PROSECUTION REPLENISH

An Endeavour for learning and excellence

Vol- V Part 1 Monthly Leaflet January, 2016

CITATIONS

Since the offence punishable under Section 307 IPC is non-compoundable offence, as such, we reject the compromise filed by the appellant. Though the victim also appeared in person before us to corroborate that now he is no more interested to prosecute the appellant, but considering the nature of injuries and the nature of offence, we are not inclined to interfere with the conviction recorded by the trial court against the appellant, and affirmed by the High Court. However, taking note of above fact, we think it just to reduce the period of sentence of imprisonment to three years without interfering with the sentence of fine. This reduction in sentence shall not be treated precedent for sentencing in respect of offence punishable under Section 307 IPC. **Mohar Singh Vs State of Rajasthan 2015(3) ALT (Cri) 350 (SC).**

On the date of offence under Sec.498-A IPC, if the husband and wife relationship existed between the parties, that would be suffice to attract the offence. Subsequent divorce between parties will not have any impact on launching prosecution under this section. **Mohd. Rafiuddin Ahmed Vs The State of Telangana 2015(3) ALT (Crl) 353 (A.P)**

the object of A.P. Prohibition of Ragging Act, 1997 is to prohibit ragging in educational institutions in respect of all categories of students but not in respect of junior students alone. If that were the intendment of Legislators, the term student perhaps would have been defined as a person who is newly/freshly admitted into educational institution and whose name is lawfully borne on the attender register thereof. Since such is not the case, it is difficult to accept the argument of the petitioner. **Puli Dinesh Babu vs The State Of Telangana 2015(3) ALT (Crl) 366 (A.P)**

the taking of cognizance on the sworn statements of the defacto-complainant and other witnesses of the complainant instead of recording the sworn statements by the Magistrate is since not sanctioned by law, the order is liable

to be set aside. **Jayasri Singh And Others vs The State Of A.P. 2015(3) ALT (Crl) 370 (A.P)**

The mediators' report does not recite that the petitioners were in possession of the material with a view to sell the same for the preparation of I.D. Liquor. Mere possession of black jaggery or alum is not punishable in view of the Government Orders as well as in view of the decisions of this Court **Koppula Nagi Reddy and 6 others Vs The State of Telangana, 2015(3) ALT (Crl) 386 (A.P)**
naturally not only the audio but also audio and video within the meaning of statement in writing, however, it is necessary to mention that mere filing of the C.D. and supply of copy to the opposite party is not enough but the photographs of the videographed material of the C.D. as well as audio conversation by exact words got written to be filed before the Court for its verification and its authenticity by duly certifying before its use. **S.Krishnaiah Vs M/s Guru Raghavendra Traders 2015(3) ALT (Crl) 398 (A.P.)**

The Supreme Court observed that the offence under Section 376 IPC does not fructify when a lady above 16 years of age voluntarily had carnal acquaintance with a man. As rightly submitted by the learned counsel for the petitioner, in the present case also, it is evident from the evidence of P.W.1 that she was a consenting party for the intercourse between her and the accused. I therefore am constrained to hold that the offence under Section 376 IPC is not made out **Penki Srinivasa Rao Vs The State of A.P 2015(3) ALT (Crl) 416 (A.P)**

it was observed to renew by filing fresh application for bail that is not a bar from cancellation of earlier bail order. In fact, a detailed order is passed by this Court regarding remedy is to file application under Section 482 Cr.P.C. and not by revision against the cancellation of bail order **Janapala Krishna vs The State Of Andhra Pradesh, 2015(3) ALT (Crl) 476 (A.P)**

An accused since inception is not necessarily heard before he is added as an accused. However, a person who is added as an accused under Section 319 of the Cr.P.C., is necessarily heard before being so added. **Jogindra Yadav and ors vs. State of Bihar, 2015(2) ALD (Crl) 906 (SC).**

The proviso to Section 132 of the Evidence Act is a facet of the rule against self incrimination and the same is statutory immunity against self incrimination which deserves the most liberal construction. Therefore, no prosecution can be launched against the maker of a statement falling within the sweep of Section 132 of the Evidence Act on the basis of the "answer" given by a person while deposing as a "witness" before a Court. **R.Dinesh Kumar Alias Deena Vs State and others, 2015(2) ALD (Crl) 912.**

Qua the words 'soon before' appearing in Sec. 113-B IPC, it is no longer res integra that the same is laden with the notion of proximity test, but not synonymous with the term 'immediately before'. **M.NARAYAN Vs. STATE OF KARNATAKA 2015 (2) ALD (Crl) 949 (SC)**

The "fact discovered" as envisaged under Section 27 of the Evidence Act embraces the place from which the object was produced, the knowledge of the accused as to it, but the information given must relate distinctly to that effect. 28. In the present case, Accused Nos. 4 & 7 disclosed the names of their co-accused at whose instance various incriminating materials including pistols, cartridges, bullets, blood stained articles were recovered. Simply denying their role without proper explanation as to the knowledge about those incriminating material would justify the presumption drawn by the Courts below to the involvement of the accused in the crime. The confession given by the accused is not the basis for the courts below to convict the accused, but it is only a source of information to put the criminal law into motion. Hence, the accused cannot take shelter under Section 25 of the Evidence Act.

In every case of gun firing, it is not required that each and every bullet should hit the target. There may be attempts by the deceased or the victim to save himself from the raining bullets, and in which case, the bullets may not hit the target. Merely because all the bullets fired from the gun did not hit the target and were not recovered from the scene of offence, is no ground to conclude that the incident did not take place.

As regards the allegation of contradictions in the statements of prosecution witnesses, we do not find any major contradictions which require our attention and consideration. When a witness is examined at length it is quite possible for him to make some discrepancies. No true witness can possibly escape from making some discrepant details. 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. ***PAWAN KUMAR @ MONU MITTAL Vs. STATE OF U.P. & ANR. 2015(2) ALD (Crl) 958 (SC)***

66A of IT Act is unconstitutional. ***Shreya Shingal Vs. UOI, 2015 (2) ALD (Crl) 971 (S.C)***

mere expression of intention to adduce evidence in contraversion of analyst report implies demand to send the samples to the C.I.L for second analysis and the accused need not specifically request for sending the report to C.I.L.

Thus, by the time the complaint was taken cognizance, the shelf life of the product was expired long ago and thereby the valuable rights of the accused conferred under Section 24(3) and (4) of the Insecticides Act, 1968, were defeated for no fault of the petitioners/accused. **New Rythu Fertilizers, Kurnool Vs State of A.P. 2015(2) ALD (Crl) 1038.**

An accused impleaded under sec 319 Cr.P.C., cannot prefer a discharge petition. **Jogendra YAdav and others Vs State of Bihar (2015) 3 SCC (Cri) 756 = (2015) 9 SCC 244.**

It has to be borne in mind that an offence of rape is basically an assault on the human rights of a victim. It is an attack on her individuality. It creates an incurable dent in her right and free will and personal sovereignty over the physical frame. Everyone in any civilised society has to show respect for the other individual and no individual has any right to invade on physical frame of another in any manner. It is not only an offence but such an 10 act creates a scar in the marrows of the mind of the victim. Anyone who indulges in a crime of such nature not only does he violate the penal provision of the IPC but also right of equality, right of individual identity and in the ultimate eventuality an important aspect of rule of law which is a constitutional commitment. **Parhlad Vs State of Haryana (2015) 3 SCC (Cri) 807 = (2015) 8 SCC 688.**

1. The States of Delhi, Himachal Pradesh, Mizoram, Arunachal Pradesh, Meghalaya, Tripura and Nagaland shall within a period of six months from today set up State Human Rights Commissions for their respective territories with or without resort to provisions of Section 21(6) of the Protection of Human Rights Act, 1993.
2. All vacancies, for the post of Chairperson or the Member of SHRC wherever they exist at present shall be filled up by the State Governments concerned within a period of three months from today.
3. Vacancies occurring against the post of Chairperson or the Members of the SHRC in future shall be filled up as expeditiously as possible but not later than three months from the date such vacancy occurs.
4. The State Governments shall take appropriate action in terms of Section 30 of the Protection of Human Rights Act, 1993, in regard to setting up/specifying Human Rights Courts.
5. The State Governments shall take steps to install CCTV cameras in all the prisons in their respective States, within a period of one year from today but not later than two years.
6. The State Governments shall also consider installation of CCTV cameras in police stations in a phased manner depending upon the incidents of human rights violation reported in such stations.
7. The State Governments shall consider appointment of non-official visitors to prisons and police stations in terms of the relevant provisions of the Act wherever they exist in the Jail Manuals or the relevant Rules and Regulations.
8. The State Governments shall launch in all cases where an enquiry establishes culpability of the persons in whose custody the victim has suffered death or injury, an appropriate prosecution for the commission of offences disclosed by such enquiry report and/or investigation in accordance with law.
9. The State Governments shall consider deployment of at least two women constables in each police station wherever such deployment is considered

necessary having regard to the number of women taken for custodial interrogation or interrogation for other purposes over the past two years. **D.K.BASU VS STATE OF WEST BENGAL & ORS (2015) 3 SCC (Cri) 824= (2015) 8 SCC 744.**

the learned Chief Judicial Magistrate has basically directed for further investigation. The said part of the order cannot be found fault with, but an eloquent one, he could not have directed another investigating agency to investigate as that would not be within the sphere of further investigation and, in any case, he does not have the jurisdiction to direct reinvestigation by another agency. Therefore, that part of the order deserves to be lancinated and accordingly it is directed that the investigating agency that had investigated shall carry on the further investigation and such investigation shall be supervised by the concerned Superintendent of Police. After the further investigation, the report shall be submitted before the learned Chief Judicial Magistrate who shall deal with the same in accordance with law. **Chandra Babu @ Moses Vs State, (2015) 3 SCC (Cri) 851 = (2015) 8 SCC 774.= (2015) 42 SCD 766**.

It is because at one point of time, the High Court had directed for finalization of trial within a fixed duration and the learned trial Judge, in all possibility, harboured the impression that even if the prosecution witnesses had not been served the notice to depose in court, and the prosecution had not taken any affirmative steps to make them available for adducing evidence in court, yet he must conclude the trial by the target date as if it is a mechanical and routine act. The learned trial Judge, as it appears to us, has totally forgotten that he could have asked for extension of time from the High Court, for the High Court, and we are totally convinced, could never have meant to conclude the trial either at the pleasure of the prosecution or desire of the accused. **Bablu Kumar and ors Vs State of Bihar (2015) 3 SCC (Cri) 862 = (2015) 8 SCC 787.**

Evidence regarding recovery of contraband article pursuant to information given by accused, while in police custody in connection with another case and FIR, reliable. **Mohan Lal Vs State of Rajasthan (2015) 3 SCC (Cri) 881 = (2015) 6 SCC 222**

NEWS

- S.O. 110(E).—In exercise of the powers conferred by sub-section (3) of section 1 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (2 of 2016), the Central Government hereby appoints the 15th day of January, 2016 as the date on which the said Act shall come into force.

- The A.P.Public Prosecutors (Cadre) Association has released their Diary and Calender through the auspicious hands of the Hon'ble Chief Minister of Andhra Pradesh Sri N.Chandra Babu Naidu.

- The following is the newly elected body of the Telangana Public Prosecutors (Cadre) Association.

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	P.Arunodaya Kumar	APP-Nalgonda	Ph:9700559317
All Deputy Directors of Prosecution(Administration) are the Ex-Officio Members			
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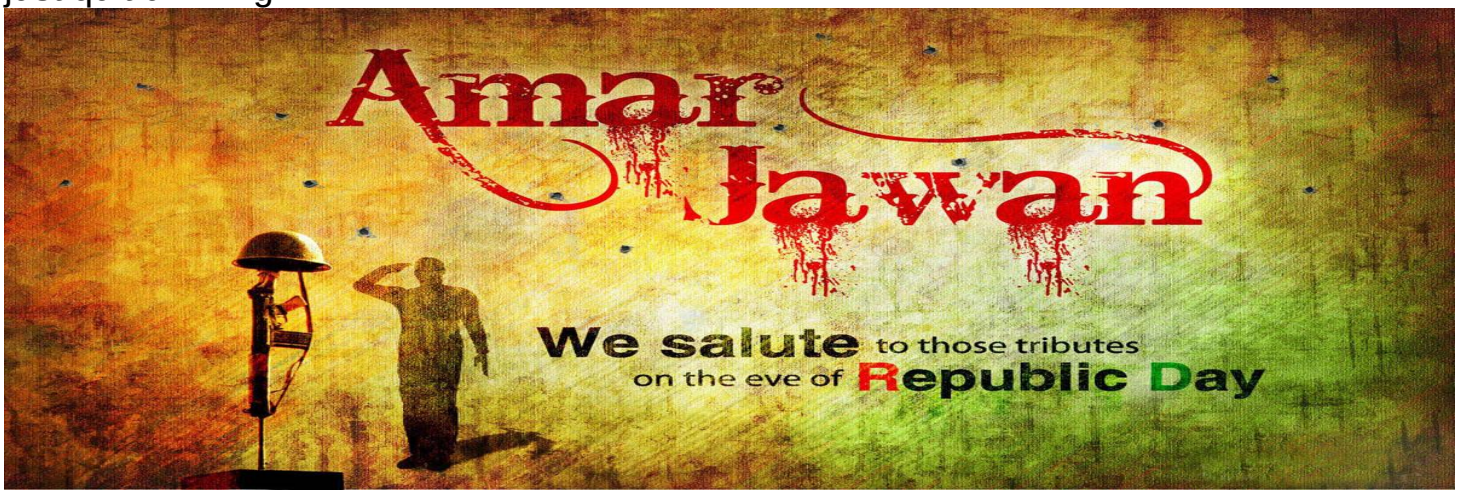
Karimnagar	0878-2240225	**Ranga Reddy**	040-24038704
Warangal	0870-2579104	**Hyderabad**	040-23302765
Khammam	08742-223798	**Nalgonda**	08682-234300
Nizamabad	08462-225281	**Mahboobnagar**	08542-241087

- The DOP OF A.P has purchased Laptop desk, chair and two cartridges for printers to be supplied for each prosecuting officer in the state and also Laptaps to the newly appointed Addl PP Gr IIs and APPS and making arrangements to send the same shortly to the offices of all Deputy Directors in the state for distribution among all prosecuting officers of AP State with the funds sanctioned by the Government of AP. The FAC Addl DOP Sri CC SUBRAHMANYAM garu

and JD op Sri Mallikarjun Rao garu made their sincere efforts in getting them. The AP PUBLIC PROSECUTORS ASSOCIATION is thankful to them for their services. As stated by Sri. T.SREENIVASULU REDDY, PRESIDENT A.P.PUBLIC PROSECUTORS ASSOCIATION.

ON A LIGHTER VEIN

An Irishman walks into a bar in Dublin, orders three pints of Guinness and sits in the back of the room, drinking a sip out of each one in turn. When he finished all three, he comes back to the bar and orders three more. The bartender says to him, 'You know, a pint goes flat after I draw it; it would taste better if you bought one at a time.' The Irishman replies, 'Well, you see, I have two brothers. One is in America, the other in Australia, and I'm here in Dublin. When we all left home, we promised that we'd drink this way to remember the days we all drank together. 'The bartender admits that this is a nice custom, and leaves it there. The Irishman becomes a regular in the bar and always drinks the same way: he orders three pints and drinks the three pints by taking drinks from each of them in turn. One day, he comes in and orders two pints. All the other regulars in the bar notice and fall silent. When he comes back to the bar for the second round, the bartender says, 'I don't want to intrude on your grief, but I wanted to offer my condolences on your great loss.' The Irishman looks confused for a moment, then a lights dawns in his eye and he laughs. 'Oh, no, ' he says, 'Everyone is fine. I've just quit drinking!



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PROSECUTION REPLENISH

An Endeavour for learning and excellence

Vol- V Part 2 Monthly Leaflet February, 2016

THE PURPOSE OF LIFE IS NOT TO BE HAPPY. IT IS TO BE USEFUL, TO BE HONORABLE, TO BE COMPASSIONATE, TO HAVE IT MAKE SOME DIFFERENCE THAT YOU HAVE LIVED AND LIVED WELL.

CITATIONS

Depending on the nature of weapon used and *situs* of the injury, in some cases, the sufficiency of injury to cause death in the ordinary course of nature must be proved and cannot be inferred from the fact that death has, in fact, taken place. the conviction of the appellant under Section 302 IPC is modified as conviction under Section 304 Part 1 IPC and the appellant is sentenced to undergo ten years rigorous imprisonment.**(2016) 43 SCD 251 - Nankaunoo Vs. State of U.P.**

The Central Government and its agencies and so also the State Governments shall within six months from today take appropriate steps to set up storage facilities for the exclusive storage of seized Narcotic Drugs and Psychotropic and controlled Substances and Conveyances duly equipped with vaults and double locking system to prevent theft, pilferage or replacement of the seized drugs. The Central Government and the State Governments shall also designate an officer each for their respective storage facility and provide for other steps, measures as stipulated in Standing Order No. 1/89 to ensure proper security against theft, pilferage or replacement of the seized drugs.
The Central Government and the State Governments shall be free to set up a storage facility for each district in the States and depending upon the extent of seizure and store required, one storage facility for more than one districts.
Disposal of the seized drugs currently lying in the police maalkhans and other places used for storage shall be carried out by the DDCs concerned in terms of the directions issued by us in the body of this judgment under the heading 'disposal of drugs'.
Keeping in view the importance of the subject we request the Chief Justices of the High Courts concerned to appoint a Committee of Judges on the administrative side to supervise and monitor progress made by the respective States in regard to the compliance with the above directions and wherever necessary, to issue appropriate directions for a speedy action on the administrative and even on the judicial side in public interest wherever considered necessary.**(2016) 43 SCD 308 - Union of India Vs. Mohanlal**

Mandatory requirement prescribed under Section 50 will have to be complied with only when a search is carried out on the body of a person and the same cannot have any effect when it comes to the question of effecting a search on any premises for which the compliance required to be carried out is as has been set out in Section 42 of the said Act itself. Supreme Court of India in **GULSHER MOHD. Vs.STATE OF HIMACHAL PRADESH 2015(12) Scale 1**

There can be no second FIR in event of any further information being received by investigating agency in respect of same occurrence. Supreme Court of India in **Awadesh Kumar Jha @ Akhilesh Kumar Jha & Anr Vs State of Bihar 2016 (1) Crimes 38 SC**

The economic offence of defrauding bank by forgery is fraud against society,merely paying back loan amount does't ground to quash criminal proceedings. Supreme court of India in **CBI Vs. Maninder Singh 2015 (4) Crimes Sc 338**

Plea of alibi taken by the defence is required to be proved only after prosecution has proved its case against the accused.Supreme Court of India in **Darshan Singh Vs State of Punjab in Criminal appeal No.2099/2008 Dated 6.1.2015**

The Medical Officer opined that the cause of death is due to smothering and throttling. He, however, could not justify his opinion with any scientific material or the physical appearance of the deceased. If really the Medical Officer suspected the death to be due to smothering and throttling, he was required to conduct further tests, but the Doctor admits that he did not send sternum to any chemical examination, merely because they were clear cut signs on the neck of the deceased. On the basis of such evidence, it is not possible to hold that it conclusively establishes that the death of the deceased was due to smothering or throttling. **Yamsani Ravinder (A.1) vs State Of A.P 2016 (1) ALD (Crl) 153.**

Ossification test being done to victim to determined the age. In this Hon'ble Supreme court relied on Vishnu @ Undrya Vs State of Maharashtra in which Hon'ble Supreme Court held & rejected the submission expert medical evidence is not binding on the ocular evidence. **PRAHLAD Vs STATE OF HARYANA; 2016 (1) ALT (Crl) 1 SC**

Acid victim compensation shall be paid at Rs.3,00,000/- in all the states and Union territories. **LAXMI VS UNION OF INDIA; 2016 (1) ALT (CRL) 27 SC**

It is settled principle that a conviction can well be founded on the testimony of a single witness if the court finds his version to be trustworthy and corroborated by record on material particulars. **KAMALA KANT DUBEY Vs STATE OF UP; 2016 (1) ALT (Crl) 59 SC**

FIR need not contain every single detail and every part of the case of prosecution.
If the allegations in FIR are not frivolous, malafide or vexatious – it cannot be simply quashed for the reason that civil suit also pending in the matter. **AARUN BHANDARI Vs STATE OF UP; 2013 (2) SCC 801 REFERRED IN STATE OF MP Vs ASHOK; 2016 (1) ALT (Crl) 76 SC**

Public Servants have, in fact been treated as special category under Sec.197 Cr.P.C., to protect them from malicious or vexatious prosecution. Such protection from harassment is given in public interest; the same cannot be treated as shield to protect corrupt officials. **INSPECTOR OF POLICE & ANOTHER Vs BATTENAPATLA VENKATA RATNAM & ANOTHER; 2016 (1) ALT (Crl) 84 SC**

In this case the Hon'ble Supreme Court relied upon the decision passed by it in case of State of UP Vs Shri Kishan 2005(1) ALT (Crl) 242 (SC) – in which held that-
Undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence. It is duty of the every court to award proper sentence having regard to the nature of the offence and manner in which it was executed and committed. **SIRAJUL Vs STATE OF UP; 2016 (1) ALT (Crl) 99 SC**

It is expected that the courts would operate the sentencing system so as to impose such sentence which reflects the conscience of the society and the sentencing process has to be stern where it should be.
Testimony of witness U/Sec.161 Cr.P.C. does not become unreliable, merely because there is a delay in examination of that witness by the police.
Investigation Officer is not obliged to anticipate all possible defenses and investigate in that line. **VK MISHRA & ANOTHER Vs STATE OF UTHARAKHAND; 2016 (1) ALT (Crl) 107 SC**

The identification for the first time in court is good enough and can be relied upon if the witness is otherwise trustworthy and reliable. **ASHOK DEBBARAMA @ ACHAK DEBBARAMA Vs STATE OF TRIPURA; 2014 (2) ALT (Crl) 400 SC**

I do not know the contents of Ex.P1 report – statement by illiterate complainant. It is clear to us Pw1's deposition can't be discredited basing on this stray statement. **PAYAM RAJULU Vs STATE OF AP; 2016 (1) ALT (Crl) 1 AP**

When the matter reserved for judgment, charge framed under Sec. 326 IPC modified to Sec.326 IPC R/w. 149 IPC – adding Sec.149 IPC with substantial Sec.326 IPC cannot be called prejudging. Referred case : 2015 (2) ALT (crl) 253 AP **CHINTHALAPATI VENKAT REDDY & OTHERS Vs STATE OF AP; 2016 (1) ALT (Crl) 9 AP**

NEWS

- Prosecution Replenish Congratulates the Members and Prosecutors of A.P. for the success of the conference held on 23/1/2016 at Vijayawada, to which the Hon'ble Sri Justice N.V.Ramana, Judge, Supreme Court of India, graced as Chief Guest.

