution or the defence and the argument that in such a case, the Court can draw an adverse presumption under illustration (g) to S. 114 of the Evidence Act. The Court observed:—

"In such a situation, a question that arises for consideration is whether the presiding officer of a Court should simply sit as a mere umpire at a contest between two parties and declare at the end of the combat who has won and who has lost or is there not any legal duty of his own, independent of the parties, to take an active role in the proceedings in finding the truth and administering justice? It is a well accepted and settled principle that a Court must discharge its statutory functions-whether discretionary or obligatory-according to law in dispensing justice because it is the duty of a Court not only to do justice but also to ensure that justice is being done. In order to enable the Court to find out the justice and render a just decision, the salutary provisions of S. 540 of the Code (S. 311 of the new Code) are enacted whereunder any Court by exercising its discretionary authority at any stage of enquiry, trial or other proceeding can summon any person as a witness or examine any person in attendance though not summoned as a witness or recall or re-examine any person in attendance though not summoned as a witness or recall or re-examine any person already examined who are expected to be able to throw light upon the matter in dispute; because if judgments happen to be rendered on inchoate, inconclusive and speculative presentation of facts, the ends of justice would be defeated."

2013 2 KCCR 1156; 2011 0 Supreme(Kar) 179; State of Karnataka through P.S. Athani Versus Kallappa Somanna Kamble & Others; Criminal Appeal No. 1523 of 2004; Decided On : 08-03-2011

Steps on Protest petition

If the appellant is unhappy about the final report, she is entitled in law to file a protest petition. Upon receipt of a protest petition, there are 3 options available to the Judicial Officer. The first is that he may accept the Final Report and may reject the Protest Petition. The second option is that he

may accept the Final Report but treat the Protest Petition as a complaint and proceed in accordance with Section 200 and 202 of the Code. The 3rd option is that he may accept the Protest Petition and reject the Final Report and take cognizance under Section 190(1)(b) of the Code. The law on this aspect is well settled as can be seen from the decision of the Supreme court in B.Chandrika vs. Santhosh, (2013) 14 Scale 209.

What are necessary conditions for using evidence recorded U/ S 299 of crpc against absconding accused?

Evidence Act, 1872 - Section 33Code of Criminal Procedure, 1973Section 299Indian Penal Code, 1860Section 302Use of statements of witnesses recorded under Section 299, Cr. P.C. Pre-conditions of Section 299.Accused declared proclaimed offender as absconding Five witnesses examined by committing Magistrate in absence of accused Later accused arrested and put up for trial Those five witnesses reported to be dead Though trial court not recording finding as to how pre-conditions of second part of Section 299 complied withYet High Court recording finding that factum of death of five witnesses established for purpose of Section 299 And their former statements under Section 299 could be treated as evidenceNo infirmity in basing conviction thereonNo interference with conviction and sentence called for. AIR 1974 SC 944, relied on.

Section 299 of the Code of Criminal Procedure consists of two parts. The first part speaks of the circumstances under which witnesses produced by the prosecution could be examined in the absence of the accused and the second part speaks of the circumstances, when such deposition can be given in evidence against the accused in any inquiry or trial for the offence with which he is charged. This procedure contemplated under Section 299 of the Code of Criminal Procedure is thus an exception to the principle embodied in Section 33 of the Evidence Act inasmuch as under Section 33, the evidence of a witness, which a party has no right or opportunity to cross-examine is not legally admissible. Being an exception, it is necessary, therefore, that all the conditions prescribed, must be strictly complied with. In other words, before recording the statement of the witnesses, produced by the prosecution, the Court must be satisfied that the accused has absconded or that there is no immediate prospect of arresting him, as provided under first part of Section 299 (1) of the Code of Criminal Procedure. When the accused is arrested and put up for trial, if any, such deposition of any witness is intended to be used as an evidence against the accused in any trial, then the Court must be satisfied that either the deponent is dead or incapable of giving evidence or cannot be found or his presence cannot be procured without an amount of delay, expense or inconvenience, which would be unreasonable.

On a mere perusal of Section 299 of the Code of Criminal Procedure as well as Section 33 of the Evidence Act, there is no hesitation to come to the conclusion that the pre-conditions in both the Sections must be established by the prosecution and it is only then, the statements of witnesses recorded under Section 299, Cr. P.C. before the arrest of the accused can be utilised in evidence in trial after the arrest of such accused only if the persons are dead or would not be available or any other condition enumerated in the second part of Section 299 (1) of the Code of Criminal Procedure is established.

Equivalent Citation: 2000CriLJ1803, [2000]2SCR807, MANU/SC/0217/2000 ;Crl. A. Nos. 118-119 of 1998; Decided On: 30.03.2000; Nirmal Singh Vs. State of Haryana

Law of Precedents

Rudrappa Ramappa Jainpur v State of Karnataka, (2004) 7 SCC 422 [LNIND 2004 SC 738] : AIR 2004 SC 4148 [LNIND 2004 SC 738] . Amzad Ali v State of Assam, 2003 Cr LJ 3545 : (2003) 6 SCC 270 [LNIND 2003 SC 570] , - No judgment can be cited as a precedent however similar the facts may be. Each case must rest on its own facts.

Experts Speak

Query: Is it mandatory to record the confession of an accused in the presence of mediators?

Reply: As held in the below case, it is not mandatory, however, if there is a possibility of procuring the mediators, then the confession be recorded in the presence of the mediators

2001 1 ALD(Cri)(SC) 54; 2001 1 Crimes(SC) 176; 2001 0 CrLJ 504; 2001 1 SCC 652; 2001 0 SCC(Cri) 248; 2000 7 Supreme 728; State Govt. of NCT of Delhi Vs. Sunil & Anr.; Criminal Appeal Nos. 1119-1120 of 1998; Decided on 29-11-2000

there is no requirement either under Section 27 of the Evidence Act or under Section 161 of the Code of Criminal Procedure, to obtain signature of independent witnesses on the record in which statement of an accused is written. The legal obligation to call independent and respectable inhabitants of the locality to attend and witness the exercise made by the police is cast on the police officer when searches are made under Chapter VII of the Code.

NEWS

- High Court for the State of Telangana - Amendment to Criminal Rules of Practice and Circular Orders, 1990 - Incorporation of New Chapter VIII-A under the heading "Procedure under FASTER {Fast and Secured Transmission of Electronic Records}" after Chapter VIII in Criminal Rules of

Practice and Circular Orders, 1990 - Notification - Orders - Issued. G.O.Ms.No.63 LAW (LA, LA&J-HOME-COURTS.A2) DEPARTMENT Dated: 13.10.2023.

- Govt of Telangana- Establishment of 57 courts in all the three cadres in different places of Telangana- GOMS no. 60 Law (LA& J home-Courts) Dept dated 05.10.2023

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AND ALSO ON OUR WEBSITE- http://prosecutionreplenish.com/

ON A LIGHTER VEIN

Two physicians boarded a flight out of Seattle. One sat in the window seat, the other sat in the middle seat. Just before takeoff, an attorney got on and took the aisle seat next to the two physicians. The attorney kicked off his shoes, wiggled his toes and was settling in when the physician in the window seat said, "I think I'll get up and get a coke."

"No problem," said the attorney, "I'll get it for you."

While he was gone, one of the physicians picked up the attorney's shoe and put a thumbtack in it. When he returned with the coke, the other physician said, "That looks good, I think I'll have one too."

Again, the attorney obligingly went to fetch it and while he was gone, the other physician picked up the other shoe and put a tack in it. The attorney returned and they all sat back and enjoyed the flight.

As the plane was landing, the attorney slipped his feet into his shoes and knew immediately what had happened.

"How long must this go on?" he asked. "This fighting between our professions? This hatred? This animosity? This putting tacks in shoes and spitting in cokes?"

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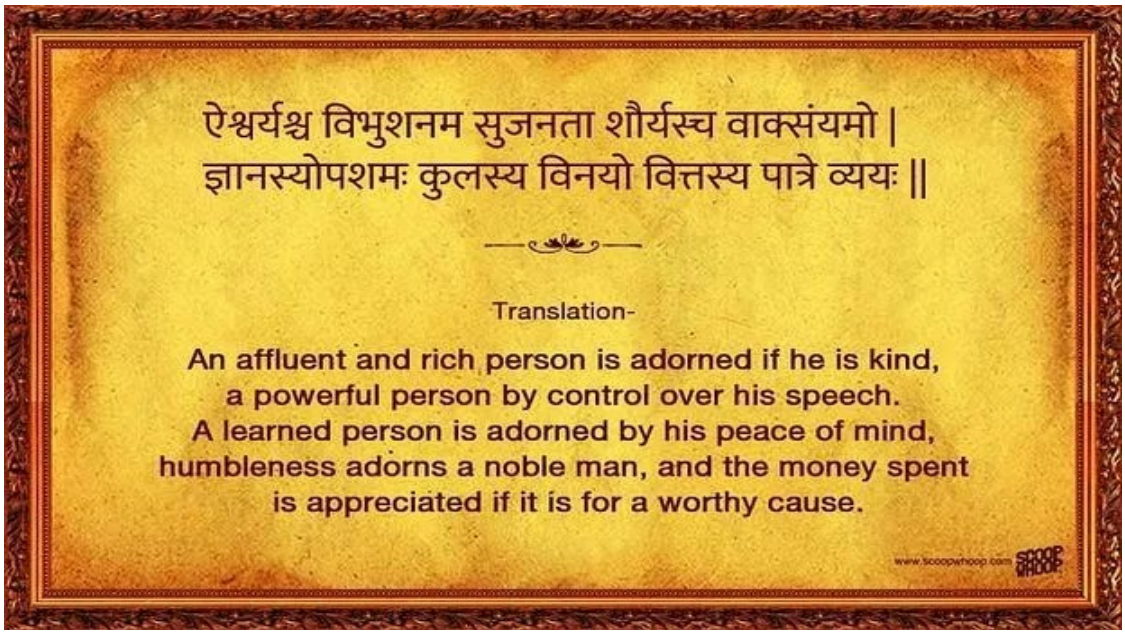
Prosecution Replenish

(An Endeavour for Learning & Excellence)

Vol : XI December,2023

Aano Bhadr Kratvo Yantu Viswatah
(Let Noble Thoughts Come To Me from All Directions)



CITATIONS

https://indiankanoon.org/doc/190028489/; **Rajeev Lakhanpal , Rajeev ... vs The State Of Telangana on 1 November, 2023; WRIT PETITION No.3004 of 2023**

The Ministry of Home Affairs, Foreigners Division, (Immigration Section), Government of India, has issued Office Memorandum dated 22.02.2021 framing consolidated guidelines for issuance of Look Out Circulars in respect of Indian Citizens and foreigners. As per Clause 6(L) of the said guidelines, in exceptional cases, LOCs can be issued even in such cases, as may not be covered by the guidelines above, whereby departure of a person from India may be declined at the request of any of the authorities mentioned in clause (B), if it appears to such authority based on inputs received that the departure of such person is detrimental to the sovereignty or security or integrity of India or that the same is detrimental to the bilateral relations with any country or to the strategic and/or economic interests of India or if such person is allowed to leave, he may potentially indulge in an act of terrorism or offences against the State and/or that such departure ought not be permitted in the larger public interest at any given point of time. As per the Circular Memorandum dated 01.07.2022 vide C.No.3089/C-3/IP/CID/ 2019-22 issued by the Director General of Police, Telangana, Hyderabad, in all cases where the person against whom LOC has been opened is no longer wanted by the Originating Agency or by the Competent Court, the LOC deletion request must be conveyed to Bureau of Immigration immediately so that liberty of the individual is not jeopardized. Further, it

is stated in the report filed by the Director General of Police that LOC will be continued basing on their satisfaction whether the person is going to cooperate with the investigation or not. Further, as per the instructions issued by the Director General of Police vide circular dated 01.07.2022, stated that whenever notice under Section 41A of Cr.P.C is issued or whenever bail is obtained by the accused, it is an obligation on the part of the police to address a letter to the Commissioner and the Commissioner in turn shall address a letter to the Immigration Authorities to close the LOC.