- Prosecution Replenish Wishes Sri Krishna Mohan, Addl.PP Gr-I, worked on deputation in Disaster Management-Cum-Fire Services, Hyderabad, a very happy and healthy retired life.

ON A LIGHTER VEIN

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

PROSECUTION REPLENISH

An Endeavour for learning and excellence

Vol- V Part 3 Monthly Leaflet March, 2016

YOU ONLY LIVE ONCE, BUT IF YOU DO IT RIGHT, ONCE IS ENOUGH."

— MAE WEST

CITATIONS

The requirement of seeking prior leave of the court to conduct "further investigation" and/or to file a"supplementary report" will have to be read into, and is a necessary implication of the provisions of Section 173(8) of the Code. The doctrine of contemporanea expositio will fully come to the aid of such interpretation as the matters which are understood and implemented for a long time, and such practice that is supported by law should be accepted as part of the interpretative process. **(2016) 43 SCD 367 - Ram Saran Varshney Vs. State of Uttar Pradesh**

The court has a role when the Public Prosecutor moves the application seeking the consent for withdrawing from the prosecution. At that stage, the court is required to see whether there has been independent application of mind by the Public Prosecutor and whether other ingredients are satisfied to grant the consent. Prior to the application being taken up being moved by the Public Prosecutor, the court has no role. If the Public Prosecutor intends to withdraw or not press the application, he is entitled to do so. The court cannot say that the Public Prosecutor has no legal authority to file the application for not pressing the earlier application. It needs no special emphasis to state that the accused persons cannot be allowed to contest such an application. We fail to fathom, how the accused persons can contest the application and also file documents and take recourse to Section 91 Cr.P.C. The kind of liberty granted to the accused persons is absolutely not in consonance with the Code of Criminal Procedure. If anyone is aggrieved in such a situation, it is the victim, for the case instituted against the accused persons on his FIR is sought to be withdrawn. The accused persons have no role and, therefore, the High Court could not have quashed the orders permitting the prosecution to withdraw the application and granting such liberty to the accused persons. The principle stating that the Public Prosecutor should apply his mind and take an independent decision about filing an application under Section 321 Cr.P.C. cannot be faulted but stretching the said principle to say that he is to convince the court that he has filed an application for not pressing the earlier application would not be appropriate. We are disposed to think so as the learned Magistrate had not dealt with the earlier application. **(2016) 43 SCD 354 - M/s V. L. S. Finance Ltd. Vs. S. P. Gupta**

The sum and substance of the aforesaid discussion is that prisoners, like all human beings, deserve to be treated with dignity.
To give effect to this, some positive directions need to be issued by this Court and these are as follows:-
1. The Under Trial Review Committee in every district should meet every quarter and the first such meeting should take place on or before 31st March, 2016. The Secretary of the District Legal Services Committee should attend each meeting of the Under Trial Review Committee and follow up the discussions with appropriate steps for the release of undertrial prisoners and convicts who have undergone their sentence or are entitled to release because of remission granted to them.
2. The Under Trial Review Committee should specifically look into aspects pertaining to effective implementation of Section 436 of the Cr.P.C. and Section 436A of the Cr.P.C. so that undertrial prisoners are released at the earliest and those who cannot furnish bail bonds due to their poverty are not subjected to incarceration only for that reason. The Under Trial Review Committee will also look into issue of implementation of the Probation of Offenders Act, 1958 particularly with regard to first time offenders so that they have a chance of being restored and rehabilitated in society.

3. The Member Secretary of the State Legal Services Authority of every State will ensure, in coordination with the Secretary of the District Legal Services Committee in every district, that an adequate number of competent lawyers are empanelled to assist undertrial prisoners and convicts, particularly the poor and indigent, and that legal aid for the poor does not become poor legal aid.
4. The Secretary of the District Legal Services Committee will also look into the issue of the release of under trial prisoners in compoundable offences, the effort being to effectively explore the possibility of compounding offences rather than requiring a trial to take place.
5. The Director General of Police/Inspector General of Police in-charge of prisons should ensure that there is proper and effective utilization of available funds so that the living conditions of the prisoners is commensurate with human dignity. This also includes the issue of their health, hygiene, food, clothing, rehabilitation etc.
6. The Ministry of Home Affairs will ensure that the Management Information System is in place at the earliest in all the Central and District Jails as well as jails for women so that there is better and effective management of the prison and prisoners.
7. The Ministry of Home Affairs will conduct an annual review of the implementation of the Model Prison Manual 2016 for which considerable efforts have been made not only by senior officers of the Ministry of Home Affairs but also persons from civil society. The Model Prison Manual 2016 should not be reduced to yet another document that might be reviewed only decades later, if at all. The annual review will also take into consideration the need, if any, of making changes therein.
8. The Under Trial Review Committee will also look into the issues raised in the Model Prison Manual 2016 including regular jail visits as suggested in the said Manual. We direct accordingly.
58. Taking a cue from the efforts of the Ministry of Home Affairs in preparing the Model Prison Manual, it appears advisable and necessary to ensure that a similar manual is prepared in respect of juveniles who are in custody either in Observation Homes or Special Homes or Places of Safety in terms of the Juvenile Justice (Care and Protection of Children) Act, 2015. **(2016) 43 SCD 347 - Re - Inhuman Conditions In 1382 Prisons**

the allegations of corruption and misappropriation of public funds released for rural development, and further considering the conduct of the appellants and the fact that the investigation is held up as the custodial interrogation of the appellants could not be done due to the anticipatory bail, we are of the opinion that the High Court has rightly cancelled the anticipatory bail granted to the appellants by the Additional Sessions Judge, Jalgaon. **Sudhir Vs The State of Maharashtra and another (2016) 1 SCC (Cri) 234 = (2016) 1 SCC 146.**

Distinction between mere breach of contract and the cheating would depend upon the intention of the accused at the time of alleged inducement. If it is established that the intention of the accused was dishonest at the very time when he made a promise and entered into a transaction with the complainant to part with his property or money, then the liability is criminal and the accused is guilty of the offence of cheating. On the other hand, if all that is established that a representation made by the accused has subsequently not been kept, criminal liability cannot be foisted on the accused and the only right which the complainant acquires is the remedy for breach of contract in a civil court. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown at the beginning of the transaction**. INTERNATIONAL ADVANCED RESEARCH CENTRE FOR POWDER METALLURGY AND NEW MATERIALS (ARCI) & ORS. Vs. NIMRA CERGLASS TECHNICS (P) LTD. & ANR. (2016) 1 SCC (Cri) 269 = (2016) 1 SCC 348.**

Despite authorities existing and governing the field, it has come to the notice of this Court that sometimes the court of first instance as well as the appellate court which includes the

High Court, either on individual notion or misplaced sympathy or personal perception seems to have been carried away by passion of mercy, being totally oblivious of lawful obligation to the collective as mandated by law and forgetting the oft-quoted saying of Justice Benjamin N. Cardozo "Justice, though due to the accused, is due to the accuser too" and follow an extremely liberal sentencing policy which has neither legal permissibility nor social acceptability. **Raj Bala Vs State of Haryana & Ors. (2016) 1 SCC (Cri) 354 = (2016) 1 SCC 463.**

Nothing has been brought by way of evidence to show that the prosecution had falsely implicated them. There is nothing to remotely suggest that there was any malice. The High Court, as is noticed, has not applied its mind to the concept of grant of compensation to the accused persons in a case of present nature. There is no material whatsoever to show that the prosecution has deliberately roped in the accused persons. There is no malafide or malice like the fact situation which are projected in the case of Hardeep Singh (supra). Thus, the view expressed by the learned trial Judge is absolutely indefensible and the affirmance thereof by the High Court is wholly unsustainable. **State of Rajasthan Vs Jainudeen Shekh and Anr (2016) 1 SCC (Cri) 380 = (2016) 1 SCC 514.**

it would suffice to say that the law on this point is crystal clear that only charge-sheet along with the accompanying material is to be considered at the stage of framing of charges, so as to satisfy whether a prima facie case is made out. It has to be the subjective satisfaction of the Court framing charges. **State of Madhya Pradesh Vs Rakesh Mishra (2016) 1 SCC (Cri) 405 = (2015) 13 SCC 8.**

When the victim has not complained about the procedure of non recording of the victim's 154 (1) and 161(3) Cr.P.C. statement by a women officer, the accused cannot take advantage of the same. **Pasupalleti Srinivasa Rao Vs The State of A.P. rep by its Public Prosecutor and another 2016(1) ALD (Crl) 207.(A.P)**

The opening of a rowdy sheet in the name of the petitioner on the basis of his involvement in a solitary criminal case was not sufficient to term him a habitual offender under clause (A) of Order 601. Further, it is an admitted fact that he stood acquitted in the said case. Despite the same, the police authorities seem to have continued the rowdy sheet in his name. This Court therefore has no hesitation in holding that the opening of the rowdy sheet in the name of the petitioner and continuance of the same thereafter was in utter violation of the law laid down by this Court. **K.Suresh Babu Vs The Superintendent of Police, Anantapur District and another. 2016(1) ALD (Crl) 210.**

Magistrate taking cognizance on the Final report filed by police basing on the Police report filed instead of Complaint before the magistrate. Barred under the provision of Sec 15 of Coastal Aquaculture Authority act,2005, as Sec 420 IPC, which is charged along with the said act is not made out. **Kollapudi Gangadhar Vs State of A.P. 2016(1) ALD (Crl) 223.**

a delay in transmitting the special report to the Magistrate is linked to the lodging of the FIR. If there is no delay in lodging an FIR, then any delay in communicating the special report to the Magistrate would really be of little consequence, since manipulation of the FIR would then get ruled out. Nevertheless, the prosecution should explain the delay in transmitting the special report to the Magistrate. However, if no question is put to the investigating officer concerning the delay, the prosecution is under no obligation to give an explanation. There is no universal rule that whenever there is some delay in sending the FIR to the Magistrate, the prosecution version becomes unreliable.
Five witnesses have testified to the events that took place at Bathra Telecom on the night of 19th June 2004. We see no reason to disbelieve any of them, particularly since they have all given a consistent statement of the events. There are some minor discrepancies, which

are bound to be there, such as the distance between the gun and Nand Singh but these do not take away from the substance of the case of the prosecution nor do they impinge on the credibility of the witnesses.
It was held that if the witnesses are trustworthy and reliable, the mere fact that no TIP was conducted would not, by itself, be a reason for discarding the evidence of those witnesses.
State of Rajasthan Vs Daud Khan. 2016(1) ALD (Crl) 241 (SC) *

Charge sheet cannot be kept pending from being numbered on the ground that the absconding accused are not produced.(Charge Sheet can be filed against absconding accused). **State of U.P. & others Vs Anil Kumar Sharma and another. 2016(1) ALD (Crl) 267(SC)(FB)**

Criminal Complaint filed without prior Sanction under Section 197 Cr.P.C. is not maintainable. **Dr.Manorama Tiwari & others Vs Surendranath Rai 2016 (1) ALD (Crl) 310 (SC)**

Sexual Offence against a minor belonging to Schedule Caste. POCSO act and SC & ST POA Act, both having non-obstinate clauses for exclusive trial- Trial to be held by Spl Court for POCSO offences, in view of the special procedures and safeguards of trial under the act. **State of A.P. Vs. Mangali Yadagiri 2016 (1) ALD (Crl) 314 (A.P).**

Case against the contested accused ended in acquittal. Case against the accused in split up case can also be acquitted when there is no identification or description of the accused in the split up case. **Garlapati Kamal Kumar Vs State of Telangana 2016 (1) ALD (Crl) 326 (A.P)**

In addition to obtaining permission from Commissioner of Police under Sec. 21 (f) (v) of City Police Act for conducting blast work, the permission from Competent Authority under Explosives act, is to be obtained. **A.V.Koti Reddy & others Vs UOI. 2016 (1) ALD (Crl) 331 (A.P)**

In these days, civilized people are generally insensitive to come forward to give any statement in respect of any criminal offence. Unless it is inevitable, people normally keep away from the Court as they feel it distressing and stressful. Though this kind of human behaviour is indeed unfortunate, but it is a normal phenomena. We cannot ignore this handicap of the investigating agency in discharging their duty. We cannot derail the entire case on the mere ground of absence of independent witness as long as the evidence of the eyewitness, though interested, is trustworthy. ***It is only when the contradiction between the two is so extreme that the medical evidence completely rules out all possibilities of the ocular evidence being true at all, that the ocular evidence is liable to be disbelieved.*"** **(2016) 43 SCD 447 - Sadhu Saran Singh Vs. State of U.P.**

When an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution. In view of Section 106 of the Evidence Act, there will be a corresponding burden on the inmates of the house to give cogent explanation as to how the crime was committed. The inmates of the house cannot get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case lies entirely upon the prosecution and there is no duty at all on the accused to offer. On the date of occurrence, when accused and his father Dashrath were in the house and when the father of the accused was found dead, it was for the accused to offer an explanation as to how his father sustained injuries. When the accused could not offer any explanation as to the homicidal death of his father, it is a strong circumstance against the accused that he is responsible for the commission of the crime. **(2016) 43 SCD 446 - Gajanan Dashrath Kharate Vs. State of Maharashtra**

Launching of prosecution – No prosecution can be launched against the maker of a statement falling within the sweep of Sec.132 of Evidence Act. **R.Dinesh Kumar @ Deena Vs State, Rep.by Inspector of Police & others; 2016 (1) ALT (Crl) 135 (SC)**

Unless there are specific allegations in the complaint against relatives of Husband no cognizance can be taken against the family members, more particularly from the tendency of baseless allegations in roping them. **Ashrampalli Ramabi Vs State of Telangana 2016 (1) ALT (Crl) 172(AP)**

Since the learned sessions Judge has not considered it necessary to impose death penalty to accused / appellant – the failure of question him with regard to sentence as required U/Sec.235 Cr.P.C. can't be considered as fatal error. **Dasaru Veeraiah Vs State of AP; 2016 (1) ALT (Crl) 82 (AP)**

Sec.173(8) , 190 Cr.P.C. – Magistrate is not bound to accept the final report U/Sec. 173(2) – entitle to issue process – excoriated by investigating agency by applying his mind independently. **Chandrababu @ Moses Vs State, through Inspector of Police; 2016 (1) ALT (Crl) 194 (SC)**

A6 filed for quash – facing trial – A1 to A5 already acquitted – split up case – circumstances. Relied& Referred cases: 2001(2) ALT (Crl) 482 AP, 2000(1) ALT (Crl) 174 AP **Garlapati Kamal Kumar Vs State of Telangana; 2016 (1) ALT (Crl) 99 (AP)**

Where special court was empowered to take cognizance of the offence, Additional Chief Judicial Magistrate had no jurisdiction to entertain and consider application for bail. **Ramrahit Singh Vs Dhananjoy Singh @ Motu & another 2016 (1) ALT (Crl) 5 (NRC) (Calcutta High Court)**

Respondents shall be free to take appropriate action for enforcement of the settlement arrived at between the parties in Lok-Adalat and are also at liberty to file recovery suit. **Anita Mishra Vs Arun Kumar & others 2016 (1) ALT (Crl) 10 (NRC) (Madhyapradesh High Court)**

AT A GLANCE

Juvenile Justice (Care and Protection of Children) Act, 2015

Sec.2(12) ñChildò means a person who has not completed **18 years of age**.

Sec.2(20) ñChildrenôs Courtò means a court established under the Commissions for Protection of Child Rights Act, 2005 or **a Special Court under the Protection of Children from Sexual Offences Act, 2012**, wherever existing and where such courts have not been designated, the Court of Sessions having jurisdiction to try offences under the Act.

Sec.2(24): ñCorporeal Punishmentò means the subjecting a child by any person to physical punishment that involves the deliberate infliction of pain as retribution for an offence, or for the purpose of disciplining or reforming the child

Sec.2(33) ñheinous crimesò includes the offences for which the minimum punishment under the IPC or any other law for the time being in force is **imprisonment for 7 years or more**.

Sec.2(35) ñjuvenileò means a child below the age of **18 years**.

Sec.2(45) ñpetty offencesò includes the offences for which the maximum punishment under the IPC or any other law for the time being in force is **imprisonment upto 3 years**.

Sec.2(54) ñserious offencesò includes the offences for which the punishment under the IPC or any other law for the time being in force is **imprisonment between 3 years and 7 years**.

Sec.2(60) ñsurrendered childò means a child, who **relinquished by the parent or guardian to the committee**, on account of physical, emotional and social factors beyond their control and declared as such by the Committee.

PENAL PROVISIONS:

DESCRIPTION	PUNISHMENT	Cog	Bail	Forum
Sec.34: Punishment for not giving information regarding an abandoned/lost /orphan within 24 hours excluding the time taken for the journey	Imprisonment upto 6 months or fine of Rs.10,000/- or both	NC	B	MC
Sec.42: Non registration of a child care institution ➢ Every 30 days delay in applying for registration shall be considered as a separate offence	Imprisonment which may extend upto 1 year or fine of not less than Rs.1,00,000/- or both	NC	B	MC
Sec.74: Disclosure of identity of children to any news or media	Imprisonment which may extend upto 6 months or fine may extend to Rs.2,00,000/- or both	NC	B	MC
Sec.75: Cruelty to child by person in charge or control over the child	Imprisonment which may extend to 3 years or fine Rs.1,00,000/- or with both	NC	B	MC
➢ Offence committed by person employed or managing in organization of care and protection of child	Imprisonment which may extend to 5 years and fine Rs.5,00,000/-	C	NB	MC
➢ Cruelty towards physically and mentally incapacitated	Imprisonment which may extend to 10 years and fine Rs.5,00,000/-	C	NB	CC
Sec.76(1) Employing a child for begging	Imprisonment which may extend to 5 years and fine Rs.1,00,000/-	C	NB	MC
➢ If person amputates or maims the child for begging	Imprisonment not less than 7 years may extend upto 10 years and fine Rs.5,00,000/-	C	NB	CC
Sec.76(2) Abetment by a person in charge of such child	Same punishment as in Sec.76(1) and that person will be declared unfit for custody	Same as in 76(1)		
Sec.77: Penalty for giving intoxicating liquor or NDPS to a child	Rigorous Imprisonment which may extend to 7 years and fine Rs.1,00,000/-	C	NB	MC
Sec.78: Using a child for vending, peddling, carrying, supplying, or smuggling any intoxicating liquor, NDPS	Rigorous Imprisonment which may extend to 7 years and fine Rs.1,00,000/-	C	NB	MC
Sec.79: Exploitation of child employee	Rigorous Imprisonment which may extend to 5 years and fine Rs.1,00,000/-	C	NB	MC
Sec.80: Punitive measures for adoption without following prescribed procedure	Imprisonment which may extend to 3 years and fine Rs.1,00,000/- or with both	NC	B	MC
Sec.81: Sale and procurement of children for any purpose ➢ By a person having actual charge of the child	Rigorous Imprisonment which may extend to 5 years and fine Rs.1,00,000/- Imprisonment not less than 3 years which may extend to 7 years	C	NB	MC
Sec.82(1): Corporal punishment: By a person in charge of or employed in a child care institute	First conviction ï Fine of Rs.10,000/- For every subsequent conviction which may extend to 3 months or fine or both and Dismissal from job on conviction and no further	NC	B	MC

	employment			
Sec.82(3): Non cooperation by management with enquiry, the incharge of the Management of Institution is liable	Imprisonment not less than 3 years and fine Rs.1,00,000/-	NC	B	MC
Sec.83(1): Use of the child by militant groups or other adults	Rigorous Imprisonment which may extend to 7 years and fine Rs.5,00,000/- or with both	C	NB	MC
Sec.83(2): Any adult group using child for illegal activities	Rigorous Imprisonment which may extend to 7 years and fine Rs.5,00,000/- or with both	C	NB	MC
Sec.85: Offences committed against disabled children	Twice the prescribed punishment			

COGNIZABLE (C)/ NON COGNIZABLE (NC)
BAILABLE (B) /NON-BAILABLE(NB)
MAGISTRATE COURT (MC) /CHILDRENôS COURT (CC)

Sec.87: Abetment: If the offence abetted is committed, same punishment as provided for that offence.

NEWS

- Prosecution Replenish wishes Sri M.Bichappa, JD-Cum- DOP(HFAC), Telangana, a speedy recovery.
- Prosecution Replenish Congratulates Sri P.Ravinder Reddy, PP, MSJ Court, Hyderabad, for being assigned the in-charge of the post of JD-cum-DOP (FAC), Telangana, till further orders.
- Prosecution Replenish Wishes Sri G.Chinnaiah, DDOP, Medak, a very happy and healthy retired life.
- Delhi High Court in Indian Radiological And Imaging Association (IRIA) vs. Union of India, has issued certain guidelines on Preconception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (PNDT Act).Read more at: http://www.livelaw.in/all-places-including-vehicles-where-any-equipment-capable-of-determining-sex-of-the-foetus-are-using-require-registration-under-pndt-act-delhi-hc/

ON A LIGHTER VEIN

This is the true story of George Phillips of Meridian, Mississippi, who was going to bed when his wife told him that he'd left the light on in the shed. George opened the door to go turn off the light but saw there were people in the shed in the process of stealing things.

He immediately phoned the police, who asked, "Is someone in your house?" and George said, "No," and explained the situation. Then they explained that all patrols were busy, and that he should simply lock his door and an officer would be there when available.

George said, "Okay," hung up, counted to 30, and phoned the police again.

"Hello, I just called you a few seconds ago because there were people in my shed. Well, you don't have to worry about them now because I've just shot them all."

Then he hung up. Within five minutes three squad cars, an Armed Response unit, and an ambulance showed up. Of course, the police caught the burglars red-handed.

One of the policemen said to George, "I thought you said that you'd shot them!"

George said, "I thought you said there was nobody available!"

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PROSECUTION REPLENISH

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Life is 10% what happens to you and 90% how you react to it.

Charles R. Swindoll

CITATIONS

NEERU YADAV Vs STATE OF U.P AND ANOTHER 2016(1) ALT (Crl) 210 (SC) Bail to history sheeter – A history sheeter involved in heinous nature of crimes – not entitle to bail. The duty of the court to take into consideration certain factors – the nature of accusation, severity of punishment in case of conviction and the character of supporting evidence, reasonable apprehension of tampering with the witness or apprehension of threat to the complainant, and prima facie satisfaction of the Court in support of the charge which are to be kept in mind

INTERNATIONAL ADVANCED RESEARCH CENTRE FOR POWDER METALLURGY AND NEW MATERIALS (ARCI) & ORS. V/s NIMRA CERGLASS TECHNICS (P) LTD.& ANR. 2016(1) ALT (Crl) 233 (SC) The essential ingredients to attract Section 420 IPC are: (i) cheating; (ii) dishonest inducement to deliver property or to make, alter or destroy any valuable security or anything which is sealed or signed or is capable of being converted into a valuable security and (iii) mens rea of the accused at the time of making the inducement. The making of a false representation is one of the essential ingredients to constitute the offence of cheating under Section 420 IPC. In order to bring a case for the offence of cheating, it is not merely sufficient to prove that a false representation had been made, but, it is further necessary to prove that the representation was false to the knowledge of the accused and was made in order to deceive the complainant. **Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown at the beginning of the transaction.** It is settled legal proposition that criminal liability should not be imposed in disputes of civil nature.

Deepa @ Deep Chand & Anr vs State Of Haryana 2016(1) ALT (Crl) 245 (SC) Eye-witness account is found to be truthful – conviction may be upheld.

B.D. Khunte V/s Union of India & Ors 2016(1) ALT (Crl) 249 (SC) Sudden provocation Sec. 300(1) – To fall under exception to Sec. 300 the provocation must not only be grave but sudden as well. It is only where the following ingredients of Exception 1 are satisfied that an accused can claim mitigation of the offence committed by him from murder to culpable homicide not amounting to murder: (1) The deceased must have given provocation to the accused. (2) The provocation so given must have been grave. (3) The provocation given by the deceased must have been sudden. (4) The offender by reason of such grave and sudden provocation must have been deprived of his power of self-control; and (5) The offender must have killed the deceased or any other person by mistake or accident during the continuance of the deprivation of the power of selfcontrol.

Satyapal Singh Vs State of MP 2016(1) ALT (Crl) 278 (SC) Locus to file appeal –Father of the deceased has locus standi to prefer an appeal before High court under proviso 372 Cr.P.C. – He falls within the definition of Victim under Sec. 2 (wa) of Cr.P.C.

K. Rawindra Reddy Vs State of AP 2016(1) ALT (Crl) 241 (AP) Sec. 311 Cr.P.C and 91 (1) Cr.P.C. recall the documents which are already marked – petitions filed – the respondents objected that at the stage of arguments it is filed. The Hon'ble High court held that the object of 311 Cr.P.C. is that there may not be a failure of justice on account of mistake of either party in bringing valuable evidence on record or leaving ambiguity in the statements of the witnesses examined either side – the interest of all stake holders should be protected – Criminal revision allowed.

NANKAUNOO Vs STATE OF U.P 2016(1) ALD (Crl) 367 (SC) (FB) the gunshot injury was caused in the inner part of left thigh, the sufficiency of injury to cause death must be proved and cannot be inferred from the fact that death has taken place

Susanta Das & Ors. Vs State of Orissa (2016) 43 SCD 269= 2016(1) ALD (Crl) 372 (SC) we are convinced that the implication of all the five accused was perfectly justified and was supported by legal evidence as was spoken to by the relevant witnesses which was duly corroborated by the medical evidence. Therefore, mere non mentioning of two of the names in the F.I.R cannot be fatal to the case of the prosecution.- As far as the submission made on the ground that some of the weapons were not recovered, expert opinion relating to blood stain and the delay involved in forwarding the F.I.R to the Magistrate, non examination of the person who accompanied P.W.7, the hostility displayed by P.W.10, where all though sought to be relied upon heavily on behalf of the accused, we find that those facts do not materially affect the case of the prosecution.

Narender Kumar Vs State of NCT of Delhi 2016 (1) ALD (Crl) 388 (SC) It was contended that the identity of the deceased was not verified by the learned Metropolitan Magistrate PW-7. Insofar as the said stand is concerned, when we peruse the evidence of PW-7 the learned Magistrate, we find that he has stated that PW-12 Dr. Nayar identified the patient to him though he had not obtained the identification of the patient in writing from PW-12. That apart, in the initial part of the evidence he has narrated as to how PW-2 the Assistant Sub-Inspector of Police approached him to record the dying declaration of the deceased, that he was accompanied by PW-2 to the hospital, that he was taken to the patient thereafter, namely, the deceased Laxman Singh s/o of Huba Singh and after preliminary orientation and after satisfying himself that the patient was fully conscious and was capable of making the statement and making an endorsement vide PW-7/D and also after getting it endorsed it by PW-12 he proceeded to record exhibit PW-7/C, the dying declaration of the deceased- Having noted the above detailed statement made by PW-7 learned Metropolitan Magistrate, we have no doubt in our mind about the verification of the identity of the patient/deceased and, therefore, we do not find any substance in the said submission.
It was then contended that the dying declaration did not contain either the signature or thumb impression of the deceased which is in violation of the guidelines issued by the High Court of Delhi in regard to the recording of dying declaration. - When we consider the said submission, in the first place, it must be stated that it was only a guideline. The guidelines were issued by the High Court in order to ensure that any defect in regard to the identity of the deceased or the veracity of the contents of the dying declaration are not doubted on the ground that the concerned patient himself could not have made such a statement in order to implicate someone in the offence. The issuance of the guidelines is for the purpose of ensuring and for testing the genuineness of the dying declaration of person who is in the last moment of his life. Merely because there was a defect in following the said guideline, which, as is now pointed out, is of a trivial nature and if the dying declaration recorded is otherwise proved by ample evidence, both oral as well as documentary, on the ground of such trivial defects, the whole of the dying declaration cannot be thrown out.

Maya Devi and another Vs State of Haryana 2016(1) ALD (Crl) 395 (SC) To attract the provisions of Section 304B, one of the main ingredients of the offence which is required to be established is that "soon before her death" she was subjected to cruelty or harassment "for, or in connection with the demand for dowry". The expression "soon before her death" used in Section 304B IPC and Section 113B of the Evidence Act is present with the idea of proximity test. In fact, learned senior counsel appearing for the appellants submitted that there is no proximity for the alleged demand of dowry and harassment. With regard to the said claim, we shall advert to while considering the evidence led in by the prosecution. Though the language used is "soon before her death", no definite period has been enacted and the expression "soon before her death" has not been defined in both the enactments. Accordingly, the determination of the period which can come within the term "soon before her death" is to be determined by the courts, depending upon the facts and circumstances of each case. However, the said expression would normally imply that the interval should not be much between the cruelty or harassment concerned and the death in question. In other words, there must be existence of a proximate and live link between the effect of cruelty based on dowry demand and the death concerned. If the alleged incident of cruelty is remote in time and has become stale enough not to disturb the mental equilibrium of the woman concerned, it would be of no consequence.
Section 304B IPC does not categorise death as homicidal or suicidal or accidental. This is because death caused by burns can, in a given case, be homicidal or suicidal or accidental. Similarly, death caused by bodily injury can, in a given case, be homicidal or suicidal or accidental. Finally, any death occurring "otherwise than under normal circumstances" can, in a given case, be homicidal or suicidal or accidental. Therefore, if all the other ingredients of Section 304B IPC are fulfilled, any death (homicidal or suicidal or accidental) whether caused by burns or by bodily injury or occurring otherwise than under normal circumstances shall, as per the legislative mandate, be called a "dowry death" and the woman's husband or his relative "shall be deemed to have caused her death". The section clearly specifies what constitutes the offence of dowry death and also identifies the single offender or multiple offenders who has or have caused the dowry death.
The key words under Section 113B of the Evidence Act, 1872 are "shall presume" leaving no option with a court but to presume an accused brought before it of causing a dowry death guilty of the offence. However, the redeeming factor of this provision is that the presumption is rebuttable. Section 113B of the Act enables an accused to prove his innocence and places a reverse onus of proof on him or her.

State Of Rajasthan vs Prakash @ Gajendra http://indiankanoon.org/doc/193923512/ **= 2016 (1) ALD (Crl) 411 (SC)** it has been observed that a careful scrutiny of the entire evidence has been made but we find from the judgment that no such exercise has been done. Mere statement in the judgment to that effect is not enough. Evidence is not only required to be mentioned in the judgment but its evidentiary value has to be assessed carefully. No such exercise has been made.

STATE OF MAHARASHTRA Vs HEMANT KAWADU CHAURIWAL ETC. 2016 (1) ALD (Crl) 412 (SC) It is a settled law that dying declaration can be the sole basis of conviction and it does not require any corroboration. But it is equally true that dying declaration goes against the cardinal principle of law that

'evidence must be direct'. Thus, dying declaration must be judged and Page 6 6 appreciated in light of the surrounding circumstances and its weight determined by reference to the principle governing the weighing of evidence

M.Viswanathan Vs The State of Andhra Pradesh & others 2016 (1) ALD (Crl) 458 - We have also been observing that the Courts below unknowingly or without looking into the law laid down by the Supreme Court in case of repeat offenders grant orders of bail on merits. We observe that the Courts below while dealing with the applications for bail on merits of such offenders should look into the law laid down by the Supreme Court and also the judgments of this Court in G.Archana (2015 (2) ALD (Crl) 325 (FB) and B.Hima Bindu (W.P. No. 14706/2015 dt 14.10.2015). We further direct the Registrar (Judicial) to forward copies of this judgment along with the judgments in G.Archana and B.Hima Bindu to all Principal District Judges with direction to circulate it to all judges in their District dealing with Bail applications.

Manorama Tiwari and Ors. Vs. Surendra Nath Rai . (2016) 1 SCC (Cri) 437 = (2016) 1 SCC 594 = In our opinion, it is a clear case where Appellants were discharging their public duties, as they were performing surgery on the patient in the Government hospital. It is not disputed that the Appellants were the Medical Officers in the Government Hospital. As such, the criminal prosecution of the Appellants initiated by the Respondent (complainant) is not maintainable without the sanction from the State Government. That being so, we are inclined to allow this appeal.

AG Vs Shiv Kumar Yadav and Another (2016)(1) SCC (Crl) 510 = (2016) 2 SCC 402 = https://indiankanoon.org/doc/33982557/ [Uber Cab case] The trial court and the High Court held that the accused had appointed counsel of his choice. He was facing trial in other cases also. The earlier counsel were given due opportunity and had duly conducted cross-examination. They were under no handicap; The Court has to keep in mind not only the need for giving fair opportunity to the accused but also the need for ensuring that the victim of the crime is not unduly harassed; Mere change of counsel cannot be ground to recall the witnesses.

Paramasivan And others Vs. State (2016) 1 SCC (crl) 600 = (2015) 13 SCC 300. In cases of circumstantial evidence **proof of motive is material consideration and a strong circumstance**. PW1 has clearly expressed his doubts that accused nos. 1, 6 and 7 might have engaged men for abducting the deceased. Such doubts expressed in Ext.P1-Complaint is sufficient incriminating circumstance against the accused nos. 2 and 3. Credibility of PWs.1 and 2 cannot be doubted on the ground of **non-mention of name of accused no.2** in Ext.P1-Complaint.

NEWS

- Prosecution Replenish welcomes back Sri M.Bichappa, JD-Cum- DOP(HFAC), Telangana, after the speedy recovery from 1/4/2016.
- Prosecution Replenish wishes Sri G.Shiviah, DyDOP, Hyderabad, a very happy & Healthy retirement.

ON A LIGHTER VEIN

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PROSECUTION REPLENISH

An Endeavour for learning and excellence

Vol- V Part 5 Monthly Leaflet May, 2016

Good, better, best. Never let it rest. 'Til your good is better and your better is best.

St. Jerome

CITATIONS

Sheikh Sintha Madhar @ Jaffer @ ... vs State Rep.By Inspector Of Police https://indiankanoon.org/doc/98343207= (2016)4 PLRSC 68

It is clear from the evidence that there is no inordinate delay in conducting the TIP. As and when the accused were arrested, within reasonable time they were produced for the TIP. Also, there is no invariable rule that two accused persons cannot be made part of the same TIP. Joint TIP would thus, in no manner, affect the validity of the TIP. The purpose of a TIP is to ensure that the investigation is going on the right track and it is merely a corroborative evidence. The actual identification must be done in the Court and that is the substantive evidence. If the accused is already known to the witness, the TIP does not hold much value and it is the identification in the Court which is of utmost importance.

A conspiracy is always hatched in secrecy and it is very difficult to gather direct evidence for the proof of the same.

DALJIT SINGH GREWAL Vs.STATE OF PUNJAB & ORS. AIR 2016 SC 1260 = 2015 STPL(Web) 2251 SC The learned senior counsel on behalf of the appellant has rightly placed reliance on the case of Sukhdev Singh (supra), wherein this Court has lucidly laid down the law pertaining to communication of ACR. It was held that if the ACR of the officer concerned is to be used for the purpose of denying promotion, then all such ACRs were required to be communicated to him, to enable him to make a representation against his adverse entries made in the ACRs.

Awadesh Kumar Jha alais Akhilesh Kumar Jha and another Vs. State of Bihar 2016(1) SCC (Crl) 679 = 2016(3) SCC 8 -It is well settled principle of law that there can be no second FIR in the event of any further information being received by the investigating agency in respect of offence or the same occurrence or incident giving rise to one or more offences for which chargesheet has already been filed by the investigating agency. The recourse available with the investigating agency in the said situation is to conduct further investigation normally with the leave of the court as provided under sub-Section (8) to Section 173 of Cr.P.C.

State of Assam Vs. Ramen Dowarah 2016(1) SCC (Crl) 689 = 2016(3) SCC 19= (2016) 43 SCD 235 = 2016 STPL(Web) 27 SC = The age of the victim was mentioned in the FIR as 14 years. In the medical report, Doctor has recorded the age of the victim to be 14 years. In the postmortem report also age is mentioned as 15 years. However radiological examination evidence so as to ascertain the age of the deceased has not been adduced. Hence we refrain from upsetting the finding of the High Court that the prosecution has not been able to establish the age of the deceased.

Men may lie but the circumstances do not is cardinal principle of evalution of evidence. The circumstances, the oral evidence and dying declarations of the deceased unerringly pointed out that it was not a case of consensual sexual intercourse. The dying declarations have to be read together immediate conduct of victim takes it out to be a case of consensual sexual intercourse.

Accused has denied in toto the commission of offence in the statement recorded under section 313 Cr.P.C. Thus in view of the aforesaid evidence we have no hesitation in setting aside the finding of the High Court to the effect that it was a case of consensual sexual intercourse. We restore the finding recorded by the trial court.

Sudip kr. Sen @ Biltu vs. State of West Bengal & ors. (2016) 1 SCC (Crl) 695 = (2016) 3 SCC 26 Conviction based on a testimony of a single witness if reliable

(2016) 43 SCD 510 - Gyaneshwar Shyamal Vs. State of West Bengal As already stated their names are found mentioned with their residential village in the complaint which was lodged at the earliest point in time. PWs 2, 4 and 8 have testified about the participation of both the above accused in the occurrence and have identified them also. Nothing is put in the cross-examination of the prosecution witnesses either denying their presence or absence of any role played by them in the assembly. Not even a suggestion is made in this regard. It is also relevant to point out that these accused in their replies made under Section 313 Cr.P.C. have not denied their presence in the occurrence. On the other hand their presence in the occurrence place is established by the evidence available on record.

(2016) 43 SCD 447 - Sadhu Saran Singh Vs. State of U.P. In the event of contradictions between medical and ocular evidence, the ocular testimony of a witness will have greater evidentiary value vis-à-vis medical evidence and when medical evidence makes the oral testimony improbable, the same becomes a relevant factor in the process of evaluation of such evidence.
It is only when the contradiction between the two is so extreme that the medical evidence completely rules out all possibilities of the ocular evidence being true at all, that the ocular evidence is liable to be disbelieved."

Darshan Singh vs State Of Punjab (2016) 1 SCC (Crl) 702 = (2016) 3 SCC 37= (2016) 43 SCD 220 = https://indiankanoon.org/doc/180969929/ -The word alibi means "elsewhere". The plea of alibi is not one of the General Exceptions contained in Chapter IV of IPC. It is a rule of evidence recognized under Section 11 of the Evidence Act. However, plea of alibi taken by the defence is required to be proved only after prosecution has proved its case against the accused. In the present case said condition is fulfilled.

Krishan Chander vs State Of Delhi (2016) 1 SCC (Crl) 725 = (2016) 3 SCC 108 = https://indiankanoon.org/doc/199582897/= 2016 STPL(Web) 11 SC -Under Section 145 of the Evidence Act when it is intended to contradict the witness by his previous statement reduced into writing, the attention of such witness must be called to those parts of it which are to be used for the purpose of contradicting him, before the writing can be used. While recording the deposition of a witness, it becomes the duty of the trial court to ensure that the part of the police statement with which it is intended to contradict the witness is brought to the notice of the witness in his cross-examination. The attention of witness is drawn to that part and this must reflect in his cross-examination by reproducing it. If the witness admits the part intended to contradict him, it stands proved and there is no need to further proof of contradiction and it will be read while appreciating the evidence. If he denies having made that part of the statement, his attention must be drawn to that statement and must be mentioned in the deposition. By this process the contradiction is merely brought on record, but it is yet to be proved. Thereafter

when investigating officer is examined in the court, his attention should be drawn to the passage marked for the purpose of contradiction, it will then be proved in the deposition of the investigating officer who again by referring to the police statement will depose about the witness having made that statement. The process again involves referring to the police statement and culling out that part with which the maker of the statement was intended to be contradicted. 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 that is, by drawing attention to the parts intended for contradiction."

Pooja pal vs Union of India 2016 STPL(Web) 68 SC = (2016) 1 SCC (Crl) 743 = (2016) 3 SCC 135 = if the persons cited as eye-witnesses by the investigating agency retract from their version made before the police, then either they have been wrongly projected as eye-witnesses or they have for right or wrong reasons resiled from their earlier narration. In both the eventualities, in our opinion, the investigation has to be faulted as inefficient, incomplete and incautious with the inevitable consequence of failure of the prosecution in the case in hand. Such a fall out also spells a dismal failure of the state machinery as a pivotal stake holder in the process of justice dispensation to protect and assure the witnesses of their safety and security so to fearlessly testify the truth.

Nankaunoo Vs State of U.P. (2016) 1 SCC (Crl) 857 (FB) = (2016) 3 SCC 317 (FB) = (2016) 43 SCD 251

Intention is different from motive. It is the intention with which the act is done that makes a difference in arriving at a conclusion whether the offence is culpable homicide or murder. The third clause of Section 300 IPC consists of two parts. Under the first part it must be proved that there was an intention to inflict the injury that is present and under the second part it must be proved that the injury was sufficient in the ordinary course of nature to cause death.

The 'intention' and 'knowledge' of the accused are subjective and invisible states of mind and their existence has to be gathered from the circumstances, such as the weapon used, the ferocity of attack, multiplicity of injuries and all other surrounding circumstances. The framers of the Code designedly used the words 'intention' and 'knowledge' and it is accepted that the knowledge of the consequences which may result in doing an act is not the same thing as the intention that such consequences should ensue. Firstly, when an act is done by a person, it is presumed that he must have been aware that certain specified harmful consequences would or could follow. But that knowledge is bare awareness and not the same thing as intention that such consequences should ensue. As compared to 'knowledge', 'intention' requires something more than the mere foresight of the consequences, namely the purposeful doing of a thing to achieve a particular end.

In the light of unimpeachable oral evidence which is amply corroborated by the medical evidence, non-recovery of 'countrymade pistol' does not materially affect the case of the prosecution. In a case of this nature, any omission on the part of the investigating officer cannot go against the prosecution case. Story of the prosecution is to be examined dehors such omission by the investigating agency. Otherwise, it would shake the confidence of the people not merely in the law enforcing agency but also in the administration of justice.