https://indiankanoon.org/doc/129320227/**; Sarfaraz Mohammed vs Union Of India on 1 November, 2023; WP.30174 of 2023**

https://indiankanoon.org/doc/146440244/**; Surabhi Anjan Rao vs The Union Of India on 7 November, 2023; WRIT PETITION No.30969 of 2023**

The petitioner had submitted an application bearing No.HY3075747904123, dated 04.09.2023 for renewal/reissuance of passport. Respondent No.2 is not considering the application for renewal/reissuance of passport on the ground of pendency of the aforesaid criminal case vide CC No.20977 of 2019. This Court opines that pendency of the proceedings in criminal case, cannot be a ground to deny for renewal/re-issuance of passport to the petitioner herein. There is no provision in the Passports Act or Rules/Regulations that passport cannot be granted on the ground of pendency of criminal cases. In view of the same, respondent No.2 cannot deny or refuse to renewal/reissue passport to the petitioner.

https://indiankanoon.org/doc/126500244/**; Rafeeq Akbani vs State Of Telanana on 6 November, 2023; Criminal Petition No.1689 OF 2018 Between:**

As seen from the compliant, the transaction between the petitioners and the 2nd respondent was a continuous process over a period of time and payments were made by the petitioners when the goods were supplied by the 2nd respondent. Though an averment is made in the compliant that subsequently the petitioners have entertained an intention to cheat the complainant and accordingly did not pay for the goods supplied, the same cannot be made basis to infer that the petitioners have cheated the defacto complainant. As held by the Hon'ble Supreme Court, the test to determine the intention of cheating can also be from the fact that such intention should have been entertained right from the inception of the transaction. When the

payments were regularly being made initially and subsequently for some of the invoices payment was deferred and cheques were issued, the ingredients of Section 420 of IPC are not made out. It cannot be said that there is an act of deception played by the petitioners. Breach of promise or contract in the present circumstances cannot be held to be an offence of cheating or criminal misappropriation punishable under Section 406 of IPC.

2023 0 INSC 978; 2023 0 Supreme(SC) 1109; Manjunath & Ors. Vs. State Of Karnataka; Criminal Appeal No. 866 of 2011; Decided on : 06-11-2023

the Trial Court held, given that the discoveries made were either from a public place or from an area where other persons also resided, reliance thereupon, could not be made. We find this approach of the trial court to be correct.

The logical extension of such holding would be that, if the scribe, for reasons beyond control, such as incapacitation or death, would be unavailable, it would be open for the prosecution to take necessary aid of secondary evidence. That not being the case however, such unexplained non-examination would, as a consequence of the holdings in Govind Narain (supra), Kans Raj (supra) and Sudhakar(supra), render the case to be doubtful if not, land a fatal blow to the prosecution case.

Ocular evidence undoubtedly fares better than other kinds of evidence and is considered evidence of a strong nature. The principle is that if the eyewitness testimony is “wholly reliable”, then the court can base conviction thereupon. This applies even in cases where there is a sole eyewitness. [30][(1993) 3 SCC 282 [2 Judge Bench]]

2023 0 INSC 965; 2023 0 Supreme(SC) 1099; Anil Kumar Vs. The State Of Kerala; Criminal Appeal No.2697 of 2023; Decided on : 01-11-2023

The exception clearly in unequivocal term states that it would be applicable where culpable homicide is committed not only without premeditated mind in a sudden fight or quarrel but also without the offender taking “undue advantage” of the situation. In the instant case, the appellant upon seeing the deceased drenched in kerosene clearly took advantage of the situation and lighted a matchstick and threw it upon her so that she can be burnt. The appellant having taken “undue advantage” of the situation cannot be extended the benefit of Exception 4 to Section 300 IPC so as to bring the case within the ambit of Part-II of 304 IPC.

2023 0 INSC 973; 2023 0 Supreme(SC) 1104; Parshuram Vs. State of M.P.; Criminal Appeal No. 524 of 2021 With Criminal Appeal No. 3416 of 2023 [Arising out of SLP (Crl.) No. 1718 of 2022]; Decided On : 03-11-2023

The law with regard to conviction under Section 302 read with Section 149 of IPC has been succinctly discussed by a Constitution Bench of this Court in the locus classicus of Masalti v. State of U.P., [1964] 8 SCR 133,

It could thus clearly be seen that the Constitution Bench has held that it is not necessary that every person constituting an unlawful assembly must play an active role for convicting him with the aid of Section 149 of IPC. What has to be established by the prosecution is that a person has to be a member of an unlawful assembly, i.e. he has to be one of the persons constituting the assembly and that he had entertained the common object along with the other members of the assembly, as defined under Section 141 of IPC. As provided under Section 142 of IPC, whoever, being aware of facts which render any assembly an unlawful assembly, intentionally joins that assembly, or continues in it, is said to be a member of an unlawful assembly.

We must hasten to add that as held by this Court in State of Gujarat v. Bai Fatima [(1975) 2 SCC 7 : 1975 SCC (Cri) 384] there may be cases where the non-explanation of the injuries by the prosecution may not affect the prosecution case. This principle would obviously apply to cases where the injuries sustained by the accused are minor and superficial or where the evidence is so clear and cogent, so independent and disinterested, so probable, consistent and creditworthy, that it far outweighs the effect of the omission on the part of the prosecution to explain the injuries.

Non-explanation of injuries on the persons of the accused would create a doubt, as to, whether, the prosecution has brought on record the real genesis of the incident or not.