Union of India Vs Mohanlal and another. (2016) 1 SCC (Crl) 864 = (2016) 3 SCC 379= (2016) 43 SCD 308- No sooner the seizure of any Narcotic Drugs and Psychotropic and

controlled Substances and Conveyances is effected, the same shall be forwarded to the officer in-charge of the nearest police station or to the officer empowered under Section 53 of the Act. The officer concerned shall then approach the Magistrate with an application under Section 52A(ii) of the Act, which shall be allowed by the Magistrate as soon as may be required under Sub- Section 3 of Section 52A, as discussed by us in the body of this judgment under the heading 'seizure and sampling'. The sampling shall be done under the supervision of the magistrate as discussed in paras 13 and 14 of this order.

Disciplinary proceedings and criminal proceedings operate in two different fields---Disciplinary action relates to employer losing trust and confidence on employee on account of alleged misconduct affecting image and reputation of employer---Criminal proceedings relate to committing of crime by a person who is in public employment, during course of his employment and in gross abuse of his position in the service---If employee indulges in acts of misconduct which also attract criminal prosecution, ordinarily employer not only initiates departmental action but also lodges complaint with police. Disciplinary proceedings and criminal proceedings operate in two different fields---Disciplinary action relates to employer losing trust and confidence on employee on account of alleged misconduct affecting image and reputation of employer---Criminal proceedings relate to committing of crime by a person who is in public employment, during course of his employment and in gross abuse of his position in the service---If employee indulges in acts of misconduct which also attract criminal prosecution, ordinarily employer not only initiates departmental action but also lodges complaint with police. **A.X. Edwin Vs. State Bank of Hyderabad, rep. by its Managing Director & Others 2016 0 Supreme(AP) 29**

Sections 376/511 – Attempt to commit rape –No house wife will lodge complaint to police without consulting her family members – Possibility of lodging of complaint after arriving at consensus with family members is quite natural and probable – Delay in lodging complaint by itself is not a valid ground to vitiate case of prosecution-**Kaadashi Mallesh Vs. State of A.P. 2016 0 Supreme(AP) 47**

Falsification of document---There is a fundamental difference between a person executing a sale deed claiming that property conveyed is his property and a person executing a sale deed by impersonating owner or falsely claiming to be authorised or empowered by owner, to execute deed on owner's behalf---When a document is executed by a person claiming a property which is not his, he is not claiming that he is someone else nor is he claiming that he is authorised by someone else---Execution of such document (purporting to convey some property of which he is not the owner) is not execution of a false document as defined under Section 464 of Code---If what is executed is not a false document, there is no forgery---If there is no forgery, then neither Section 467 nor Section 471 of Code are attracted. **M. Srinivasulu Reddy & Another Vs. The Station House Officer, Vijayawada & Others 2016 0 Supreme(AP) 45**

Indian Stamp Act, 1899 – Sections 36 and 61 – Matter regarding admissibility of improperly stamped document does not become final on receiving said document in evidence – Original Court on its own or at instance of objector or by appellate or revisional Court can review decision of admissibility of such document – Objector can raise objection with regard to admissibility of a document on ground that it has been not duly registered despite fact that said document has already been exhibited and admitted in evidence. **2016 0 Supreme(AP) 53 M/s.**

Srinivasa Builders, Rep. by its Managing Director V.Nagi Reddy Vs. A. Janga Reddy (Died) rep. by LRs.

The victim has not walked into a hospital on her own. She was brought to the hospital by some third parties. At the time of admission of a patient, who has suffered extensive burn injuries, one is bound to inform as to the cause of the burns and therefore, it is but only expected that the third party would have intimated the burns to have been suffered accidentally and they are under no legal obligation to disclose as to who has caused the burns. No one will be willingly committing himself to a medico legal case. Further, if one is not an eye witness to the incident, he would be assuming that the burns may not have been caused deliberately, but could be the result of an accident. Therefore, Ex.P11, the police intimation sent up by the duty doctor at 03.00 p.m., as soon as he admitted the deceased in the hospital, has only referred that a patient, who has suffered burn injuries accidentally, has been admitted to the hospital at 02.00 p.m., on 19.02.2007. Ex.P11 has clearly brought out that some third party, who is a relative of the victim, has brought her to the hospital. In these circumstances, the alleged contradiction, which the learned counsel for the appellants has sought to stress upon, based upon the statement made by P.W.7 during the course of cross-examination, would not lend the necessary support nor would it leave any scope to suspect even remotely the contents of the dying declaration made by her. **Pathan Kareemulla & others Vs. The State of Andhra Pradesh.2016(1)ALD (Crl) 537= https://indiankanoon.org/doc/95370303/= LAWS(APH)-2015-8-35**

the de facto complainant is not entitled to the concession of claiming as still a member of the Scheduled Caste for the benefit of Act 33 of 1989 as Section 3 sub-section (1) on wording is whoever not being a member of Scheduled Caste or Scheduled Tribe, particularly sub sections 9 and 10 uses the word a member of Scheduled Castes or a Scheduled Tribe, to mean he must continue as on the date of alleged occurrence as a member of the Scheduled Caste or Scheduled Tribe. Once he is ceased to be a member of Scheduled Caste or Scheduled Tribe by conversion into Christianity from the words discussed particularly from the Order, 1950 amended by Act 63 of 1956 and later by Act 15 of 1990 and covered by the Three-Judge Benchs well considered expression in Soosais case that was not even referred to the conclusion in another Three-Judge Bench expression in Chandra Mohanans case, the de facto complainant for no longer continues as a member of Scheduled Caste from the facts supra and when not entitled to the benefit of Section 3 of the Act, the prosecution invoking Section 3(1)(x) of the Act is unsustainable and the cognizance taken as PR.C. is unsustainable and liable to be quashed. **Chinni Appa Rao S/o.Simhachalam, Vs. State of A.P. 2016 (1) ALD (Crl) 545 =** LAWS(APH)-2015-12-22 =

It is well accepted in criminal jurisprudence that F.I.R. may not contain all the details of the occurrence or even the names of all the accused. It is not expected to be an encyclopedia even of facts already known. There are varities of crimes and by their very nature, details of some crimes can be unfolded only by a detailed and expert investigation. This is more true in crimes involving conspiracy, economic offences or cases not founded on eye witness accounts. The fact that Police chose not to send up a suspect to face trial does not affect power of the trial court under Section 319 of the Cr.P.C. to summon such a person on account of evidence recorded during trial. **HARDEI Vs. STATE OF U.P. 2016 (2) Crimes 7 (SC)**

NEWS

- G.O.RT.No. 245 **HOME (COURTS.A) DEPARTMENT** Dated: 13-04-2016- Public Services – Prosecuting Officers- State of A.P.- Retirements during the year 2016–Notification – Orders – Issued.

Sl.No.	Name and Designation	Date of Birth	Date of Retirement
(1)	S/Sri (2)	(3)	(4)
1	G.Mallikarjuna Rao, Joint Director of Prosecutions, O/o Director of Prosecutions, Andhra Pradesh, Hyderabad.	09.06.1956	30.06.2016
2	C.C.Subramanyam, Joint Director of Prosecutions, O/o Director of Prosecutions, Andhra Pradesh, Hyderabad.	03.07.1956	31.07.2016
3	P.C. Rajendra Kumar, Addl. Public Prosecutor Grade-I, III Addl. Sessions Court, Tirupathi, Chittoor District.	03.08.1956	31.08.2016

- The Repealing and Amendment Act, 2016 is available under Gazette Section.
- The notification regarding the provisions of SC & ST (POA) Act, 2015 coming into force is available in the gazette section of our website.

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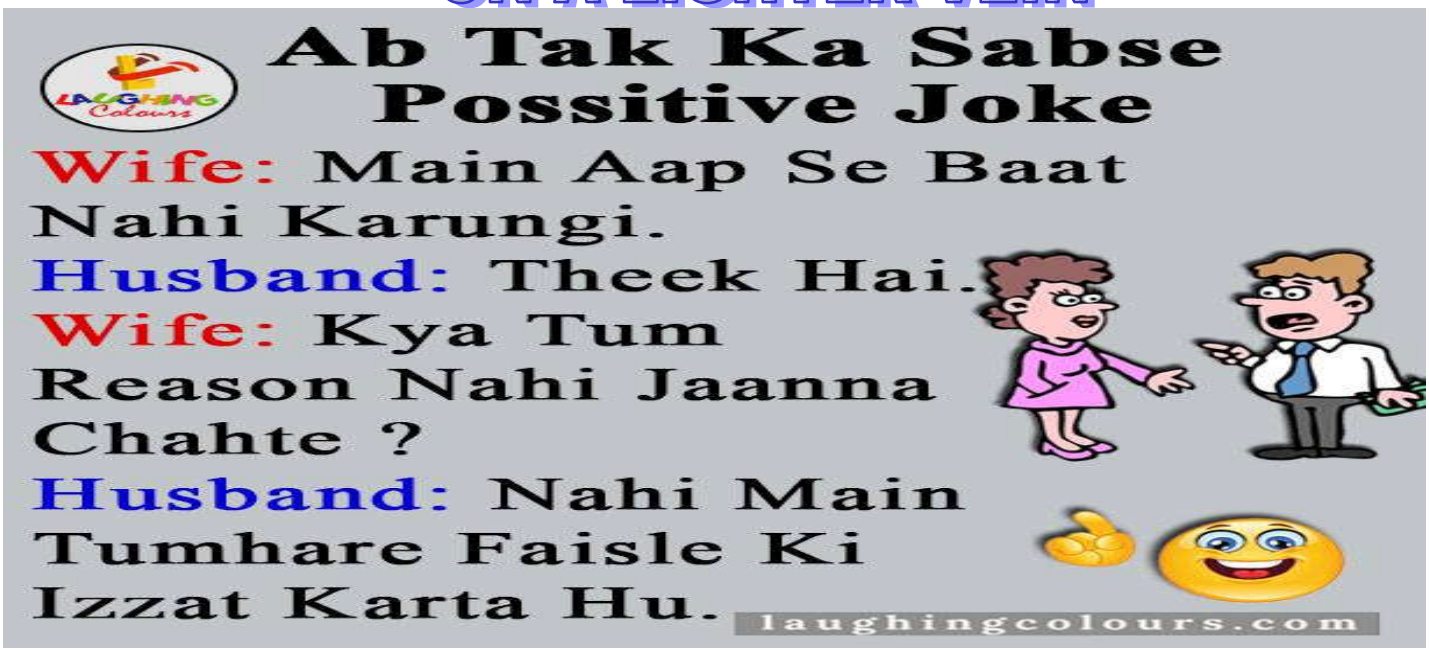

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People will always throw stones in your path..!!
It depends on U ..!!
What u make from it..!!
A WALL of difficulties ..!!
Or
A BRIDGE of success.

.. Anonymous

CITATIONS

[2016] 0 SUPREME(SC) 342 STATE OF HIMACHAL PRADESH VS RAJIV JASSI

(a) Criminal trial – Circumstantial evidence – Trial court convicting respondent on proper appreciation of evidence – Circumstances found established by trial court – Unnecessary doubted and brushed aside lightly by High Court – Brushing aside medical evidence of forcible poisoning. (Para 14)

(b) Indian Penal Code, 1860 – Section 302 – Medical evidence establishing forced poisoning – A number of injuries on body of deceased – Accused alone in the room with deceased – Not explaining the injuries – Section 106, Indian Evidence Act, 1872 – Conviction by trial court justified. (Para 15,AIR 1960 SC 7; 1995 Supp (2) SCC 187; AIR 2010 SC 2352 – Relied upon

(c) Indian Penal Code, 1860 – Section 302 – Trial court convicting respondent u/s 302 – High Court wrongly holding that as the trial court did not convict respondent u/s 498A and 304B, it could not be said that the deceased was being ill-treated or harassed with cruelty on account of dowry although his cruelty fully established by evidence – Further, despite being aware of precarious condition of deceased respondent did not open the door for the neighbours and intentionally delayed taking the victim to the hospital – High Court also discarding evidence of independent witness – Acquittal by High Court not justified. (Para 16, 17, 19) AIR 1984 SC 1622 – Relied upon

(d) Indian Penal Code, 1860 – Section 302 – Trial court awarding life imprisonment – Accused had kicked womb of deceased who was 8 months pregnant – Foetus recovered from womb – That child, now 17 years old and residing with accused – Plea for leniency – No ground for showing leniency. (Para 22)

2016] 0 SUPREME(SC) 351 MUDDASANI VENKATA NARSAIAH (D) TH. LRS. VS MUDDASANI SAROJANA

Practice and Procedure – Cross examination – Not only a matter of procedure but that of substance – Non cross-examination of a witness – Effect – Not disputing statement of the witness – If a witness is not cross-examined his statement will be deemed to have been accepted. (Para 16) AIR 1963 SC 1906 – Relied upon

[2016] 0 SUPREME(SC) 312 MOHAMMAD SADIQUE VS DARBARA SINGH GURU

(a) Caste – A person can change his religion and faith but not the caste – Appellant, son of Muslim parents, originally member of doom community, embracing Sikhism and

accepted by the Sikh community – 'Doom' Caste certificate issued to him – Doom is a scheduled caste in Punjab – Certificate not cancelled – Filing nomination five years after embracing Sikhism and making required declarations – Caste certificate accepted by Returning officer – Appellant not changing his name even after embracing Sikhism – Reasons explained – Impugned judgment not sustainable – Section 116A, Representation of the People Act, 1951. (Para 22) (1976) 3 SCC 411; (1984) 2 SCC 112; (1984) 2 SCC 91; (2015) 4 SCC 1 – Relied upon

(b) Caste and religion – Not essential to change name after changing religion – Change of name only a corroborating factor – Also not necessary that entire family of a person should convert or reconvert to the religion to which he has gone – Appellant not only followed Sikh traditions, he never offered Namaz, nor observed Roza nor went to Haj – Even the respondent not raising any objection at the time of filing of nomination papers – High Court erred in law in upsetting his election – Section 116A, Representation of the People Act, 1951. (Para 23, 24)

2016] 0 SUPREME(SC) 354 NORTHERN MINERALS LTD. VS RAJASTHAN GOVT.

Insofar as the contention of the learned counsel for the respondents in distinguishing the right of the person from whom the sample was taken, as mandated under Section 24(3) is concerned, we need only refer to sub-Section (4) of Section 24 of the Act which extends the above right, even to the complainant and the accused. Read harmoniously, therefore, we have no hesitation to conclude, that insofar as the person from whom the sample was taken, the right to raise an objection is circumscribed by requiring him to indicate his intention to do so within 28 days of the receipt of the copy of the report. There is however no such limitation of time placed by the legislature on the complainant and/or the other accused proceeded against. In the above view of the matter, insofar as the present appeal is concerned, we find, that a vital right vested in the appellants/accused to get the sample re-tested (from the Central Insecticides Laboratory), to controvert the report of analysis of the sample obtained by the Insecticide Inspector, stood frustrated. The appellants have lost the right to disprove their guilt. The appellants cannot be proceeded against, when they have, for no fault of their own, lost a vital right of defence. We are satisfied to conclude, that under sub-Section (4) of Section 24 of the Act, an accused other than a person from whom the sample is taken, also has a right to adduce evidence in controversion of the Insecticide Analysit's Report, and in case the accused avail of the above right under sub-Section (4) of Section 24, he must bear the expenses of the test or analysis, to be made by the Central Insecticides Laboratory (under sub-Section 5 of Section 24)

[2016] 0 SUPREME(SC) 305 HARIJAN BHALA TEJA VS STATE OF GUJARAT

(a) Code of Criminal Procedure, 1973 – Section 378 – Judgment of acquittal – Can be interfered with if perverse and not supported by evidence on record. (Para 12)

(b) Indian Evidence Act, 1872, Section 106 – Appellant's wife dying homicidal death – Appellant staying alone with his wife – It was for the appellant to explain the death. (Para 19)

(c) Criminal trial – Appellant burying his wife's body in a hurry – Wife dying homicidal death – Medical evidence proving death due to strangulation – High Court rightly convicting appellant u/s 302 IPC. (Para 15, 16, 21) (2002) 4 SCC 308 – Relied upon

(d) Administration of justice – When two views are possible and the trial court takes one possible view, it cannot be interfered – Instantly view taken by trial court is not a possible view – High Court rightly interfered. (Para 22)

[2016] 0 SUPREME(SC) 325 DEVINDER SINGH VS STATE OF PUNJAB THROUGH CBI

(a) Code of Criminal Procedure, 1973 – Section 197 – Protection to public servant – Sanction – Grant of – Principles culled out – If act or omission is done in discharge of duty, official nature of the duty should be liberally and widely construed – In case of criminal activity section 197 should be construed narrowly and in a restricted manner – If there is reasonable nexus between the act done and official duty, public servant will be entitled to the protection – Necessity of sanction has to be decided by competent authority and sanction has to be issued on the basis of sound objective assessment – Question of sanction can be raised at any stage: at the time of cognizance or at the time of framing of charge and it can be decided prima facie on the basis of accusation – It can be decided afresh in light of evidence adduced even after conclusion of trial or at the appellate stage – Question of good faith or bad faith may be decided on conclusion of trial. (Para 37)

[2016] 0 SUPREME(SC) 337 STATE OF M.P. VS RAJVEER SINGH

Code of Criminal Procedure, 1973 – Section 482 – High Court quashing the FIR which was registered after a direction issued by the High Court itself – High Court not considering that the FIR was registered for offence under section 307/34 IPC which was cognizable and not liable to be compromised – Crime against society cannot be wiped by compromise – Further investigation in the matter was required – Quashing the FIR was not proper. (Para 5, 7, 8) 2013(14) SCALE 235 – Relied upon 2012 Cr.L.R. (SC) 69 – Distinguished

[2016] 0 SUPREME(SC) 300 CHAMAN VS STATE OF UTTRAKHAND

(d) Criminal trial – Standard of proof – Beyond reasonable doubt – Only a guideline, not a fetish – Guilty cannot get away only because offence not established beyond reasonable doubt – Caution against exaggerated devotion to the rule of benefit of doubt – Reasonableness of doubt must be commensurate to the nature of the offence to be investigated. (Para 31) (1978) 4 SCC 161; (1990) 1 SCC 445 – Relied upon

2016(1) ALD (Crl) 716 Elvis Stephenson Vs Jerusalem Mathai and another.

(2016) 2 SCC (Crl) 110 = (2016) 3 SCC 370 Usmangani Adambhai Vahora Vs State of Gujarat.

Recusal by Judge- Duties and conduct of judge - Advocate's Role- Prosecutor making mention on behalf of accused is no offence.

2016(1) ALD (Crl) 810 (SC) Anant Prakash Sinha @ Anant Sinha Vs State of Haryana

Defacto complainant can file an application for alteration of charges.

2016(1) ALD (Crl) 822 (SC) = (2016) 4 SCC 357 **Sadhu Saran Singh Vs State of U.P. and others**

As far as the non-examination of any other independent witness is concerned, there is no doubt that the prosecution has not been able to produce any independent witness. But, the prosecution case cannot be doubted on this ground alone. In these days, civilized people are generally insensitive to come forward to give any statement in respect of any criminal offence. Unless it is inevitable, people normally keep away from the Court as they feel it distressing and stressful. Though this kind of human behaviour is indeed unfortunate, but it is a normal phenomena. We cannot ignore this handicap of the investigating agency in discharging their duty. We cannot derail the entire case on the mere ground of absence of independent witness as long as the evidence of the eyewitness, though interested, is trustworthy

State of Maharashtra v. Brijlal Sadasukh Modani, (2016) 4 SCC 417 = 2016(1) ALD (Crl) 799

Issue that whether General Manager of a multi-State cooperative bank, is a public servant, is to be determined by resort to S. 2(c)(ix) which specifically deals with this issue. It is not necessary to apply definition of “State” under Art. 12 of Constitution, to society concerned. Hence, registered cooperative society, needs to have received some or even a “sprinkling” of financial aid from Government or other authorities for its employees to qualify as “public servant” under 1988 Act, which is a matter to be determined at trial and not under S. 482 CrPC. Furthermore, meaning of “any aid” under S. 2(c)(ix) needs to be purposively construed as the concept in entirety has to be understood in the backdrop of corruption.

Prem Sagar Manocha v. State (NCT of Delhi), (2016) 4 SCC 571

Merely because an expert has tendered an opinion while also furnishing the basis of the opinion and that too without being conclusive and definite, it cannot be said that he has committed perjury so as to help somebody. And, mere rejection of the expert evidence by itself may not also warrant initiation of proceedings under Section 340 CrPC.

State of M.P. v. Udaibhan, (2016) 4 SCC 116 = 2016(1) ALD (Crl) 820 (SC)

Undue leniency in awarding sentence should be avoided as it does not have necessary effect of being a deterrent for accused and does not reassure society that offender was properly dealt with. It is court’s duty to ensure justice to both parties.

Union of India v. Saleena, (2016) 3 SCC 437 = (2016) 2 SCC (Crl) 117

Manner in which said orders should comply with Art. 22. Detention order and its grounds have to be communicated at the earliest as mandated under Art. 22(5). However, in case a representation is made against detention order and Advisory

Board/competent authority rejects said representation, Board/competent authority is not required to communicate grounds of said rejection to detenu.

Union of India v. Mohanlal, (2016) 3 SCC 379

Directions issued for protection of seized narcotics/contraband against theft, substitution and pilferage.

Bobbili Ramakrishna Raja Yadav v. State of A.P., (2016) 3 SCC 309

If the dowry amount or articles of married woman was placed in the custody of her husband or in-laws, they would be deemed to be trustees of the same. The person receiving dowry articles or the person who is in dominion over the same, as per Section 6 of the Dowry Prohibition Act, is bound to return the same within three months after the date of marriage to the woman in connection with whose marriage it is given. If he does not do so, he will be guilty of a dowry offence under this section. The section further lays down that even after his conviction he must return the dowry to the woman within the time stipulated in the order.

Gulzari Lal v/s State of Haryana; 2016 (2) ALT (Crl) 1 (SC)

Validity of Dying declaration – without obtaining certificate of fitness of the declarant by a medical officer –can be recorded.

Mukesh V/s State of Chatthisgarh ; 2016 (2) ALT (Crl) 6 (SC)

Sole testimony of the witness is sufficient even to the absence of corroborative evidence to establish the commission of rape.

Sadhu Saran Singh V/s State of Utharapradesh; 2016 (2) ALT (Crl) 14 (SC)

Non-Examination of injured witness – is not fatal to the case of prosecution –cannot be doubted on the ground of Non-Examination of any independent witness.

Ram Saran Varshney V/s State of Uthara Pradesh ; 2016 (2) ALT (Crl) 27 (SC)

498-A, 506 IPC & Sec. 3 and 4 of Dowry Prohibition Act – Appellant No. 4, 5 and 6 are sisters of appellant No.1 – married and living independently & not residing with the appellant No. 1 to 3 – R2(wife) not alleged specific allegation against appellant No. 4 to 6 – their visit on two occasions cannot be treated as harassment and proceedings against sister in law not justified – quashed.

Tekan @ Tekram V/s State of Madhya Pradesh (Now Chattisgarh) ; 2016 (2) ALT (Crl) 36 (SC)

All the states and Union Territories shall make endeavour to formulate a uniform scheme for providing victim compensation in respect of rape/ physical exploitation with the physically handicapped women as required under law after taking into consideration scheme framed by GOA for rape victim compensation.

Baldev V/s State of Haryana ; 2016 (2) ALT (Crl) 54 (SC)

NDPS Act Sec. 15 and 35 – only witness examined for the prosecution is ASI (Police however not IO) – No mandatory rule that IO should be examined – search held in midnight – conviction can be based on sole testimony of ASI – No proposition of law that evidence of police official, unless supported by independent evidence is untrustworthy of acceptance.

Yoginder Garg & others V/s Govt. Of AP Rep. By Prl. Secretary, Home and others ; 2016 (2) ALT (Crl) 12 (AP)

Criminal Procedure Code – Sec. 173 (1) and 173 (8) – Police are empowered to further investigate a crime if fresh information comes to light – Decision to initiate further investigation lies within the discretion of police.

Further, in the opinion of this court, a narrow and pedantic view curtailing the power of the Magistrate to direct further investigation, even if he / she is of the opinion that the same is necessary to further the ends of justice, would be retrograde and counter-productive. It would indeed be anomalous to say that the police have such power but despite having supervisory authority over the police under Sec.156 (3) Cr.P.C. the magistrate has no such discretion to direct further investigation in a fitting case! Taking it a step further, once the Magistrate is vested with such power, there is no embargo envisaged in law that prevents the *defacto complainant* from invoking that power by filing an appropriate petition. Trite to state, the *suo motu* power vesting in a court or authority can always be set in motion upon a complaint or petition by an affected party.

N. Aravind Kumar V/s State of AP: 2016 (2) ALT (Crl) 53 (AP)

The Magistrate is now in the picture at all stages of the police investigation but he is not authorised to interfere with the actual investigation or to direct the police how that investigation is to be conducted.

Thus, within the prerogative when the investigating officer want to investigate further either to array the entity which was not originally needless to say while taking cognizance by the time the accused entity arrayed in the offence by subsequent and further investigation if there is a bar of limitation for not to take cognizance that is a different thing within the prerogative of the court with reference to factual matrix not to take cognizance or the like. But premature to decide or to control when the investigating agency want to investigate further against the entity or even to show the entity by whom to represent within the area of limited further investigation by intimating the fact to the court practically though it is the application filed in the form of leave, no leave is contemplated for the right of the police to further investigate but for at best to treat the same as an intimation. The learned Magistrate failed to consider the scope in dismissing the petition that was rightly interfered by the lower Revisional court by setting aside and there is nothing to interfere.

Gunja Yesu and another V/s State of Telangana. Rep. By PP, High Court; 2016 (2) ALT (Crl) 64 (AP)

Cr.P.C. Sec. 427 and 482 – If the convict prisoners have to spend the remainder of their life spans in jail , there can be no question of their serving the sentences in

calendar cases consecutively as the sentences in calendar cases cannot be carried out after convicts serving the life sentences – When a person already for a term or imprisonment for life, the subsequent sentence shall run concurrently with such previous sentence.

Kukkala Siva Krishna @ Siva V/s Kukkala Kalyani and another; 2016 (2) ALT (Crl) 68 (AP)

Inherent powers – compounding of offences – Inherent powers under Sec. 482 Cr.P.C. or 151 CPC can be invoked only when there is no provision contrary to the order that the court proposes to pass – If there is a specific prohibition regarding a particular procedure, Sec.482 Cr.P.C. may not be invoked.

When there is a specific prohibition to compound the offences other than those mentioned in Sec. 320(1) and 320(2) of Cr.P.C. such offences cannot be compounded.

NEWS

- **Prosecution Replenish wishes Sri M. Bichappa Garu, DOP (FAC) Telangana, a very happy and healthy retired life.**
- **Prosecution Replenish wishes Sri Mallikarjuna Rao Garu, JD, A.P., a very happy and healthy retired life.**
- The Anti Hijacking act; THE AADHAAR (TARGETED DELIVERY OF FINANCIAL AND OTHER SUBSIDIES, BENEFITS AND SERVICES) ACT, 2016; Bureau of Indian Standards act, 2016 and The repealing and amendment act, 2016.
- Rules – The Special Rules for Andhra Pradesh State Prosecution Service, 1992 - Adaptation to the State of Telangana – Notification - Orders - Issued vide G.O.MS.No. 110 HOME (LEGAL) DEPARTMENT Dated: 31-05-2016.

ON A LIGHTER VEIN

A boss was telling an applicant the two main rules of the company..
He said,
"Our 2nd main rule is cleanliness. Did you wipe your feet on the mat before coming in?"
The applicant replied, "Yes sir! I did."
Then the boss said," Our 1st main rule is trustworthiness.
There was no mat!"

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PROSECUTION REPLENISH

An Endeavour for learning and excellence

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Keep your eyes on the stars, and your feet on the ground.
Theodore Roosevelt

CITATIONS

Sheikh Sintha Madhar @ Jaffer @ Sintha etc. Vs. State represented by Inspector of Police 2016 (1) ALD (Crl) 903 (SC)

- The fact that PW1 was not named in the inquest report is of no consequence as the inquest report relates to the cause of death and not the witnesses' account of the incident.
- The first informant though had not named PW1 in the complaint such omission is not fatal in the face of otherwise cogent and convincing evidence of PW1, corroborated by PW65.
- The other three eyewitnesses: PW2, PW3 and PW5 turned hostile during the trial and did not support the prosecution case at all, but that does not affect the statements of PW1 and PW65.
- PW1's statement cannot be rejected only on the ground that she is an interested witness as she has been particularly corroborated by PW65's testimony.
- the distance and brightness of the place of incident from where PW1 witnessed it was possible for her to see the assailants at night from a distance of about 100 feet.
- The next question is regarding the weapon of murder not conforming to the post-mortem report opinion. The post-mortem report states that most of the wounds are deep cut wounds but the same can be caused by a knife. To this extent, the statement of PW1 is corroborated by the medical examination.
- It is clear from the evidence that there is no inordinate delay in conducting the TIP. As and when the accused were arrested, within reasonable time they were produced for the TIP.
- Also, there is no invariable rule that two accused persons cannot be made part of the same TIP. Joint TIP would thus, in no manner, affect the validity of the TIP. The purpose of a TIP is to ensure that the investigation is going on the right track and it is merely a corroborative evidence. The actual identification must be done in the Court and that is the substantive evidence. If the accused is already known to the witness, the TIP does not hold much value and it is the identification in the Court which is of utmost importance. PW1 identified all the seven accused appellants in the Court as well as in the TIP.

Chaman and another Vs. State of Uttrakhand. 2016(1) ALD (Crl) 913 (SC) =2016(2) Crimes 134 (SC)

- Though the FIR was written by one H.S. Verma, his non-examination as well is of no adverse bearing on the prosecution case.
- It is patent from the evidence of the doctor conducting the post- mortem examination that the cause of death is asphyxia. PW6 - Dr. A.K. Kaul has indicated as well in his statement on oath that the bronchial tube of the deceased was broken. Having regard to the decomposed state of the dead body, at the time when the post-mortem was conducted, the absence of visible

injury on the body per se does not militate against the otherwise unambiguous medical opinion that the death was due to asphyxia.

- Proof beyond reasonable doubt, as has been held in a plethora of decisions of this Court, is only a guideline and not a fetish and that someone, who is guilty, cannot get away with impunity only because truth may suffer some infirmity when projected through human processes as has been observed in Inder Singh and another vs. The State (Delhi Administration) (1978)4SCC161. A caveat against exaggerated devotion to the rule of benefit of doubt to nurture fanciful doubts or lingering suspicion so as to destroy social defence has been sounded by this Court in Gurbachan Singh vs. Satpal Singh and others (1990)1SCC 445. It has been propounded that reasonable doubt is simply that degree of doubt which would permit a reasonable and a just man to come to a conclusion. It has been underlined therein that reasonableness of doubt must be commensurate to the nature of the offence to be investigated.

Harijan Bhala Teja Vs. State of Gujarat 2016(1) ALD (Crl) 931 (SC)

- Modi's Medical Jurisprudence and Toxicology on strangulation explains that strangulation can be defined as the compression of the neck by a force other than hanging. Ligature strangulation is a violent form of death, which results from constricting the neck by means of a ligature or by any other means without suspending the body. On internal injuries Modi's Medical Jurisprudence says that it should be noted that the hyoid bone and superior cornuae of the thyroid cartilage are not, as a rule, fractured by any other means other than by strangulation.
- We have also examined the matter as to whether two views were possible in the present case from the evidence on record. The trial court, in our opinion, has taken a view which was not possible from the evidence on record. The trial court has unnecessarily emphasized on the point that there is no direct evidence to connect the accused with the crime. In the facts and circumstances of the case, there was no possibility of direct evidence to be on the record.

M/S. Gaba Pharmaceuticals (P) Ltd, Hyderabad, Telangana and others vs Union Of India and another. 2016(1) ALD (Crl) 980.

- it is a fit case to remit the matter back to the learned Sessions Judge for further hearing and pass an order as to the case whether comes under Section 27(a) orSection 27(c) or both for retaining by him as a Special Court being Court of Sessions from the committal made and cognizance under Section 193 Cr.P.C. taken, if not and if comes underSection 27(b) or 27(d) or both, to send back to the magistrate within his power under Section 228Cr.P.C. while framing charge as triable by magistrate under Section 228(1)(a) Cr.P.C.

Kummari Lakshmaiah (Angadi) and others Vs State of A.P. and another. 2016 (1) ALD (Crl) 987.

- T.T.Antony and Upkar Singh(supra), however not referred Vinay Tyagi(supra) and stated that the declaration of law in T.T.Antony(supra) has not been diluted in any subsequent judgments of the Apex Court, even though exceptions have been carved out as held in Amitbhai Anil Chandra Shah Vs. C.B.I. [2013(3) SCJ 595] -it was summed up in twelve points as to cases where the rule against registration of two F.I.Rs. for the same occurrence/incident, will not apply viz.
- (i). in case the FIRs are not in respect of the same cognizable offence or the same occurrence giving rise to one or more cognizable offences nor are they alleged to have been committed in the course of the same transaction or the same occurrence as the one alleged in the first FIR. (Rameshchandra Nandlal Parikh v. State of Gujarat (2006) 1 SCC 732).
- (ii). where the incident is separate and the offences are similar or different, or where the subsequent crime is of such magnitude that it does not fall within the ambit and scope of the FIR recorded first. (Anju Chaudhary v. State of Uttar Pradesh: (2013) Cri.L.J. 776 (SC).
- (iii). Where several distinct offences/incidents have been reported. In such a case the investigating agency should issue separate FIRs under Section 154(1) Cr.P.C. (M/s. Jagathi Publications Ltd. Rep. by Y. Eshwara Prasad Reddy v. Central Bureau of Investigation: 2012(2) ALD (Cri) 762).
- (iv). to cryptic, anonymous or oral messages which do not clearly specify a cognizable offence and cannot be treated as an FIR. No exception can be taken if, upon receipt of proper information, another detailed FIR is recorded, and the detailed FIR is treated as the FIR. (Tapinder Singh v. State of Punjab (1970) 2 SCC 113; Vikram v. State of Maharashtra (2007) 12 SCC 332).
- (v). Where, for an earlier period, there was an FIR which was duly investigated into and culminated in a final report which was accepted by a Competent Court. (M. Krishna v. State of Karnataka ((1999) 3 SCC 247: AIR 1999 SC 1765).
- (vi). Where the earlier complaint was decided on insufficient material or was passed without understanding the nature of the complaint, or where complete facts could not be placed before the court and the applicant came to know of certain facts after the disposal of the first complaint. In such cases the test of full consideration of the complaints on merits must be applied. (Shiv Shankar Singh v. State of Bihar [(2012) 1 SCC 130).
- (vii). in cases where there are different versions, they are in respect of two different incidents/crimes, and when new discovery is made on factual foundations. Discoveries may be made by the police authorities at a subsequent stage and can also surface in another proceeding. (Nirmal Singh Kahlon v. State of Punjab: (2009) 1 SCC 441; Babubhai v. State of Gujarat : (2010) 12 SCC 254).

- (viii). even in cases where the first complaint is registered and investigation initiated, it is possible to file a further complaint based on the material gathered during the course of investigation. (Upkar Singh v. Ved Prakash ((2004) 13 SCC 292 : AIR 2004 SC 4320; Ram Lal Narang v. State (Delhi Administration) (1979 CriLJ 1346) : (1979) 2 SCC 322).
- (ix). Where two FIRs are lodged in respect of the same incident having materially different allegations of commission of different cognizable offences. (T.T. Antony v. State of Kerala (2001 CriLJ 3329 : (2001) 6 SCC 181; Upkar Singh v. Ved Prakash ((2004) 13 SCC 292 : AIR 2004 SC 4320).
- (x). to a counter claim by the accused in the first complaint, or on his behalf, alleging a different version of the said incident. In case there are rival versions in respect of the same episode, it would be treated as two different FIRs and investigation can be carried under both of them by the same investigating agency. (Upkar Singh v. Ved Prakash (2004) 13 SCC 292; Kari Choudhary v. Most.Sita Devi: (2002) 1 SCC 714 : AIR 2002 SC 441); Ashok Kumar Tiwari v. State of U.P (2008 CriLJ 4668 (Allahabad High Court)).
- (xi). where the FIRs are regarding independent and distinct offences, registration of a subsequent FIR cannot be prohibited on the ground that some other FIR had been filed against the petitioner in respect of other allegations made against him. (Rameshchandra Nandlal Parikh v. State of Gujarat, (2006) 1 SCC 732).
- (xii). in cases where the same group of people commit offences in a similar manner in different localities falling under different jurisdictions. Even if these incidents are committed in close proximity of time, there can be separate FIRs. (Anju Chaudhary v. State of Uttar Pradesh: (2013) Cri.L.J. 776).

Shakti Kumar Gupta v. State of J & K, AIR 2016 SC 853

- Judicial Officer cannot be given average entry in the ACR merely on the ground that he has not submitted his Self Assessment Report.

Gautam Kundu Versus Manoj Kumar, Assistant Director, Eastern Region, Directorate Of Enforcement (PREVENTION Of Money Laundering Act) Govt. Of India, AIR 2016 SC 106

- Bail under Prevention of Money Laundering Act, 2002, (—PMLA‖). Section 45 of the PMLA starts with a non obstante clause which indicates that the provisions laid down in Section 45 of the PMLA will have overriding effect on the general provisions of the Code of Criminal Procedure in case of conflict between them. Section 45 of the PMLA imposes following two conditions for grant of bail to any person accused of an offence punishable for a term of imprisonment of more than three years under Part-A of the Schedule of the PMLA: (i) That the prosecutor must be given an opportunity to oppose the application for bail; and (ii) That the Court 4 must be satisfied that there are reasonable grounds for believing that the accused person is not guilty of such offence and that he is not

likely to commit any offence while on bail. The conditions specified under Section 45 of the PMLA are mandatory and needs to be complied with which is further strengthened by the provisions of Section 65 and also Section 71 of the PMLA. Section 65 requires that the provisions of Cr.P.C. shall apply in so far as they are not inconsistent with the provisions of this Act and Section 71 provides that the provisions of the PMLA shall have overriding effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. PMLA has an overriding effect and the provisions of Cr.P.C. would apply only if they are not inconsistent with the provisions of this Act. Therefore, the conditions enumerated in Section 45 of PMLA will have to be complied with even in respect of an application for bail made under Section 439 of Cr.P.C. That coupled with the provisions of Section 24 provides that unless the contrary is proved, the Authority or the Court shall presume that proceeds of crime are involved in money laundering and the burden to prove that the proceeds of crime are not involved, lies on the appellant.

Awadesh Kumar Jha @ Akhilesh Kumar Jha & Anr., AIR 2016 SC 373

- From a plain reading of sub-section (2) and sub-section (8) of Section 173, it is evident that even after submission of the police report under subsection (2) on completion of the investigation, the police has a right to further investigation under sub-section (8) of Section 173 but not ―fresh investigation or ―reinvestigation‖. The meaning of ―further‖ is additional, more, or supplemental. ―Further‖ investigation, therefore, is the continuation of the earlier investigation and not a fresh investigation or reinvestigation to be.

Nankaunoo v. State of U.P., AIR 2016 SC 589

- Non Recovery of Weapon – Not always fatal The contention is not tenable that the alleged weapon ‗countrymade pistol‘ was never recovered by the investigating officer and in the absence of any clear connection between the weapon used for crime and ballistic report and resultant injury, the prosecution cannot be said to have established the guilt of the appellant. In the light of unimpeachable oral evidence which is amply corroborated by the medical evidence, non-recovery of ‗countrymade pistol‘ does not materially affect the case of the prosecution. In a case of this nature, any omission on the part of the investigating officer cannot go against the prosecution case. Story of the prosecution is to be examined dehors such omission by the investigating agency. Otherwise, it would shake the confidence of the people not merely in the law enforcing agency but also in the administration of justice.

Surender @ Kala Versus State of Haryana, AIR 2016 SC 508= (2016) 4 SCC 617

- The investigation in the matter was conducted by SI Satbir Singh who himself was the complainant. Distinguishing the decision State by Inspector of Police,

Narcotic Intelligence Bureau, Madhurai, Tamil Nadu v. Rajangam [2010 (15) SCC 369] and Megha Singh v. State of Haryana[1996(11) SCC 709 ; AIR 1995 SC 2339], it is held that in Megha Singh, the search was not conducted in the presence of a Gazetted Officer, as is required in a case under the Act. In the instant case the search of the appellant was conducted in the presence of and under the instructions of Gazetted Officer. The extracts of depositions of other prosecution witnesses show that it was not S.I. Satbir Singh alone who was involved in the investigation. In our view the principle laid down in Megha Singh and followed in State vs. Rajangam does not get attracted in the present matter. Relevant to note that this was not even a ground projected in support of the case of the appellant and does not find any reference in the judgment under appeal. We therefore reject the submission.

State Of Kerala vs P.B.Sourabhan & Ors 2016(2) CC (Cri) 241 = (2016) 4 SCC 102= https://indiankanoon.org/doc/34010735/= MANU/SC/0269/2016

- Section 36 Cr.P.C does not fetter the jurisdiction of the State Police Chief to pass such an order based on his satisfaction. It is the satisfaction of the State Police Chief, in the light of the facts of a given case, that would be determinative of the appointment to be made in which situation the limits of jurisdiction will not act as fetter or come in the way of exercise of such jurisdiction by the superior officer so appointed. Such an appointment would not be hedged by the limitations imposed by Section 36 Cr.P.C.

Gajanan Dashrath Kharate v. State of Maharashtra, (2016) 4 SCC 604

- Delay in setting law into motion by lodging of complaint and registration of FIR is normally viewed by courts with suspicion because there is possibility of concoction and embellishment of the occurrence. So it becomes necessary for prosecution to satisfactorily explain the delay. Object of insisting upon a prompt lodging of report, is to obtain early information not only regarding assailants but also about part played by accused, nature of incident and names of witnesses.

Prem Sagar Manocha v. State (NCT of Delhi), (2016) 4 SCC 571= (2016) 2 SCC (Cri) 315 = 2016(2) Crimes 52 (SC)

- Merely because an expert has tendered an opinion while also furnishing the basis of the opinion and that too without being conclusive and definite, it cannot be said that he has committed perjury so as to help somebody. And, mere rejection of the expert evidence by itself may not also warrant initiation of proceedings under Section 340 CrPC.

Gulzari Lal v. State of Haryana, (2016) 4 SCC 583 = (2016) 2 SCC (Cri) 325

- A valid dying declaration may be made without obtaining a certificate of fitness of declarant by a medical officer.