2023 0 INSC 990; 2023 0 Supreme(SC) 1119; Madan Vs State of Uttar Pradesh; Criminal Appeal Nos. 1381-1382, 1790 of 2017; Decided On : 09-11-2023

It can thus be seen that merely because some of the witnesses are interested or inimical witnesses, their evidence cannot be totally discarded. The only requirement is that their evidence has to be scrutinized with greater care and circumspection.

It is a settled law that though motive could be an important aspect in a case based on circumstantial evidence, in the case of direct evidence, the motive would not be that relevant.

Merely because there are certain lacunae in the investigation, it cannot be a ground to disbelieve the testimony of eye-witnesses. In this respect, we may refer to the observations of this Court in the case of Karnel Singh vs. State of M.P. (1995) 5 SCC 518, which read thus:

> "5. Notwithstanding our unhappiness regarding the nature of investigation, we have to consider whether the evidence on record, even on strict scrutiny, establishes the guilt. In cases of defective investigation the court has to be circumspect in evaluating the evidence but it would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing into the hands of the investigating officer if the investigation is designedly defective....."

A similar view has been taken by this Court in the case of Shera Singh vs. State of Punjab, (1996) 10 SCC 330.

2023 0 INSC 1002; 2023 0 Supreme(SC) 1134; Ramakant Singh and Others Vs. The State of Jharkhand and Another ; Criminal Appeal No. 3484 of 2023, S.L.P. (Criminal) No. 9228 of 2023; Decided On : 07-11-2023

it was not open for the learned Chief Judicial Magistrate to entertain a protest petition against his earlier order of taking cognizance. The order dated 3rd November, 2009, amounts to modification of the earlier order dated 9th April, 2009, which was not permissible as there is no power conferred on the learned Judicial Magistrate to modify earlier order of taking cognizance.

These legal aspects have been clearly overlooked by the High Court. By referring to the decision of this Court in the case of Nupur Talwar (supra), the High Court observed that it is well-settled that once protest petition is filed, depending upon the facts of the case, the Court can proceed on the basis of that protest petition and follow the procedure prescribed under Sections 200 and 202 of the Cr.P.C. In this case, the Court was dealing with a completely different case where protest petition was filed against an order taking cognizance.

2023 0 INSC 1000; 2023 0 Supreme(SC) 1135; Balaram Vs. State of Madhya Pradesh; Criminal Appeal No. 2300 of 2009; Decided On : 08-11-2023

it is well settled, as laid down in a locus classicus case of Vedivelu Thevar vs. State of Madras, AIR 1957 SC 614 there are three types of witnesses, which are:

(i) wholly reliable.

(ii) wholly unreliable.

(iii) neither wholly reliable nor wholly unereliable.

The law laid down in Vedivelu Thevar (supra) is consistently followed by this Court in a catena of judgments. It can thus be seen that, there are three types of witnesses. If the witness is wholly reliable, there is no difficulty inasmuch as relying on even the solitary testimony of such a witness conviction could be based. Again, there is no difficulty in the case of wholly unreliable witnesses inasmuch as his/her testimony is to be totally discarded. It is only in the case of the third category of witnesses which is partly reliable and partly unreliable that the Court faces the difficulty. The Court is required to separate the chaff from the grain to find out the true genesis of the incident.

2023 0 INSC 1008; 2023 0 Supreme(SC) 1164; Priya Indoria Vs. State Of Karnataka And Ors.; Criminal Appeal Nos. of 2023 (Arising out of SLP(Crl.) Nos.11423-11426 of 2023) (Arising out of Diary No.7943 of 2023); Decided On : 20-11-2023

An interpretation giving rise to an absolute bar on the jurisdiction of a Court of Session or a High Court to grant interim anticipatory bail for an offence committed outside the territorial confines of a High Court or Court of Session may lead to an anomalous and unjust consequence for bona fide applicants who may be victims of wrongful, mala fide or politically motivated prosecution.

Section 48 of CrPC permits the police to pursue an accused in other jurisdictions. A police officer, for the purpose of arresting without a warrant, one whom he is allowed to arrest, may pursue an individual anywhere in India. Prior to effecting the arrest outside a particular jurisdiction, the police is obligated to secure the transit remand i.e. the remand of the accused, for taking him from one place to another in their own custody, usually for the purpose of producing him before the concerned magistrate who has jurisdiction to try/commit the case. The primary purpose of such a remand is to enable the police to shift the person in custody from the place of arrest to the place where the matter can be investigated and tried. However in various cases, the police and investigating agencies have failed to exercise necessary restraint while functioning within their legal remit. It is for the aforesaid reason that an accused apprehending arrest seeks pre-arrest bail. The Courts in India have to be vigilant about such applications being filed particularly when a person alleged to have committed an offence can be proceeded with by setting the criminal law in motion in a place other than the place where the offence has actually occurred. In such circumstances the Courts must balance the interest of the accused in the context of

the salutary principle of access to justice which is a facet of Article 21 of the Constitution as well as a Directive Principle of State Policy, especially Article 39(A). More importantly, it is a facet of Article 14 of the Constitution which guarantees to every person in the country, equality before the law and equal protection of the law.

In the circumstances, we hold that the Court of Session or the High Court, as the case may be, can exercise jurisdiction and entertain a plea for limited anticipatory bail even if the FIR has not been filed within its territorial jurisdiction and depending upon the facts and circumstances of the case, if the accused apprehending arrest makes out a case for grant of anticipatory bail but having regard to the fact that the FIR has not been registered within the territorial jurisdiction of the High Court or Court of Session, as the case may, at the least consider the case of the accused for grant of transit anticipatory bail which is an interim protection of limited duration till such accused approaches the competent Sessions Court or the High Court, as the case may be, for seeking full-fledged anticipatory bail.