AIR CUSTOMS OFFICER IGI NEW DELHI Vs PRAMOD KUMAR DHAMIJA (2016) 2 SCC (Cri) 253= (2016) 4 SCC 153

- The exoneration in related adjudication proceedings and the effect thereof on criminal proceedings again came up for consideration before a three-Judge Bench of this Court in Radheshyam Kejriwal v. State of West Bengal and Another (2011) 3 SCC 581 . In his dissenting opinion P. Sathasivam, J. (as the learned Chief Justice then was) concluded that there was nothing in Foreign Exchange Regulation Act, 1973 to indicate that a finding in adjudication is binding on a court in prosecution under Section 56 of Act or that the prosecution under Section 56 depended upon the result of the adjudication under the Act. C.K. Prasad J., speaking for the majority summed up as under:-

"38. The ratio which can be culled out from these decisions can broadly be stated as follows:-

(i) Adjudication proceedings and criminal prosecution can be launched simultaneously;

(ii) Decision in adjudication proceedings is not necessary before initiating criminal prosecution;

(iii) Adjudication proceedings and criminal proceedings are independent in nature to each other;

(iv) The finding against the person facing prosecution in the adjudication proceedings is not binding on the proceeding for criminal prosecution;

(v) Adjudication proceedings by the Enforcement Directorate is not prosecution by a competent court of law to attract the provisions of Article 20(2) of the Constitution or Section 300 of the Code of Criminal Procedure; (vi)

(vi) The finding in the adjudication proceedings in favour of the person facing trial for identical violation will depend upon the nature of finding:

(vii) If the exoneration in adjudication proceedings is on technical ground and not on merit, prosecution may continue; and

(viii) In case of exoneration, however, on merits where the allegation is found to be not sustainable at all and the person held innocent, criminal prosecution on the same set of facts and circumstances cannot be allowed to continue the underlying principle being the higher standard of proof in criminal cases."

Dharam Pal Vs State of Haryana & Ors. (2016) 2 SCC (Cri) 259 = (2016) 4 SCC 160.

- the power of the Police Officer under Section 173(8) Cr.P.C. is unrestricted. Needless to say, the Magistrate has no power to interfere but it would be appropriate on the part of the investigating officer to inform the Court.

- It can never be forgotten that as the great ocean has only one test, the test of salt, so does justice has one flavour, the flavour of answering to the distress of the people without any discrimination. **We may hasten to add that the democratic setup has the potentiality of ruination if a citizen feels, the truth uttered by a poor man is seldom listened to.** Not for nothing it has been said that Sun rises and Sun sets, light and darkness, winter and spring come and go, even the course of time is playful but truth remains and sparkles when justice is done. It is the bounden duty of a Court of law to uphold the truth and truth means absence of deceit, absence of fraud and in a criminal investigation a real and fair investigation, not an investigation that reveals itself as a sham one. It is not acceptable. It has to be kept uppermost in mind that impartial and truthful investigation is imperative. If there is indentation or concavity in the investigation, can the 'faith' in investigation be regarded as the gospel truth? Will it have the sanctity or the purity of a genuine investigation? If a grave suspicion arises with regard to the investigation, should a Constitutional Court close its hands and accept the proposition that as the trial has commenced, the matter is beyond it? That is the "tour de force" of the prosecution and if we allow ourselves to say so it has become "'id'ee fixe" but in our view the imperium of the Constitutional Courts cannot be stifled or smothered by bon mot or polemic. Of course, the suspicion must have some sort of base and foundation and not a figment of one's wild imagination. One may think an impartial investigation would be a nostrum but not doing so would be like playing possum. **As has been stated earlier facts are self-evident and the grieved protagonist, a person belonging to the lower strata. He should not harbor the feeling that he is an "orphan under law".**

(2016) 43 SCD 447 - Sadhu Saran Singh Vs. State of U.P reported in May edition is reported as **(2016) 2 SCC (Cri) 275 = (2016) 4 SCC 357** dealing with occular and medical evidence, non examination of injured witness when not fatal etc.

The State of Telangana rep. by its Prl.Secretary Home Dept., Hyderabad and 2 others Vs. Mothiram and another https://indiankanoon.org/doc/38158836/

It is true that in the application form the respondent did not mention that he was involved in a criminal case under Sections 325/34 IPC. Probably he did not mention this out of fear that if he did so he would automatically be disqualified. At any rate, it was not such a serious offence like murder, dacoity or rape, and hence a more lenient view should be taken in the matter.

AT A GLANCE

ELECTRICITY ACT, 2003.

- Private complaint by authorised officer only.
- All offences are compoundable for the first time and as per the compounding fees mentioned in Sec 152 of the act.
- Abettor equally punishable for Abetment as provided for the punishment.
- Employees of Electricity department are punishable for default in execution of duties under Sec.150.

135 Theft of Electricity	(1) Whoever, dishonestly, -- (a) taps, makes or causes to be made any connection with overhead, underground or under water lines or cables, or service wires, or service facilities of a licensee; or (b) tampers a meter, installs or uses a tampered meter, current reversing transformer, loop connection or any other device or method which interferes with accurate or proper registration, calibration or metering of electric current or otherwise results in a manner whereby electricity is stolen or wasted; or (c)damages or destroys an electric meter, apparatus, equipment, or wire or causes or allows any of them to be so damaged or destroyed as to interfere with the proper or accurate metering of electricity, so as to abstract or consume or use electricity shall be punishable with imprisonment for a term which may extend to three years or with fine or with both: Provided that in a case where the load abstracted, consumed, or used or attempted abstraction or attempted consumption or attempted use - (i) **does not exceed 10 kilowatt,** the fine imposed **on first conviction shall not be less than three times the financial gain** on account of such theft of electricity and in the event of **second or subsequent conviction the fine imposed shall not be less than six times the financial gain** on account of such theft of electricity; (ii) **exceeds 10 kilowatt,** the fine imposed **on first conviction shall not be less than three times the financial gain** on account of such theft of electricity and in the event of **second or subsequent conviction, the sentence shall be imprisonment for a term not less than six months but which may extend to five years and with fine not less than six times** the financial gain on account of such theft of electricity: Provided further that if it is proved that any artificial means or means not authorized by the Board or licensee exist for the abstraction, consumption or use of electricity by the consumer, it shall be **presumed, until the contrary is proved, that any abstraction, consumption or use of electricity has been dishonestly caused by such consumer**.	shall be punishable with imprisonment for a term which may extend to three years or with fine or with both:
136 Theft of electric lines and materials	(1) Whoever, dishonestly -- (a) cuts or removes or takes way or transfers any electric line, material or meter from a tower, pole, any other installation or place of installation or any other place, or site where it may be rightfully or lawfully stored, deposited, kept, stocked, situated or located including during transportation, without the consent of the licensee or the owner, as the case may be, whether or not the act is done for profit or gain; or (b) stores, possesses or otherwise keeps in his premises, custody or control, any electric line, material or meter without the consent of the owner, whether or not the act is committed for profit or gain; or (c) loads, carries, or moves from one place to another any electric line, material or meter without the consent of its owner, whether or not the act is done for profit or gain, done for profit or gain, is said to have committed an offence of theft of electric lines and materials, (2) If a person, having been convicted of an offence punishable under sub-section (1) is again guilty of an offence punishable under that subsection, he **shall be punishable for the second or subsequent offence for a term of imprisonment which shall not be less than six months but which may**	shall be punishable with imprisonment for a term which may extend to three years or with fine or with both.

	extend to five years and shall also be liable to fine which shall not be less than ten thousand rupees.	
137 Punishment for receiving stolen property	Whoever, dishonestly receives any stolen electric lines or materials knowing or having reasons to believe the same to be stolen property,	shall be punishable with imprisonment of either description for a term which may extend to three years or with fine or with both.
138 Interference with meters or works of licensee	(1) Whoever, - (a) unauthorisedly connects any meter, indicator or apparatus with any electric line through which electricity is supplied by a licensee or disconnects the same from any such electric line; or (b) unauthorisedly reconnects any meter, indicator or apparatus with any electric line or other works being the property of a licensee when the said electric line or other works has or have been cut or disconnected; or (c) lays or causes to be laid, or connects up any works for the purpose of communicating with any other works belonging to a licensee; or (d) maliciously injures any meter, indicator, or apparatus belonging to a licensee or willfully or fraudulently alters the index of any such meter, indicator or apparatus or prevents any such meter, indicator or apparatus from duly registering, and if it is proved that any means exist for making such connection as is referred to in clause (a) or such re-connection as is referred to in clause (b), or such communication as is referred to in clause (c), for causing such alteration or prevention as is referred to in clause (d), and that the meter, indicator or apparatus is under the custody or control of the consumer, whether it is his property or not, it shall be **presumed**, until the contrary is proved, that such connection, reconnection, communication, alteration, prevention or improper use, as the case may be, has been knowingly and wilfully caused by such consumer.	shall be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to ten thousand rupees, or with both, and , in the case of a continuing offence, with a daily fine which may extend to five hundred rupees;
139 Negligently wasting electricity or injuring works.	Whoever, negligently causes electricity to be wasted or diverted or negligently breaks, injures, throws down or damages any material connected with the supply of electricity,	shall be punishable with fine which may extend to ten thousand rupees.
140 Penalty for maliciously wasting electricity or injuring works	Whoever, maliciously causes electricity to be wasted or diverted, or , with intent to cut off the supply of electricity, cuts or injures, or attempts to cut or injure, any electric supply line or works,	shall be punishable with fine which may extend to ten thousand rupees
141 Extinguishing public lamps.	Whoever, maliciously extinguishes any public lamp	shall be punishable with fine which may be extend to two thousand rupees.
142 Punishment for non-	In case any complaint is filed before the Appropriate Commission by any person or if that Commission is satisfied that any person has contravened any provisions of this Act or rules or regulations made thereunder, or any	shall not exceed one lakh rupees for each

compliance of directions by Appropriate Commission.	direction issued by the Commission, the Appropriate Commission may after giving such person an opportunity of being heard in the matter, by order in writing, direct that, without prejudice to any other penalty to which he may be liable under this Act, such person shall pay, by way of penalty, which	contravention and in case of a continuing failure with an additional penalty which may extend to six thousand rupees for every day during which the failure continues after contravention of the first such direction.

NEWS

- Prosecution Replenish wishes Sri C.C. Subramanyam, ADOP, A.P., a very happy, healthy and prosperous retired life.
- Prosecution Replenish conveys its congratulations to Smt Vyjayanthi Madam, for adoring the post of the JDOP Cum DOP (FAC), Telangana.
- Smt. C. Saraladevi, Additional Public Prosecutor Gr II, Principal Assistant Sessions Court, Kurnool, on deputation to work as Special Officer in office of the Advocate on Records in A.P. Bhavan, New Delhi - Orders - Issued- A.P. G.O.RT.No. 405 HOME (COURTS.A) DEPARTMENT Dated: 15-06-2016
- Promotion to the post of Additional Director of Prosecutions for the panel year 2015-2016 – Panel Approved – Promotion to Sri C.C. Subramanyam to the post of Additional Director of Prosecutions, Andhra Pradesh, Hyderabad - Orders - Issued - A.P. G.O.Ms.No:72 HOME (COURTS.A) DEPARTMENT Dated:10.06.2016.

ON A LIGHTER VEIN

Once, there was a preacher who was an avid golfer. Every chance he could get, he would be on the golf course swinging away. It was an obsession. One Sunday was a picture-perfect day for golfing. The sun was out, no clouds were in the sky, and the temperature was just right.

The preacher was in a quandary as to what to do, and shortly, the urge to play golf overcame him. He called an assistant to tell him that he was sick and could not do church, packed the car up, and drove three hours to a golf course where no one would recognize him. Happily, he began to play the course.

An angel up above was watching the preacher and was quite perturbed. He went to God and said, "Look at the preacher. He should be punished for what he is doing."

God nodded in agreement. The preacher teed up on the first hole. He swung at the ball, and it sailed effortlessly through the air and landed right in the cup 250 yards away. A picture-perfect hole-in-one. He was amazed and excited.

The angel was a little shocked. He turned to God and said, "I beg your pardon, but I thought you were going to punish him."

God smiled. "Think about it-who can he tell?"

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.

PROSECUTION REPLENISH

An Endeavour for learning and excellence

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A creative man is motivated by the desire to achieve, not by the desire to beat others.

Ayn Rand

CITATIONS

V.C. CHINNAPPA GOUDAR Vs. KARNATAKA STATE POLLUTION CONTROL BOARD AND ANR =2015 STPL(Web) 1561 SC= 2015(4) SCALE 82 = (2016) 2 SCC (Cri) 407 = (2015) 14 SCC 535. Water (Prevention and Control of Pollution) Act, 1974, Sections 48 and 49 – Criminal Procedure Code, 1973, Section 5 and 197 – Public Servant – Sanction for Prosecution – Prosecution of Public servant for Commission of offence by public servant under the provisions of the Act, 1974 – Section 5 Cr.P.C. makes it clear that in the absence of specific provisions to the contrary, nothing contained in the Cr.P.C. would affect any special or local laws providing for any special form or procedure prescribed to be made applicable – Sanction for prosecution under Section 197 Cr.P.C. is not required.

GAJANAN DASHRATH KHARATE Vs. STATE OF MAHARASHTRA = (2016) 2 SCC (Cri) 436 = (2016) 4 SCC 604. The object of insisting upon a prompt lodging of the report is to obtain early information not only regarding the assailants but also about the part played by the accused, the nature of the incident and the names of witnesses. In the case at hand, prosecution has satisfactorily explained the delay in lodging the complaint. When the prosecution has explained the delay in lodging the complaint, prosecution case cannot be doubted on the small delay between the time of occurrence and in registration of first information report.

In view of Section 106 of the Evidence Act, there will be a corresponding burden on the inmates of the house to give cogent explanation as to how the crime was committed. The inmates of the house cannot get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case lies entirely upon the prosecution and there is no duty at all on the accused to offer. On the date of occurrence, when accused and his father Dashrath were in the house and when the father of the accused was found dead, it was for the accused to offer an explanation as to how his father sustained injuries. When the accused could not offer any explanation as to the homicidal death of his father, it is a strong circumstance against the accused that he is responsible for the commission of the crime

SURENDER @ KALA Vs. STATE OF HARYANA = (2016) 2 SCC (Cri) 448 = (2016) 4 SCC 617 the investigation in the matter was conducted by PW6 SI Satbir Singh who himself was the complainant. In Megha Singh, the search was not conducted in the presence of a Gazetted Officer, as is required in a case under the Act. In the instant case the search of the appellant was conducted in the presence of and under the instructions of PW4. The extracts of depositions of other prosecution witnesses show that it was not PW6 S.I. Satbir Singh alone who was involved in the investigation. In our view the principle laid down in Megha Singh and followed in State vs. Rajangam does not get attracted in the present matter. Relevant to note that this was not even a ground projected in support of the case of the appellant and does not find any reference in the judgment under appeal. We therefore reject the submission.

Admissibility of Electronic Evidence: It has been highlighted in this article that the admissibility of the secondary electronic evidence has to be adjudged in the light of the principles laid down in Section 65-B of the Indian Evidence Act and the proposition of law settled in the judgments of the Supreme Court along with judgments of the Rajasthan and

Delhi High Courts. If the secondary electronic evidence is not accompanied by a certificate issued in terms of Section 65-B of the Evidence Act, it is not admissible in evidence and any opinion of the examiner of electronic records, or the deposition of the witnesses in court pertaining to the contents of such electronic record without Section 65-B compliance cannot be looked into by the courts **(2016) 5 SCC (J-1)**

Anant Prakash Sinha v. State of Haryana, (2016) 6 SCC 105 = (2016) 2 SCC (Cri) 525 Criminal Procedure Code, 1973 — S. 216 — When can court alter or add to any charge: Court can change or alter the charge if there is defect or something is left out. The test is, it must be founded on material available on record. It can be on basis of complaint or FIR or accompanying documents or material brought on record during course of trial. It can also be done at any time before pronouncement of judgment. If court has not framed a charge despite material on record, it has jurisdiction to add a charge. Similarly, it has authority to alter charge. The principle that has to be kept in mind is, that the charge so framed by Magistrate is in accord with materials produced before him or if subsequent evidence comes on record. It is not to be understood, that unless evidence has been let in, charges already framed cannot be altered, for that is not the purport of S. 216 CrPC. In addition to the aforementioned, it is obligatory on part of court to see that no prejudice is caused to accused and he is allowed to have a fair trial. There are in-built safeguards in S. 216 CrPC. Accused must always be made aware of the case against him so as to enable him to understand the defence that he can lead.
Defacto complainant/Victim can file an application for alteration of charges.

Prabhakar Vithal Gholve Vs State of Maharashtra 2016(2) ALD(Cri) 5 (SC) = 2016(2) Crimes 247 (SC) It would be natural for the family members of juvenile offender Balu on hearing his cries, to rush for his help and when injury on the appellant has also been proved there is sufficient material to infer the reasonable possibility of a grave and sudden provocation. The assault on the deceased, in absence of intention to cause death could be on account of sudden fight without pre-meditation, in the heat of passion and upon a sudden quarrel. We therefore feel persuaded to and do set aside the conviction of the appellant under Section 302 IPC and substitute the same with conviction under Section 304 Part I of the IPC.

Harijan Jivrajbhai Badhabhai Vs State of Gujarat 2016 (2) ALD (Crl) 7 (SC) It is true that even before the registration of FIR the inquest was undertaken and the post-mortem was conducted. In this case, the assault was made right in the Courtroom which called for immediate action on part of the investigators to clear the Courtroom as early as possible. The Investigating Officer had initially requested the Presiding Officer to lodge a complaint. Upon his refusal, the Investigating Officer then had to make enquiries and record the complaint of PW 30 Bhanji. In the meantime, if inquest was undertaken and the body was sent for post-mortem, we do not see any infraction which should entail discarding of the entire case of prosecution. We also do not find anything wrong if the first informant soon after the recording of the assailant corrected himself, as a result of which name of the third assailant came to be dropped. So long as the version coming from the eye witnesses inspires confidence and is well corroborated by the material on record, any such infraction, in our view would not demolish the case of the prosecution in entirety.

KUNAPAREDDY @ NOOKALA SHANKA BALAJI Vs KUNAPAREDDY SWARNA KUMARI & ANR 2016 (2) ALD (Crl) 21 (SC) = 2016 (2) Crimes 277 (SC) If the amendment sought to be made relates to a simple infirmity which is curable by means of a formal amendment and by allowing such amendment, no prejudice could be caused to the other side, notwithstanding the fact that there is no enabling provision in the Code for entertaining such amendment, the Court may permit such an amendment to be

made. On the contrary, if the amendment sought to be made in the complaint does not relate either to a curable infirmity or the same cannot be corrected by a formal amendment or if there is likelihood of prejudice to the other side, then the Court shall not allow such amendment in the complaint.

R.RACHAIAH Vs. HOME SECRETARY, BANGALORE, 2016 (2) ALD (Crl) 30 (SC) = 2016 (2) Crimes 264 (SC) In a case like this, with the framing of alternative charge on 30.09.2006, testimony of those witnesses recorded prior to that date could even be taken into consideration. It hardly needs to be demonstrated that the provisions of Sections 216 and 217 are mandatory in nature as they not only sub-serve the requirement of principles of natural justice but guarantee an important right which is given to the accused persons to defend themselves appropriately by giving them full opportunity. Cross-examination of the witnesses, in the process, is an important facet of this right. Credibility of any witness can be established only after the said witness is put to cross-examination by the accused person.

D.Laxman Raju and 4 others Vs The State of Telangana,2016 (2) ALD (Crl) 77 Coming to decide whether laid foundation for secondary evidence in the Criminal proceeding referred to the provisions supra, to receive at the stage where, when and how to decide; the Apex Court categorically laid down with guidelines to all the Courts as follow as law of the land under Article 141 of the Constitution of India (particularly in criminal cases) in Bipin Shantilal Panchal vs. State of Gujarat that any objection regarding admissibility or relevancy to be raised while marking the document to mark subject to said objection, in order to decide such objection ultimately after completion of trial and not instantly but for touching requirement of stamp duty and registration or the like. No doubt, it is further laid down in the subsequent expressions of the Apex Court that the objection relation to admissibility of secondary evidence if not raised while marking, since the same is a procedural aspect, being made of proof and later it can be raised as deemed waived as such exhibited document without such objection is as good as original, but for to decide other objections relating to admissibility, relevancy and on proof under Section 68 of the Evidence Act or the like vide R.V.E Venkatachala Gounder Vs. Arulmigu Viswesaraswami and V.P Temple and Dayamathi Bai vs. K.M.Shaffi.

Rajamoori Ram Reddy & Others vs The State Of Andhra Pradesh 2016(2) ALD (Crl) 91 = https://indiankanoon.org/doc/93072067/ = legalcrystal.com/1179830 It is no doubt true that it was further added that the accused were covered while showing them before the media, but, still the fact remains that if the accused persons were already presented before public media, the subsequent identification parade that is carried out on 19th April, 2008 loses much of its credibility. Hence, we are not willing to attach any significance to the identification parade carried out and the identity established during such a parade.

Dalmia Cement (Bharat) Limited and another. Vs Assistant Director of Enforcement Directorate, 2016 (2) ALD (Crl) 115 it would be clear that when an ECIR is lodged with the Directorate of Enforcement there is no Magisterial intervention unlike an FIR and mere registration of ECIR against the suspects of offence under Section 3 of PMLA cannot go to mean that such persons are accused under Section 3 of PMLA. Consequently, therefore, the protection against testimonial compulsion as under Cr.P.C as well as under Article 20(3) of the Constitution of India, in my view, would not be available, as claimed by the petitioners.

Ummadisetti Ratnasagar vs State 2016(2) ALD (Crl) 135 =https://indiankanoon.org/doc/144173762/ The document in question is General Power of Attorney - cum - Agreement of sale. The very purpose of execution of G.P.A. is to

enable the principal to appoint an agent to act on his behalf or to do a specific or a particular act. A principal is entitled to revoke his GPA at any point of time subject to terms and conditions of agency. So far as the agreement of sale is concerned, the same does not create title to the vendee. Under the agreement of sale the title remains with the vendor.Section 54 of the Transfer of Property Act makes it clear that a contract of sale, that is, an agreement of sale does not, of itself, create any interest in or charge on such property. Neither interest nor title is created in favour of the second respondent under the General Power of Attorney - cum - Agreement of sale dated 26.12.2005. 16 Rule 26 (i) (k) (i) of the Rules does not deal with conveyance of any mode other than the deed of conveyance on sale. The concerned Sub-Registrar is not entitled to register cancellation deed in respect of a registered deed of conveyance on sale without prior notice to the parties to the document.
The learned Magistrate, while taking cognizance of offence, has not considered the scope of Section 197 Cr.P.C. Therefore, it is manifest that the trail Court has committed grave error in taking cognizance of the offence against the petitioner. Taking cognizance of offence against the petitioner in violation of Section 197 Cr.P.C. is non-est in the eye of law. In such circumstances, compelling the petitioner to face the rigour of trial would certainly amount to miscarriage of justice.