2023 0 INSC 1011; 2023 0 Supreme(SC) 1171; Nanhe Vs State Of U.P.; Criminal Appeal No. 2791 of 2023; Decided On : 21-11-2023

It may be true that the deceased may have been killed accidentally by the appellant in the state of intoxication but there is no iota of evidence to establish that due to intoxication he was incapable of knowing the nature of his act or that the act which he was doing or likely to do was so dangerous so as to cause death of any person. Thus, in the absence of such evidence, coupled with the fact that it is not the case of the appellant that he was administered intoxication without his knowledge or against his will, the provision of Section 86 IPC would not be applicable and he would not be entitled to reduction of sentence from 302 IPC to one falling under Part-II of Section 304 IPC.

2023 0 INSC 988; 2023 7 KHC(SN) 7; 2023 0 Supreme(SC) 1114; State of Karnataka Vs T. Naseer @ Nasir @ Thandiantavida Naseer @ Umarhazi @ Hazi ; Criminal Appeal No. 3456 of 2023, Special Leave Petition (Crl.) No. 6548 of 2022; Decided On : 06-11-2023

It was opined that there is a difference between the original information contained in a computer itself and the copies made therefrom. The former is primary evidence and the latter is secondary one. The certificate under Section 65-B of the Act is unnecessary when the original document (i.e. primary evidence) itself is produced.

Fair trial in a criminal case does not mean that it should be fair to one of the parties. Rather, the object is that no guilty should go scot-free and no innocent should be punished. A certificate under Section 65-B of the Act, which is sought to be produced by the prosecution is not an evidence which has been created now. It is meeting the requirement of law to prove a report on record. By permitting the prosecution to produce the certificate under Section 65B of the Act at this stage will not result in any irreversible prejudice to the accused. The accused will have full opportunity to rebut the evidence led by the prosecution. This is the purpose for which Section 311 of the Cr.P.C. is there. The object of the Code is to arrive at truth. However, the power under Section 311 of the Cr.P.C. can be exercised to sub-serve the cause of justice and public interest. In the case in hand, this exercise of power is required to uphold the truth, as no prejudice as such is going to be caused to the accused.

2023 0 INSC 986; 2023 0 Supreme(SC) 1116; Hariprasad @ Kishan Sahu Vs. State of Chhattisgarh; Criminal Appeal No. 1182 of 2012; Decided On : 07-11-2023

It cannot be gainsaid that the First Information Report in a criminal case is an extremely vital and valuable piece of evidence for the purpose of corroborating the oral evidence adduced during the course of the trial. The object of insisting upon prompt lodging of the report to the police in respect of the commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of actual culprits and the part played by them as well as names of the eye witnesses present at the scene of occurrence [2] [Thulia Kali vs. The State of Tamil Nadu; 1972 (3) SCC 393]. It is also an equally settled legal position that the receipt and recording of information report by the police is not a condition precedent to set into motion a criminal investigation [3] [The King Emperor vs. Khawaja Nazir Ahmad; AIR 1945 PC 18]. The First Information Report under Section 154 of Cr.PC, as such could not be treated as a substantive piece of evidence. It can only be used to corroborate or contradict the informant's evidence in the Court. As held by three-Judge Bench of this Court [4] [Apren Joseph alias current Kunjukunju & Ors. Vs. State of Kerela; 1973 (3) SCC 114], FIR is very useful if recorded before there is time and opportunity to embellish, or before the informant's memory fades. Undue or unreasonable delay in lodging the FIR, therefore, may give rise to suspicion which put the Court on guard to look for the possible motive and the

explanation for the delay and consider its effect on the trustworthiness or otherwise of the prosecution version.

Of course, the delay in lodging an FIR by itself cannot be regarded as the sufficient ground to draw an adverse inference against the prosecution case, nor could it be treated as fatal to the case of prosecution. The Court has to ascertain the causes for the delay, having regard to the facts and circumstances of the case. If the causes are not attributable to any effort to concoct a version, mere delay by itself would not be fatal to the case of prosecution.

the explanation offered by the prosecution that the FIR was not registered as the cause of death was not stated by the Doctor who carried out the post-mortem and the report of Chemical examiner was awaited, seems to be reasonable and acceptable. It appears that there was no mala fide intention on the part of any of the witnesses or the police not to register the FIR or to delay the registration of FIR. It was only when the report of Chemical examiner was received, the FIR was registered on 03.11.2004. We are, therefore, inclined to hold that the FIR being only a corroborative piece of evidence and not a substantive piece of evidence, mere delay in registering the FIR could not be held to be a ground adverse to the case of prosecution.

https://indiankanoon.org/doc/123371047/; Maddur Sailoo vs The State Of A.P. Rep., By Its Pp on 24 November, 2023; CRIMINAL APPEAL NO.1167 OF 2013

67. The Parliament Standing Committee Report on Atrocities Against Women and Children has observed that, "high acquittal rate motivates and boosts the confidence of dominant and powerful communities for continued perpetration" and recommends inclusion of provisions of SC & ST Act while registering cases of gendered violence against women from SC & ST communities. However, as we have noted, one of the ways in which offences against SC & ST women fall through the cracks is due to the evidentiary burden that becomes almost impossible to meet in cases of intersectional oppression. This is especially the case when courts tend to read the requirement of "on the ground" under Section 3(2)(v) as "only on the ground of". The current regime under the SC & ST Act, post the amendment, has facilitated the conduct of an intersectional analysis under the Act by replacing the causation requirement under Section 3(2)(v) of the Act with a knowledge requirement making the regime sensitive to the kind of evidence that is likely to be generated in cases such as these.

https://indiankanoon.org/doc/43350805/; Sai Vishwajeet Shaw, vs The State Of Telangana, on 24 November, 2023 CRIMINAL PETITION NO.5562 OF 2023;

this Court finds that the issue of maintainability of the charge sheet under Section 188 of IPC is clearly covered by the judgment of this Court in the case of Pupala Srinadh Srinath Vs. The State of Telangana and another and also the case of the Madras High Court of Madurai Bench in the case of Jeevanandham and others Vs. State rep. by Inspector of Police, Velayuthampalayam Police Station, Karur District, wherein it was held as follows:

> "The offence under Section 188 of IPC can only be prosecuted on the basis of a complaint which is filed by a public servant into the Court. Section 195 of Cr.P.C. prohibits taking cognizance by a Court except on the complaint in writing by a public servant concerned."

9. In this case, the complaint was not given by a public servant. In view of the same, the charge under Section 188 of IPC is liable to be quashed as against the petitioner herein.

https://indiankanoon.org/doc/5810045/; Samreddy Keethi Reddy vs The State Of Telangana And Another on 24 November, 2023; Crl.P.No.6505 of 2022;

As rightly pointed out by the learned counsel for the petitioners, to attract the provisions of Section of 420 of IPC, there has to be dishonest inducement to deliver any property to any person or to make, alter or destroy the whole or any part of a valuable security. It is admitted fact that it is the petitioner No.1 who is the owner of the property and there was an agreement for sale of the property and the sale consideration was also agreed to and a sum of Rs.20,00,000/- had been paid as an advance. Admittedly, she has not received the entire sale consideration and petitioner No.1 has to receive the balance sale consideration and therefore, there is no case of cheating attracting the provisions of Section 420 of IPC and the petitioners have not induced any person, leave alone respondent No.2 to purchase the property at a particular rate and the ingredients of criminal intimidation are also absent in this case. The police officials have not brought out any evidence on record in the charge sheet to demonstrate or prove that the petitioners have resorted to any intimidating tactics or to cheat respondent No.2.

https://indiankanoon.org/doc/46797403/; Mohd Siddiq Siddique vs The State Of Telangana; CRIMINAL PETITION No.11641 OF 2023 Date: 24.11.2023

Section 41A CrPC notice is ordered to be served for the offence U/Sec. 457 & 380 IPC. (457 offence is punishable with 14 years, if it is coupled with theft)

2023 INSC 1027; CRIMINAL APPEAL NO. 3619 OF 2023 (@ SPECIAL LEAVE PETITION (CRL.) NO.5136 OF 2022) SIVAMANI AND ANR.Vs. STATE REPRESENTED BY INSPECTOR OF POLICE, VELLORE TALUK POLICE STATION, VELLORE DISTRICT.

Admittedly, there is no allegation of repeated or severe blows having been inflicted. Even the injuries on PW1 and PW2 have been found to be simple in nature, which is an additional point in the appellants' favour. 11. We are further inclined to accept the submissions of the learned counsel for the appellants that from the materials on record, only offences under Sections 3232 and 3243 of the IPC can be made out. As such, the conviction under Section 307, IPC is unsustainable.

PRINCIPLES IN REGARD TO DYING DECLARATIONS

11. Section 32 the Indian Evidence Act, 1872 [For brevity, "IEA"] relates to statements, written or verbal of relevant fact made by a person who is dead or who cannot be found, in other words, dying declaration. The various principles laid down by pronouncements of this court in respect of dying declarations can be summarised as under: –

11.1 The basic premise is "nemo moriturus praesumitur mentire" i.e. man will not meet his maker with a lie in his mouth.

11.1.1 In Laxman v. State of Maharashtra, (2002) 6 SCC 710 [5 Judge Bench] a Constitution bench of this court observed: –

> "when the party is at the point of death and when every hope of this world is gone, when every motive to falsehood is silenced, and the man is induced by the most powerful consideration to speak only the truth The situation in which a man is on the deathbed is so solemn and serene, is the reason in law to accept the veracity of his statement."

11.2 For a statement to be termed a "dying declaration", and thereby be admissible under Section 32 of IEA, the circumstances discussed/disclosed therein "must have some proximate relation to the actual occurrence".

11.3 The Privy Council in Pakala Narayana Swamy v. Emperor, AIR 1939 PC 47 [5 Judge Bench] explained the phrase "circumstances of the transaction" as under:-

> "The circumstances must be circumstances of the transaction : general expressions indicating fear or suspicion whether of a particular individual or otherwise and not directly related to the occasion of the death will not be admissible. But statements made by the deceased that he was proceeding to the spot where he was in fact killed, or as to his reasons for so proceeding, or that he was going to meet a particular person, or that he had been invited by such person to meet him would each of them be circumstances of the transaction, and would be so whether the person was unknown, or was not the person accused. Such a statement might indeed be exculpatory of the person accused. 'Circumstances of the transaction' is a phrase no doubt that conveys some limitations. It is not as broad as the analogous use in 'circumstantial evidence' which includes evidence of all relevant facts. It is on the other hand narrower than 'res gestae'. Circumstances must have some proximate relation to the actual occurrence : though, as for instance, in a case of prolonged poisoning they may be related to dates at a considerable distance from the date of the actual fatal dose. It will be observed that 'the circumstances' are of the transaction which resulted in the death of the declarant. It is not necessary that there should be a known transaction other than that the death of the declarant has ultimately been caused, for the condition of the admissibility of the evidence is that 'the cause of (the declarant's) death comes into question'."

11.3.1 In the well-known case of Sharad Birdhichand Sarda v. State of Maharashtra, (1984) 4 SCC 116 [3 Judge Bench] principles in respect of the application of section 32 have been noted as under: –

Per S. Murtaza Fazal Ali J.,-

> "21. ...
>
> (1) Section 32 is an exception to the rule of hearsay and makes admissible the statement of a person who dies, whether the death is a homicide or a suicide, provided the statement relates to the cause of death, or exhibits circumstances leading to the death. In this respect, as indicated above, the Indian Evidence Act, in view of the peculiar conditions of our society and the diverse nature and character of our people, has thought it necessary to widen the sphere of Section 32 to avoid injustice.
>
> (2) The test of proximity cannot be too literally construed and practically reduced to a cut-and-dried formula of universal application so as to be confined in a straitjacket. Distance of time would depend or vary with the circumstances of each case. For instance, where death is a logical culmination of a continuous drama long in process and is, as it were, a finale of the

story, the statement regarding each step directly connected with the end of the drama would be admissible because the entire statement would have to be read as an organic whole and not torn from the context. Sometimes statements relevant to or furnishing an immediate motive may also be admissible as being a part of the transaction of death. It is manifest that all these statements come to light only after the death of the deceased who speaks from death. For instance, where the death takes place within a very short time of the marriage or the distance of time is not spread over more than 3-4 months the statement may be admissible under Section 32.