Criminal Procedure Code, 1973 — S. 216 — When can court alter or add to any charge: Court can change or alter the charge if there is defect or something is left out. The test is, it must be founded on material available on record. It can be on basis of complaint or FIR or accompanying documents or material brought on record during course of trial. It can also be done at any time before pronouncement of judgment. If court has not framed a charge despite material on record, it has jurisdiction to add a charge. Similarly, it has authority to alter charge. The principle that has to be kept in mind is, that the charge so framed by Magistrate is in accord with materials produced before him or if subsequent evidence comes on record. It is not to be understood, that unless evidence has been let in, charges already framed cannot be altered, for that is not the purport of S. 216 CrPC. In addition to the aforementioned, it is obligatory on part of court to see that no prejudice is caused to accused and he is allowed to have a fair trial. There are in-built safeguards in S. 216 CrPC. Accused must always be made aware of the case against him so as to enable him to understand the defence that he can lead. **[Anant Prakash Sinha v. State of Haryana, (2016) 6 SCC 105]**

Remedy in such matters does not lie before High Court under Art. 226 of Constitution but before Magistrate concerned under S. 156(3) CrPC. If on an application under S. 156(3) CrPC, Magistrate is prima facie satisfied, he can: (i) direct registration of FIR, (ii) if FIR has already been registered, issue a direction for proper investigation to be made, which includes, if he deems it necessary, recommending change of investigating officer, and can also (iii) monitor the investigation. **[Sudhir Bhaskarrao Tambe v. Hemant Yashwant Dhage, (2016) 6 SCC 277]**

To enable police to start investigation in a matter, Magistrate can direct police to register an FIR in that case. Even where a Magistrate does not do so in explicit words but directs or investigation under S. 156(3) CrPC, the police should register an FIR. **[Hemant Yashwant Dhage v. State of Maharashtra, (2016) 6 SCC 273]**

Sheikh Sintha Madhar @ Jaffer @ Sintha etc vs State Rep. By Inspector Of Police https://indiankanoon.org/doc/98343207= 2016 (2) Crimes 235 (SC) It is clear from the evidence that there is no inordinate delay in conducting the TIP. As and when the accused were arrested, within reasonable time they were produced for the TIP. Also,there is no invariable rule that two accused persons cannot be made part of the same TIP. Joint TIP would thus, in no manner, affect the validity of the TIP. The purpose of a TIP is to ensure

that the investigation is going on the right track and it is merely a corroborative evidence. The actual identification must be done in the Court and that is the substantive evidence. If the accused is already known to the witness, the TIP does not hold much value and it is the identification in the Court which is of utmost importance.

Anil @ Bawa Vs State of Haryana 2016 2 Crimes(SC) 295; Prosecution not examining two witnesses – Evidence of father of deceased found reliable having no motive to implicate appellants – Non-examination of witnesses not material.
Being related to deceased immaterial if the evidence is reliable.

Criminal Procedure code, 1973 — 222 — An accused can be convicted for minor offence when charged with major offence — Vice-verse is not permissible — Appellant accused was charged for offence of sexual assault on a minor girl u/s 7 of POCSO — As the victim girl was deaf and dumb trial court convicted accused for offence of aggravated assault punishable u/s 9 and 10 of the Act — In absence of charge for aggravated offence, he could not be punished for major offence — He was liable to be punished for offence u/s 7 and 8 of the Act.

Kanneboina Gopala Krishna vs State of AP 2016 (2)) ALT (CRL) 329 (AP) Sec.319 Cr.PC.. Adding of accused- for exercise of power u/sec.319 cr.p.c, court is to be satisfied that some other person who is not facing trial, may also have been involved in the offence- not more than primafacie view that evidence appearing against such person necessities to bring such person to face trial..

State of Telangana vs Bommareddy Rama Koti Reddy. 2016 (2) ALT (CRL) 333(AP) Forcing accused for production of documents in criminal investigation would invite earth of Art.20(3) of constitution of India. Cancellation of anticipatory bail: cancellation would be in case conditions of bail violated, tampering the evidence/ material, interfering with investigation or not co-operating with investigating agency- if investigating authority feels presence of accused very much necessary for further progress in investigation, it may issue notice as was done earlier and failure to co-operate thereupon would be available to be urged in that eventually.

Kaadashi Mallesh vs state of AP 2016 (2) ALT (CRL) 343 Witness doesn't become unreliable only by his declaration as hostile. Court can convict a person basing on solitary evidence of prosecutrix provided it inspires confidence.

Mohd. Osman Ali & others vs state of AP 2016(2) ALT (CRL) 351 AP. Where there are serious contradictions between two DD.s in the absence of clear evidence proving guilt, accused entitled to benefit of doubt.

AT A GLANCE

The Schedule Caste and Schedule Tribe (Prevention of Attrocities) Act, 1989

(As amended by the act of 2015)

In Addition to the earlier provisions most important being Sec 438 CRPC not applying to the offences under this act.

- Exclusive Special Courts can take cognizance of the case directly.
- Cases to be tried to be disposed within 2 months.
- an appeal shall lie, from any judgment, sentence or order, not being an interlocutory order, or an order of the Special Court or the Exclusive Special Court granting or refusing bail of a Special Court or an Exclusive Special Court, to the High Court, within a period of ninety days from the date of the

judgment, sentence or order appealed from: Provided further that no appeal shall be entertained after the expiry of the period of one hundred and eighty days. Every appeal preferred shall, as far as possible, be disposed of within a period of three months from the date of admission of the appeal

- A victim or his dependent shall have the right to reasonable, accurate, and timely notice of any Court proceeding including any bail proceeding and the Special Public Prosecutor or the State Government shall inform the victim about any proceedings under this Act.
- A victim or his dependent shall have the right to apply to the Special Court or the Exclusive Special Court, as the case may be, to summon parties for production of any documents or material, witnesses or examine the persons present.
- A victim or his dependent shall be entitled to be heard at any proceeding under this Act in respect of bail, discharge, release, parole, conviction or sentence of an accused or any connected proceedings or arguments and file written submission on conviction, acquittal or sentencing.
- the concerned Special Court or the Exclusive Special Court may, on an application made by a victim or his dependent, informant or witness in any proceedings before it or by the Special Public Prosecutor in relation to such victim, informant or witness or on its own motion, take such measures including— (a) concealing the names and addresses of the witnesses in its orders or judgments or in any records of the case accessible to the public; (b) issuing directions for non-disclosure of the identity and addresses of the witnesses; (c) take immediate action in respect of any complaint relating to harassment of a victim, informant or witness and on the same day, if necessary, pass appropriate orders for protection: Provided that inquiry or investigation into the complaint received under clause (c) shall be tried separately from the main case by such Court and concluded within a period of two months from the date of receipt of the complaint: Provided further that where the complaint under clause (c) is against any public servant, the Court shall restrain such public servant from interfering with the victim, informant or witness, as the case may be, in any matter related or unrelated to the pending case, except with the permission of the Court.

Sec 3 **Punishments for offences of atrocities.** (1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,– (a) puts any inedible or obnoxious substance into the mouth of a member of a Scheduled Caste or a Scheduled Tribe or forces such member to drink or eat such inedible or obnoxious substance; (b) dumps excreta, sewage, carcasses or any other obnoxious substance in premises, or at the entrance of the premises, occupied by a member of a Scheduled Caste or a Scheduled Tribe; (c) with intent to cause injury, insult or annoyance to any member of a Scheduled Caste or a Scheduled Tribe, dumps excreta, waste matter, carcasses or any other obnoxious substance in his neighbourhood; (d) garlands with footwear or parades naked or semi-naked a member of a Scheduled Caste or a Scheduled Tribe; (e) forcibly commits on a member of a Scheduled Caste or a Scheduled Tribe any act, such as removing clothes from the person, forcible tonsuring of head, removing moustaches, painting face or body or any other similar act, which is derogatory to human dignity; (f) wrongfully occupies or cultivates any land, owned by, or in the possession of or allotted to, or notified by any competent authority to be allotted to, a member of a Scheduled Caste or a Scheduled Tribe, or gets such land transferred; (g) wrongfully dispossesses a member of a Scheduled Caste or a Scheduled Tribe from his land or premises or interferes with the enjoyment of his rights, including forest rights, over any land or premises or water or irrigation facilities or destroys the crops or takes away the produce therefrom.	shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to five years and with fine.

Explanation.—For the purposes of clause (f) and this clause, the expression "wrongfully" includes—

(A) against the person's will;

(B) without the person's consent;

(C) with the person's consent, where such consent has been obtained by putting the person, or any other person in whom the person is interested in fear of death or of hurt; or

(D) fabricating records of such land;

(h) makes a member of a Scheduled Caste or a Scheduled Tribe to do "begar" or other forms of forced or bonded labour other than any compulsory service for public purposes imposed by the Government;

(i) compels a member of a Scheduled Caste or a Scheduled Tribe to dispose or carry human or animal carcasses, or to dig graves;

(j) makes a member of a Scheduled Caste or a Scheduled Tribe to do manual scavenging or employs or permits the employment of such member for such purpose;

(k) performs, or promotes dedicating a Scheduled Caste or a Scheduled Tribe woman to a deity, idol, object of worship, temple, or other religious institution as a devadasi or any other similar practice or permits aforementioned acts;

(l) forces or intimidates or prevents a member of a Scheduled Caste or a Scheduled Tribe—

(A) not to vote or to vote for a particular candidate or to vote in a manner other than that provided by law;

(B) not to file a nomination as a candidate or to withdraw such nomination; or

(C) not to propose or second the nomination of a member of a Scheduled Caste or a Scheduled Tribe as a candidate in any election;

(m) forces or intimidates or obstructs a member of a Scheduled Caste or a Scheduled Tribe, who is a member or a Chairperson or a holder of any other office of a Panchayat under Part IX of the Constitution or a Municipality under Part IXA of the Constitution, from performing their normal duties and functions;

(n) after the poll, causes hurt or grievous hurt or assault or imposes or threatens to impose social or economic boycott upon a member of a Scheduled Caste or a Scheduled Tribe or prevents from availing benefits of any public service which is due to him;

(o) commits any offence under this Act against a member of a Scheduled Caste or a Scheduled Tribe for having voted or not having voted for a particular candidate or for having voted in a manner provided by law;

(p) institutes false, malicious or vexatious suit or criminal or other legal proceedings against a member of a Scheduled Caste or a Scheduled Tribe;

(q) gives any false or frivolous information to any public servant and thereby causes such public servant to use his lawful power to the injury or annoyance of a member of a Scheduled Caste or a Scheduled Tribe;

(r) intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view;

(s) abuses any member of a Scheduled Caste or a Scheduled Tribe by caste name in any place within public view;

(t) destroys, damages or defiles any object generally known to be held sacred or in high esteem by members of the Scheduled Castes or the

Scheduled Tribes.

Explanation.—For the purposes of this clause, the expression "object" means and includes statue, photograph and portrait;

(u) by words either written or spoken or by signs or by visible representation or otherwise promotes or attempts to promote feelings of enmity, hatred or ill-will against members of the Scheduled Castes or the Scheduled Tribes;

(v) by words either written or spoken or by any other means disrespects any late person held in high esteem by members of the Scheduled Castes or the Scheduled Tribes;

(w) (i) intentionally touches a woman belonging to a Scheduled Caste or a Scheduled Tribe, knowing that she belongs to a Scheduled Caste or a Scheduled Tribe, when such act of touching is of a sexual nature and is without the recipient's consent;

(ii) uses words, acts or gestures of a sexual nature towards a woman belonging to a Scheduled Caste or a Scheduled Tribe, knowing that she belongs to a Scheduled Caste or a Scheduled Tribe.

Explanation.—For the purposes of sub-clause (i), the expression "consent" means an unequivocal voluntary agreement when the person by words, gestures, or any form of non-verbal communication, communicates willingness to participate in the specific act:

Provided that a woman belonging to a Scheduled Caste or a Scheduled Tribe who does not offer physical resistance to any act of a sexual nature is not by reason only of that fact, is to be regarded as consenting to the sexual activity:

Provided further that a woman's sexual history, including with the offender shall not imply consent or mitigate the offence;

(x) corrupts or fouls the water of any spring, reservoir or any other source ordinarily used by members of the Scheduled Castes or the Scheduled Tribes so as to render it less fit for the purpose for which it is ordinarily used;

(y) denies a member of a Scheduled Caste or a Scheduled Tribe any customary right of passage to a place of public resort or obstructs such member so as to prevent him from using or having access to a place of public resort to which other members of public or any other section thereof have a right to use or access to;

(z) forces or causes a member of a Scheduled Caste or a Scheduled Tribe to leave his house, village or other place of residence:

Provided that nothing contained in this clause shall apply to any action taken in discharge of a public duty;

(za) obstructs or prevents a member of a Scheduled Caste or a Scheduled Tribe in any manner with regard to—

(A) using common property resources of an area, or burial or cremation ground equally with others or using any river, stream, spring, well, tank, cistern, water-tap or other watering place, or any bathing ghat, any public conveyance, any road, or passage;

(B) mounting or riding bicycles or motor cycles or wearing footwear or new clothes in public places or taking out wedding procession, or mounting a horse or any other vehicle during wedding processions;

(C) entering any place of worship which is open to the public or other persons professing the same religion or taking part in, or taking out, any religious, social or cultural processions

including jatras; (D) entering any educational institution, hospital, dispensary, primary health centre, shop or place of public entertainment or any other public place; or using any utensils or articles meant for public use in any place open to the public; or (E) practicing any profession or the carrying on of any occupation, trade or business or employment in any job which other members of the public, or any section thereof, have a right to use or have access to; (zb) causes physical harm or mental agony of a member of a Scheduled Caste or a Scheduled Tribe on the allegation of practicing witchcraft or being a witch; or (zc) imposes or threatens a social or economic boycott of any person or a family or a group belonging to a Scheduled Caste or a Scheduled Tribe,	
(3) (2) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,— (i) gives or fabricates false evidence intending thereby to cause, or knowing it to be likely that he will thereby cause, any member of a Scheduled Caste or a Scheduled Tribe to be convicted of an offence which is capital by the law for the time being in force shall be punished with imprisonment for life and with fine; and if an innocent member of a Scheduled Caste or a Scheduled Tribe be convicted and executed in consequence of such false or fabricated evidence,	the person who gives or fabricates such false evidence, shall be punished with death;
(ii) gives or fabricates false evidence intending thereby to cause, or knowing it to be likely that he will thereby cause, any member of a Scheduled Caste or a Scheduled Tribe to be convicted of an offence which is not capital but punishable with imprisonment for a term of seven years or upwards,	shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to seven years or upwards and with fine;
(iii) commits mischief by fire or any explosive substance intending to cause or knowing it to be likely that he will thereby cause damage to any property belonging to a member of a Scheduled Caste or a Scheduled Tribe,	shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine;
(iv) commits mischief by fire or any explosive substance intending to cause or knowing it to be likely that he will thereby cause destruction of any building which is ordinarily used as a place of worship or as a place for human dwelling or as a place for custody of the property by a member of a Scheduled Caste or a Scheduled Tribe,	shall be punishable with imprisonment for life and with fine;
(v) commits any offence under the Indian Penal Code (45 of 1860) punishable with imprisonment for a term of ten years or more against a person or property knowing that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member	shall be punishable with imprisonment for life and with fine;
(va) commits any offence specified in the Schedule, against a person or property, knowing that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member,	shall be punishable with such punishment as specified under the Indian Penal Code for such offences and shall also be liable to fine.
(vi) knowingly or having reason to believe that an offence has	shall be punishable with the

been committed under this Chapter, causes any evidence of the commission of that offence to disappear with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false,	punishment provided for that offence; or
(vii) being a public servant, commits any offence under this section,	shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to the punishment provided for that offence.
4. (1) Whoever, being a public servant but not being a member of a Scheduled Caste or a Scheduled Tribe, wilfully neglects his duties required to be performed by him under this Act and the rules made thereunder, (2) The duties of public servant referred to in sub-section (1) shall include— (a) to read out to an informant the information given orally, and reduced to writing by the officer in charge of the police station, before taking the signature of the informant; (b) to register a complaint or a First Information Report under this Act and other relevant provisions and to register it under appropriate sections of this Act; (c) to furnish a copy of the information so recorded forthwith to the informant; (d) to record the statement of the victims or witnesses; (e) to conduct the investigation and file charge sheet in the Special Court or the Exclusive Special Court within a period of sixty days, and to explain the delay if any, in writing; (f) to correctly prepare, frame and translate any document or electronic record; (g) to perform any other duty specified in this Act or the rules made thereunder: Provided that the charges in this regard against the public servant shall be booked on the recommendation of an administrative enquiry. (3) The cognizance in respect of any dereliction of duty referred to in sub-section (2) by a public servant shall be taken by the Special Court or the Exclusive Special Court and shall give direction for penal proceedings against such public servant.”	shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to one year.

- All proceedings relating to offences under this Act shall be video recorded.

THE SCHEDULE

[See section 3(2) (va)]

Section under	**the Name of offence and punishment Indian Penal Code**
120A	Definition of criminal conspiracy.
120B	Punishment of criminal conspiracy.
141	Unlawful assembly.
142	Being member of unlawful assembly.
143	Punishment for unlawful assembly.
144	Joining unlawful assembly armed with deadly weapon.
145	Joining or continuing in unlawful assembly, knowing it has been commanded to disperse.
146	Rioting.
147	Punishment for rioting.

148	Rioting, armed with deadly weapon.
217	Public servant disobeying direction of law with intent to save person from punishment or property from forfeiture.
319	Hurt.
320	Grievous hurt.
323	Punishment for voluntarily causing hurt.
324	Voluntarily causing hurt by dangerous weapons or means.
325	Punishment for voluntarily causing grievous hurt.
326B	Voluntarily throwing or attempting to throw acid.
332	Voluntarily causing hurt to deter public servant from his duty.
341	Punishment for wrongful restraint.
354	Assault or criminal force to woman with intent to outrage her modesty.
354A	Sexual harassment and punishment for sexual harassment.
354B	Assault or use of criminal force to woman with intent to disrobe.
354C	Voyeurism.
354D	Stalking.
359	Kidnapping.
363	Punishment for kidnapping.
365	Kidnapping or abducting with intent secretly and wrongfully to confine person.
376B	Sexual intercourse by husband upon his wife during separation.
376C	Sexual intercourse by a person in authority.
447	Punishment for criminal trespass.
506	Punishment for criminal intimidation.
509	Word, gesture or act intended to insult the modesty of a woman.

NEWS

- Prosecution Replenish congratulates Sri T.Srinivas Reddy garu for adoring the post of JD Cum ADOP(I/C) in the O/o the DOP, Andhra Pradesh.
- Designation of all the principal district and session judges courts in the districts of the state and metropolitan sessions judges courts in metropolitan cities of hyderabad, and cyberabad at l.b. nagar of cyberabad sessions division in ranga reddy district as "food safety appellate tribunals under food safety and standard act, 2006 (act no. 34 of 2006)" for trial and disposal of the cases. ***[G.O.Rt.No. 493, Law (LA, LA&J - Home - Courts-A), 26th June, 2015.]*** **Notification available for download under gazette section.**
- **THE LOKPAL AND LOKAYUKTAS (AMENDMENT) ACT, 2016** available for download under Gazette section.
- **THE CHILD LABOUR (PROHIBITION AND REGULATION) AMENDMENT ACT, 2016,** available for download under Gazette section.

ON A LIGHTER VEIN

Anne went away to college and promptly became an avid animal right activist. When she came home for the Holidays she noticed her mother wearing a beautiful genuine fur coat.

"Oh Mom," Anne exclaimed in a disapproving tone, "some animal must have suffered terribly just so you can get a fur coat."

"ANNE!" Screamed her Mom Aghast " I SEND YOU AWAY TO COLLEGE AND YOU COME BACK TALKING LIKE THAT?! HOW DARE YOU TALK THAT WAY ABOUT YOUR DAD!!!"

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PROSECUTION REPLENISH

An Endeavour for learning and excellence

Vol- V Part 9 Monthly Leaflet September, 2016

In Life you will realise that there is role for everyone you meet.
Some will test you, some will use you,
some will love you and some will teach you.
But, the ones that are important are the ones who bring out the best in you.
They're the rare and amazing people who remind you why it's worth it.