(3) The second part of clause (1) of Section 32 is yet another exception to the rule that in criminal law the evidence of a person who was not being subjected to or given an opportunity of being cross-examined by the accused, would be valueless because the place of crossexamination is taken by the solemnity and sanctity of oath for the simple reason that a person on the verge of death is not likely to make a false statement unless there is strong evidence to show that the statement was secured either by prompting or tutoring.

(4) It may be important to note that Section 32 does not speak of homicide alone but includes suicide also, hence all the circumstances which may be relevant to prove a case of homicide would be equally relevant to prove a case of suicide.

(5) Where the main evidence consists of statements and letters written by the deceased which are directly connected with or related to her death and which reveal a tell-tale story, the said statement would clearly fall within the four corners of Section 32 and, therefore, admissible. The distance of time alone in such cases would not make the statement irrelevant."

11.4 Numerous judgments have held that provided a dying declaration inspires confidence of the court it can, even sans corroboration, form the sole basis of conviction. In this regard, reference may be made to Khushal Rao v. State of Bombay, AIR 1958 SC 22 [3 Judge Bench], Suresh Chandra Jana v. State of West Bengal, (2017) 16 SCC 466 [2 Judge Bench] and Jayamma v. State of Karnataka, (2021) 6 SCC 213 [3 Judge Bench].

11.5 In order to rely on such a statement, it must fully satisfy the confidence of the court, since the person who made such a statement is no longer available for crossexamination or clarification or for any such like activity.

11.5.1 In Madan v. State of Maharashtra, (2019) 13 SCC 464 [2 Judge Bench], while referring to an earlier decision in Ram Bihari Yadav v. State of Bihar, (1998) 4 SCC 517 [2 Judge Bench] it was observed that a Court must rely on dying declaration if it inspires confidence in the mind of the court.

11.5.2 On a similar note, this Court in Panneerselvam v. State of T.N., (2008) 17 SCC 190 [3 Judge Bench] has observed: –

> "Though a dying declaration is entitled to great weight, it is worthwhile to note that the accused has no power of cross-examination. Such a power is essential for eliciting the truth as an obligation of oath could be. This is the reason the court also insists that the dying declaration should be of such nature as to inspire full confidence of the court in its correctness."

11.5.3 However, a note of caution has also been sounded. If such a declaration does not inspire confidence in the mind of the court, i.e., there exist doubts about the correctness and genuineness thereof, it should not be acted upon, in the absence of corroborative evidence.

11.5.3.1 In Paniben v. State of Gujarat, (1992) 2 SCC 474 [2 Judge Bench] it was observed-

> "The Court has to be on guard that the statement of deceased was not as a result of either tutoring, prompting or a product of imagination."

A reference may also be made to K. Ramachandra Reddy v. Public Prosecutor, (1976) 3 SCC 618 [2 Judge Bench]

11.6 The Court must be satisfied that at the time of making such a statement, the deceased was in a "fit state of mind". In Shama v. State of Haryana, (2017) 11 SCC 535 [2 Judge Bench] a fit state of mind has been held to be a prerequisite, alongside the ability to recollect the situation and the state of affairs at that point in time in relation to the incident, to the satisfaction of the court.

11.6.1 In Uttam v. State of Maharashtra, (2022) 8 SCC 576 [2 Judge Bench], it was discussed that it is for the court to determine, from the evidence available on record, the state of mind being fit or not.

11.6.2 In order to make a determination of the state of mind of the person making the dying declaration, the court ordinarily relies on medical evidence.[17][(2008) 4 SCC 265 [2 Judge Bench]] However, equally, it has been held that if witnesses present, while the statement is being made, state that the deceased while making the statement was in a fit state of mind, such statement would prevail over the medical evidence.[18][(2002) 6 SCC 710 [5 Judge Bench]] The statement of witnesses present prevailing over the opinion of the doctor has been reiterated in Uttam (supra).

11.6.3 It has also, however, been held in Laxman (supra) that the mere absence of a doctor's certificate in regard to the "fit state of mind" of the dying declarant, will not ipso facto render such declaration unacceptable. This position had been once again recognised in Surendra

Bangali @ Surendra Singh Routele v. State of Jharkhand, Criminal Appeal No. 1078 of 2010 [2 Judge Bench].

11.7 In case of a plurality of such statements, it has been observed that it is not the plurality but the reliability of such declaration determines its evidentiary value. The principle as held in Amol Singh v. State of M.P., (2008) 5 SCC 468 [2 Judge Bench] was:-

> "13. ... it is not the plurality of the dying declarations but the reliability thereof that adds weight to the prosecution case. If a dying declaration is found to be voluntary, reliable and made in fit mental condition, it can be relied upon without any corroboration [but] the statement should be consistent throughout. ...
>
> However, if some inconsistencies are noticed between one dying declaration and the other, the court has to examine the nature of the inconsistencies, namely, whether they are material or not [and] while scrutinising the contents of various dying declarations, in such a situation, the court has to examine the same in the light of the various surrounding facts and circumstances."

11.7.1 Faced with multiple dying declarations, this Court in Lakhan v. State of M.P,. (2010) 8 SCC 514[2 Judge Bench] observed-

> "21. .... In such an eventuality no corroboration is required. In case there are multiple dying declarations and there are inconsistencies between them, generally, the dying declaration recorded by the higher officer like a Magistrate can be relied upon, provided that there is no circumstance giving rise to any suspicion about its truthfulness. In case there are circumstances wherein the declaration had been made, not voluntarily and even otherwise, it is not supported by the other evidence, the court has to scrutinise the facts of an individual case very carefully and take a decision as to which of the declarations is worth reliance."

11.7.2 This Court, in Jagbir Singh v. State (NCT of Delhi), (2019) 8 SCC 779 [2 Judge Bench], in this respect, concluded as under: –

> "32. We would think that on a conspectus of the law as laid down by this Court, 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."

11.8 The presence of a Magistrate in recording of a dying declaration, is not a necessity but only a rule of Prudence. To this effect in Jayamma (supra), this Court observed :

"...law does not compulsorily require the presence of a judicial or executive Magistrate to record a dying declaration or that a dying declaration cannot be relied upon as the solitary piece of evidence unless recorded by judicial or executive Magistrate. It is only a rule of prudence, and if so permitted by the facts and circumstances, the dying declaration may preferably be recorded by a judicial or executive Magistrate so as to muster additional strength to the prosecution case."

Referring to the Constitution bench in Laxman (supra) the principle of a dying declaration not necessarily to be recorded by a Magistrate stands reiterated in Rajaram v. State of Madhya Pradesh, 2022 SCC OnLine SC 1733 [2 Judge Bench]

11.9 Dying Declaration is not to be discarded by reason of its brevity is what is held in Surajdeo Ojha v. State of Bihar, 1980 Supp SCC 769 [2 Judge Bench].

11.9.1 It was observed in the State of Maharashtra v. Krishnamurti Laxmipati Naidu, 1980 Supp SCC 455 [2 Judge Bench] that if the dying declaration, while being brief, contains essential information, the courts would not be justified in ignoring the same.

11.9.2 In fact, the Constitution bench in Laxman reiterated this principle, stating: –

"Marely because a dying declaration does not contain the details of the occurrence, it cannot be rejected and in case there is merely a brief statement, it is more reliable for the reason that the shortness of the statement is itself a guarantee of its veracity."

11.10 Examination of the person who reduced into writing, the dying declaration, is essential. Particularly, in the absence of any explanation forthcoming for the production of evidence is what stands observed in Govind Narain v. State of Rajasthan, 1993 Supp (3) SCC 343 [2 Judge Bench].

11.10.1 In fact, in Kans Raj v. State of Punjab, (2000) 5 SCC 207 [3 Judge Bench] it was held: –

"11. ...To make such statement as substantive evidence, the person or the agency relying upon it is under a legal obligation to prove the making of such statement as a fact. If it is in writing, the scribe must be produced in the Court and if it is verbal, it should be proved by examining the person who heard the deceased making the statement." and;

In Sudhakar v. State of Maharashtra, (2000) 6 SCC 671[3 Judge Bench], this Court categorically observed: -

"5. If it is in writing, the scribe must be produced in the court and if it is verbal, it should be proved by examining the person who heard the deceased making the statement. However, in cases where the original recorded dying declaration is proved to have been lost and not available, the prosecution is entitled to give secondary evidence thereof."

11.11 The questions that a court must ask when dealing with a case concerning a dying declaration, as listed out by this Court in Irfan@Naka v. State of U.P., 2023 SCC Online SC 1060 [3-Judge Bench] along with the principles culled out hereinabove form the complete gamut of consideration required on part of a court when deciding the weightage to be awarded to a dying declaration.

Appreciation of Rustic Witness

in the case of State of Uttar Pradesh vs. Krishna Master and Others, (2010) 12 SCC 324 which read thus:

"24. The basic principle of appreciation of evidence of a rustic witness who is not educated and comes from a poor strata of society is that the evidence of such a witness should be appreciated as a whole. The rustic witness as compared to an educated witness is not expected to remember every small detail of the incident and the manner in which the incident had happened more particularly when his evidence is recorded after a lapse of time. Further, a witness is bound to face shock of the untimely death of his near relatives. Therefore, the court must keep in mind all these relevant factors while appreciating evidence of a rustic witness."

Can a witness be declared Hostile after Cross-examination by defence counsel?

In Dahyabhai Chhaganbhai Thakker v. State of Gujarat this Court made the following observations:

Section 154 does not in terms, or by necessary implication confine the exercise of the power by the court before the examination-in-chief is concluded or to any particular stage of the examination of the witness. It is wide in scope and the discretion is entirely left to the court to exercise the power when the circumstances demand. To confine this power to the stage of examination-in-chief is to make it ineffective in practice. A clever witness in his examination-in-chief faithfully conforms to what he stated earlier to the police or in the committing Court, but in the cross-examination introduces statements in a subtle way contradicting in effect what he stated in the examination-in-chief. If his design is obvious, we do not see why the court cannot, during the course of his cross-examination, permit the person calling him as a witness to put questions to him which might be put in cross-examination by the adverse party.

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ON A LIGHTER VEIN

2 Wives chatting in office :
Wife 1: I had a fine evening, how was Urs???
Wife 2 : It was a disaster. My husband came home, ate his dinner in 3 mins & fell asleep in 2 mins. How was yours?
Wife 1 : Oh mine was amazing ! My husband came home and took me out for a romantic dinner. After dinner we walked for an hour. When we came home he lit the candles around the house. It was like a fairy tale !
At the same time, their husbands are talking at work..
Husband 1: How was your evening?
Husband 2: Great. I came home, dinner was on the table, I ate & fell asleep. What about you ?
Husband 1: It was horrible. I came home, there's no dinner, they cut the electricity because I forgot to pay the bill; so I took her out for dinner which was so expensive that didn't have money left for a cab or auto. We walked home which took an hour & when we got home I remembered there was no electricity so I had to light candles all over the house !!!!!!

MORAL: PRESENTATION DOES MATTER... NO MATTER WHAT THE REALITY IS

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