Anonymous

CITATIONS

Terrorist and Disruptive Activities (Prevention) Act, 1987 – Section 20-A(1) and 15 – Confessions of A1 recorded in another case under the Act validly invoked – Subsequent discharge of A1 in the case – Would not in any way dilute or diminish the value of such confession – The confession can be used in present matter, (Para 48, 49, 50, 51)
Terrorist and Disruptive Activities (Prevention) Act, 1987 – Section 15(1) – Confession – Admissible against the maker, co-accused, abettor or a conspirator – Can form foundation or basis for conviction of the maker, co-accused, abettor or conspirator – Guidelines laid down in (1994) 3 SCC 569 on 11.03.1994 should be followed in case of confessions recorded after 11.03.1994. (Para 60, 61)
Terrorist and Disruptive Activities (Prevention) Act, 1987 – Section 15 r/w rule 15, TADA Rules – Confession – A1 remanded to police custody on 28.02.1994 by Designated court, Mumbai – Produced in Ajmer court on 01.03.1994 – Again produced him before the court on 04.04.1994 – A1 not making any complain of being beaten or torture or forcible extraction of confession – Format of confession also consistent with Rule 15 – Making such allegations before Supreme Court – In view of certificate of satisfaction about voluntariness of the confession given by officer recording confession and other material circumstances, confession accepted as correctly recorded. (Para 62)
If a series of explosions occurring in different places in identical way is investigated by a single agency and TADA is validly invoked in first case, it can validly be invoked in other cases also. **2016 0 AIR(SC) 2461; 2016 4 Supreme 268; 2016 0 Supreme(SC) 392; 2016(3) Crimes 1; Mohd. Jalees Ansari and Others Vs. Central Bureau of Investigation**

Evidence of injured witness should normally be relied, but its veracity should also be examined with reference to materials on record. It should be seen whether the witness is implicating somebody out of enmity and vendetta. **2016 4 Supreme 317; 2016 0 Supreme(SC) 422; 2016(30 Crimes 43(SC); Indira Devi and Ors. Vs. State of Himachal Pradesh**

Criminal trial – Conviction under a provision in absence of any charge framed under that provision – No infirmity when relevant and material facts are already part of charge under other provisions. (Para 14)
Code of Criminal Procedure, 1973 – Section 378 – Interference by High Court – Perversity in trial court judgment – Trial court ignoring glaring facts emerging from deposition of PW-6, 9 and 20 as well as PW 13 and 16 and also by ignoring the admission of the accused in the UDR complaint – Trial court further failing to look for the relevant documents already available on the record – Trial court not applying its mind to the scope of Section 174 – Trial court judgment, held, perverse – High Court rightly interfered. (Para 13)
Indian Penal Code, 1860 – Section 498-A – Demand of Rs.1,00,000/- by appellant for investment in his wine business – Injuries on person of deceased – Not explained by appellant though he was alone in the room with the deceased – Harassment falling under clause (b) of section 498-A – No infirmity. (Para 17)

Indian Penal Code, 1860 – Section 498-A r/w section 113A, Indian Evidence Act, 1872 – Appellant found guilty u/s 498-A – Unnatural death of wife within seven years of marriage – Husband subjecting deceased to cruelty – Circumstances raising presumption u/s 113A – Once the charge of cruelty is proved u/s 498-A, presumption u/s 113A must be raised. (Para 18, 19, 24)

we find no merit in the first contention that the judgment and order of the acquittal was not perverse or that it required no interference of the High Court. The views of the High Court on this issue are sound and we are in agreement that the judgment of the trial court suffered from such gross errors in approach and appreciation that it could not be saved on the principle that if two views are possible, there should be no interference with a judgment and order of acquittal.**2016 0 Supreme(SC) 421; 2016(3) Crimes 48 (SC); Satish Shetty Vs. State of Karnataka.**

Power u/s 482 CrPC is not limited to quashing proceedings within the ambit and scope of Section 320.

Settlement and compromise could be basis for quashing proceedings between private parties, particularly when the case has a predominantly civil fervour arising out of commercial, financial, mercantile, civil, partnership, matrimony relating to dowry etc., or family disputes.

The only limitation to such exercise of the power is that the crime should not be against the society. **J. Ramesh Kamath & Ors.Vs. Mohana Kurup & Ors 2016 0 AIR(SC) 2452; 2016 0 Supreme(SC) 375; 2016(3) Crimes 56 (SC).**

Terrorist and Disruptive Activities (Prevention) Act, 1987 – Section 20A – Sub-section requiring approval of District Superintendent of Police – Instantly approval taken from Additional Director General of Police – Not valid – Even an authority higher in rank would not be competent to give the approval. (Para 5) **2016 0 AIR(SC) 2386; 2016 0 Supreme(SC) 384; 2016 (3) Crimes 64 (SC); State of Rajasthan Vs. Mohinuddin Jamal Alvi & Anr**

Adjudication founded on analysis of statutory provisions, applicability of letters issued by Reserve Bank of India and nature of transaction carried out between the parties is an adjudication on merits and not on technical grounds.

Adjudicating forum should follow the majority view in a judgment and not the minority view.

Superior Court should not deliberate on an order which is not challenged before it.

When a subsequent decision refers and distinguishes an earlier decision (may be by a larger Bench), it becomes binding precedent. Pronouncement in Radheshyam Kejriwal is a binding precedent.

If adjudication proceeding exonerates the accused on merits, trial of the person would be abuse of process of court.**2016 0 Supreme(SC) 448; 2016 (3) Crimes 67 (SC) M/s Videocon industries Ltd & anr. Vs. State of Maharashtra & ors.**

"362. Court not to alter judgment:- Save as otherwise provided by this Code or by any other law for the time being in force, no Court, when it has signed its judgment or final order disposing of a case, shall alter or review the same except to correct a clerical or arithmetical error." The aforesaid provision debars the Court from altering or reviewing the judgment only in those cases when it has signed its judgment or when it has passed final order disposing of a case. In the instant case, as mentioned above, the Trial Court on the earlier occasion had simply deferred taking cognizance under the impression that the sanction under Section 19 of the PC Act is required. There was no final order passed disposing of the case inasmuch as had the sanction been brought, (cognizance would have been taken in any case), the Trial Court is authorised to take cognizance which is not disputed by the learned counsel for the respondent as well.

There was no decision much less conclusive decision taken by the Court. The Trial Court rightly pointed out that it was only in the nature of reminding the duty of the Investigation Officer to meet certain requirements for taking cognizance of offence under the PC Act. However, when the Investigation Officer brought to its notice, on the subsequent date, that no such sanction was required, the Trial Court finding it to be correct position in law took cognizance. By this, the Trial Court was not reviewing any order. According to us order dated 13.09.2012 could not be construed as final order, more so, when there was no final determination of the issue regarding requirement of sanction for prosecution against the respondent herein. **State through CBI/ACB, Hyderabad Vs Dharmana Prasad Rao, 2016 (3) Crimes 72 (SC)**

Domestic Violence Act, 2005 – Section 28 r/w sections 18 and 20 – Respondent making prayers u/s 18 and 20 – Section 28 provides that proceedings under these provisions shall be governed by CrPC – However, the disputes are predominantly of civil nature – Therefore the order to be passed by the Magistrate in first instance would be of a civil nature – If violated, the order assumes the character of criminality – Sections 18, 19, 20, 21 and 31 – However, nature of the matter remains predominantly civil. (Para 12, 13, 14, 15)
Domestic Violence Act, 2005 – Sections 18 and 20 – Complaint under – Being of civil nature, the complaint can be allowed to be amended – More so because respondent no. 1 was entitled to file additional application for the additional relief – Even amendment in complaint before criminal courts is not completely barred . (Para 17)
2016 0 AIR(SC) 2519; 2016 2 Crimes(SC) 277; 2016 0 Supreme(SC) 447; 2016 (3) Crimes 74 (SC) Kunapareddy @ Nookala Shanka Balaji Vs. Kunapareddy Swarna Kumari & Anr

Circumstances should be such as to form a complete chain ruling out every possible hypothesis of the innocence of the accused person(s).
Being related or partisan per se cannot discredit them or adversely affect the probative worth of their statements on oath.
2016 0 AIR(SC) 1015; 2016 0 AIR(SCW) 1015; 2015 0 Supreme(SC) 1300; State of Punjab Vs. Suraj Prakash & Anr.

The said testimony with regard to actual assault supported by other witnesses and medical evidence – Discrepancies pointed out therein trivial – No infirmity in conviction.
2016 0 Supreme(SC) 457; 2016(3) Crimes 111 (SC) Kailas Namdeo Patil & Co. Vs. State of Maharashtra

When other accused and medical evidence supported the prosecution case, the informant on whose instance FIR was lodged, turning hostile would be immaterial.
2016 0 Supreme(SC) 455; 2016(3) Crimes 115 (SC). Satish @ Bobby Vs State of Haryana

Non examination of finger-print photographer and non-production of negatives in not fatal to prosecution.
Depositing huge amount of money by accused in his bank account at his native place after the robbery and not being able to explain the source of money is incriminating circumstance against him.
Acquittal in criminal proceeding does not debar the employer from taking action in accordance with Rules, and acquittal in criminal case does not entitle a person to automatic reinstatement, unless honourably acquitted. **2016(3) Crimes 140; 2016 0 Supreme(SC) 545; Ajay Kumar Singh Vs The Flag Officer Commanding-in-chief & Ors.**

In case of multiple dying declarations, each dying declaration has to be considered independently on its own merit for appreciating its evidentiary value. One cannot be rejected because of the contents of the other.
2016 0 Supreme(SC) 485; 2016(3) Crimes 158 (SC) Raju Devade Vs.State of Maharashtra.

Criminal trial – Circumstantial evidence – Murder – Burden of proof on prosecution – Of a comparatively lighter character – Accused cannot keep quiet and not offer any explanation as to cause of death of deceased – Section 106, Indian Evidence Act, 1872. (Para 21, 22)
Taking a plea proved to be false becomes additional link in the chain of circumstances, to complete the chain. **2016 0 Supreme(SC) 481; 2016(3) Crimes 168 (SC) Jamnadas Vs State of M.P.**

Code of Criminal Procedure, 1973 – Section 156(3) – Magistrate may direct police to register FIR and conduct investigation – Even if the Magistrate does not direct specifically to register FIR but directs investigation, police should register FIR – Magistrate and police directed accordingly. (Para 11)
Hamant Yashwant Dhage Vs State of Maharashtra. 2016 0 Supreme(SC) 143; (2016) 2 SCC (Cri) 545; (2016) 6 SCC 273.

Criminal Procedure Code, 1973 — Ss. 154, 156(1) & (3) and 36 — Non-registration of FIR or improper investigation by police — Remedy in matters of: Remedy in such matters does not lie before High Court under Art. 226 of Constitution but before Magistrate concerned under S. 156(3) CrPC. If on an application under S. 156(3) CrPC, Magistrate is prima facie satisfied, he can: (i) direct registration of FIR, (ii) if FIR has already been registered, issue a direction for proper investigation to be made, which includes, if he deems it necessary, recommending change of investigating officer, and can also (iii) monitor the investigation. **[Sudhir Bhaskarrao Tambe v. Hemant Yashwant Dhage, (2016) 6 SCC 277; (2016) 2 SCC (Cri) 549.**

S. 197(1) — Previous sanction to prosecute public servant under — When required: Protection under S. 197 is available only when alleged act done by public servant is reasonably connected with discharge of his official duty and is not merely a cloak for doing objectionable act. If in doing his official duty, he acted in excess of his duty, but there is a reasonable connection between act and performance of official duty, excess will not be a sufficient ground to deprive public servant of protection. Question is not as to nature of offence such as whether alleged offence contained element necessarily dependent upon offender being a public servant, but whether it was committed by a public servant acting or purporting to act as such in discharge of his official capacity. Before S. 197 can be invoked, it must be shown, that official concerned was accused of offence alleged to have been committed by him while acting or purporting to act in discharge of his official duties. It is not the duty which requires examination so much as the act, because official act can be performed both in discharge of official duty as well as in dereliction of it. The act must fall within the scope and range of official duties of public servant concerned. There cannot be any universal rule to determine whether there is a reasonable connection between act done and official duty, nor is it possible to lay down any such rule. One safe and sure test in such regard, would be to consider if omission or neglect on part of public servant to commit the act complained of could have made him answerable for a charge of dereliction of his official duty. This makes it clear, that concept of S. 197 does not get immediately attracted on institution of complaint case. **[Amal Kumar Jha v. State of Chhattisgarh, (2016) 6 SCC 734]**

Criminal Procedure Code, 1973 — Ss. 193, 190, 209 and 397 to 401 — Power of Sessions Court to take cognizance under S. 193 CrPC as a court of original jurisdiction — When

available: When Magistrate has played an *active role* in taking/refusing cognizance before committing case under S. 209 CrPC, i.e. of active committal, when Magistrate has already exercised cognizance power, Sessions Court cannot take cognizance for a second time "as a court of original jurisdiction" under S. 193 CrPC, as cognizance of an offence can only be taken once. It can only exercise its revisional jurisdiction. In another situation when Magistrate has played a *passive role* in committing case under S. 209 CrPC, i.e. passive committal, since Magistrate has not exercised cognizance power, Sessions Court is free to exercise the same for the first time "as a court of original jurisdiction" under S. 193 CrPC. **[Balveer Singh v. State of Rajasthan, (2016) 6 SCC 680] = (2016) 2 SCC (Cri) 622.**

Criminal Trial — Practice and Procedure — Locus standi/standing: Term "*locus standi*" is Latin term, general meaning of which is "place of standing". *Concise Oxford English Dictionary*, defines "locus standi" as the right or capacity to bring an action or to appear in a court. Traditional view of "locus standi" has been, that person who is aggrieved or affected alone has the standing before court i.e. to say he only has a right to move court for seeking justice. Later, Supreme Court, with justice-oriented approach, has relaxed the strict rule with regard to "locus standi", allowing any person from society not related to cause of action to approach the court, bona fide seeking justice for those who could not themselves approach the court. Regarding criminal trial, which is conducted, largely, by following procedure laid down in CrPC, since offence is considered to be a wrong committed against society, prosecution against accused person is launched by State. It is duty of State to get culprit booked for offence committed by him. Focal point here is that if State fails in aforesaid regard, then, party having bona fide connection with cause of action, who is aggrieved by order of court, cannot be left at mercy of State and without any option to approach the court for seeking justice. **Amanullah v. State of Bihar, (2016) 6 SCC 699= (2016) 2 SCC (Cri) 551= 2016 0 Supreme(SC) 287;**

In so far as the accused who were convicted with the aid of Section 149, the High Court adopted a test and held that unless at least four witnesses had shown to have given a consistent account against any of the Appellants, the case against them could not be said to have been proved.
The test adopted in Masalti (supra) as a rule of prudence cannot mean that in every case of mob violence there must be more than one eyewitness. The Trial Court was therefore perfectly right and justified in relying upon the testimony of sole witness PW12 Sarojini and the High Court completely erred in applying the test laid down in Masalti (supra).
State of Maharashtra Vs Ramlal Devappa Rathod and Ors. (2016) 2 SCC(cri) 638 = (2015) 15 SCC 77 = 2015 4 JLJR(SC) 312; 2015 0 Supreme(SC) 1222;

Juvenile Justice (Care and Protection of Children) Act, 2000 – Section 7A r/e Rule 12, Juvenile Justice (Care and Protection) Rules, 2007 – Age of juvenile – If matriculation or equivalent certificate is reliable, it has to be treated as conclusive proof of age – However, in case of doubt an enquiry for determination of age would be permissible – Instantly, certificates issued by different schools contradictory – Electoral roll showing the appellant as major – Resort to medical examination for determination of age – No infirmity. **Parag Bhati (Juvenile) thrgh. Legal Guardian-Mother-Smt. Rajni Bhati versus State of Uttar Pradesh and Anr; 2016 2 Crimes(SC) 268; 2016 0 AIR(SC) 2418; 2016 4 Supreme 173; 2016 0 Supreme(SC) 366; 2016(2) ALD (Crl) 212 (SC).**

Sentence – Parity in sentence – Appellants claiming parity in sentence with other three co-accused – The tree co-accused were granted benefit of probation on account of their ages varying from 75 to 85 years – Held, appellants cannot claim parity in sentence. **Bijender @ Papu and Anr. Versus State of Haryana; 2016 0 Supreme(SC) 423; 2016(2) ALD (Crl) 234 (SC)**

Criminal trial – Petitioners charged u/s 420 IPC and section 66-A(b), IT Act, 2000 – Section 66-A struck down in its entirety by Shreya Singhal case – FIR showing that the dispute is purely of civil nature, but given a criminal colour – No ingredient of section 420 IPC even remotely attracted – All proceedings quashed.
Initiation of disciplinary proceeding or criminal prosecution should not be an impediment for delineation of the allegations of violation of procedures of arrest and curtailment of liberty.
Procedures of arrest and seizure u/s 41 CrPC and in the guidelines laid down in D.K.Basu's case are mandatory.
Violation of sections 41 and 41-A CrPC and guidelines of D.K. Basu case in matter of arrest and seizure attracts public law remedy entitling the Court to impose compensation. Compensation of Rs.5,00,000 to each petitioner directed.
In the case at hand, there has been violation of Article 21 and the petitioners were compelled to face humiliation.
They have been treated with an attitude of insensibility. Not only there are violation of guidelines issued in the case of D.K. Basu (supra), there are also flagrant violation of mandate of law enshrined under Section 41 and Section 41-A of CrPC. The investigating officers in no circumstances can flout the law with brazen proclivity. In such a situation, the public law remedy which has been postulated in Nilawati Behra (supra), Sube Singh v. State of Haryana, (2006) 3 SCC 178 Hardeep Singh v. State of M.P., (2012) 1 SCC 748 comes into play. The constitutional courts taking note of suffering and humiliation are entitled to grant compensation. That has been regarded as a redeeming feature. In the case at hand, taking into consideration the totality of facts and circumstances, we think it appropriate to grant a sum of Rs.5,00,000/-(rupees five lakhs only) towards compensation to each of the petitioners to be paid by the State of M.P. within three months hence. It will be open to the State to proceed against the erring officials, if so advised. **Dr. Rini Johar & Anr. Vs. State of M.P. & Ors.; 2016 0 Supreme(SC) 425; 2016 (2) ALD (Crl) 235 (SC).**

Criminal trial – Conviction under a provision in absence of any charge framed under that provision – No infirmity when relevant and material facts are already part of charge under other provisions
Indian Penal Code, 1860 – Section 498-A r/w section 113A, Indian Evidence Act, 1872 – Appellant found guilty u/s 498-A – Unnatural death of wife within seven years of marriage – Husband subjecting deceased to cruelty – Circumstances raising presumption u/s 113A – Once the charge of cruelty is proved u/s 498-A, presumption u/s 113A must be raised.
When trial court ignores glaring facts emerging from deposition of witnesses, as also admission of the accused in the UDR complaint and fails to look for the relevant documents already available on the record and does not apply its mind to the scope of Section 174; verdict of the trial court shall be perverse liable to interference by the High Court. **Satish Shetty Vs. State of Karnataka; 2016 0 Supreme(SC) 421;2016(2) ALD (Crl) 247 (SC)**

Criminal Procedure Code, 1973—Section 340—Perjury—Only on a substantial issue, should there be fabrication of evidence or tendering of false evidence knowing it be really so, then situation warrants initiation of proceedings—Otherwise, precious time of Court would be lost in pursuing trivia leaving aside substantial issues.
Criminal Procedure Code, 1973—Section 340—Perjury—Intent and purpose— Purpose is to uphold majesty of judicial process—Process of decision making by a judicial authority should not be divested from its pursuit of finding truth—Role of Court which was to deal with application under Section 340 is not to record any finding as to whether any offence was committed or who committed the same—It is only intended for it to form an opinion that witness has either intentionally given false evidence or produced fabricated evidence—

It is for Court to firm up its opinion that it is expedient in interests of justice to prosecute witness

2015 3 Crimes(HC) 452; 2015 0 Supreme(AP) 265; 2016(2) ALD (Crl) 261; M. Salahuddin Ayub Vs. State of Telangana

when once the charges against the petitioner/A.21 is not proved in the Departmental Proceedings, the pendency of trial against the petitioner/A.21 is nothing but an abuse of process of law. This Court is also of the view that no purpose would be served in proceeding with the trial especially in the absence of any material records, as the entire case is based on the material evidence **B.Muthaiah Vs State of A.P. & Another. 2016(2) ALD (Crl) 286**

Indian Penal Code, 1860 – Sections 376/511 – Attempt to commit rape – Conviction – No house wife will lodge complaint to police without consulting her family members – Possibility of lodging of complaint after arriving at consensus with family members is quite natural and probable – Delay in lodging complaint by itself is not a valid ground to vitiate case of prosecution.

It is needless to say that the Court need not brush aside the evidence of the hostile witnesses in toto. The court can place reliance on the testimony of hostile witnesses also to the extent of their supporting the version of the prosecution case.

There appears to be misconception regarding the effect on the testimony of a witness declared hostile. It is a misconceived notion that merely because a witness is declared hostile his entire evidence should be excluded or rendered unworthy of consideration.

The Court can convict a person basing on the solitary evidence of the prosecutrix if the same inspires the confidence of the Court

2016 0 Supreme(AP) 47; 2016(2) ALD (Crl) 340; Kaadish Mallesh Vs State of A.P.

The passport of an accused facing trial under DVC can also be got impounded by resorting to the sec 10 of Passports act through the Regional Passport Auhtority. **K.Sowmya vs The Regional Passport Officer And another https://indiankanoon.org/doc/42793995/**

NEWS

- Prosecution Replenish congratulates Sri T.Srinivas Reddy garu for adoring the post of JD Cum ADOP(I/C) in the O/o the DOP, Andhra Pradesh.
- TS-ALLOWANCES – Dearness Allowance – Dearness Allowance to the State Government Employees from 1st of January, 2016 – Sanctioned – Orders – Issued. G.O.MS.No. 103 FINANCE (HRM.IV) DEPARTMENT Dated: 01-09-2016.
- A.P.-ALLOWANCES – Dearness Allowance – Dearness Allowance to the State Government Employees from 1st July 2015 – Sanctioned – Orders – Issued. G.O.Ms.No.172 - FINANCE (HR VI) DEPARTMENT Dated: 27-08-2016

ON A LIGHTER VEIN

"Poor Old fool," thought the well-dressed gentleman as he watched an old man fish in a puddle outside a pub. So he invited the old man inside for a drink. As they sipped their whiskeys, the gentleman thought he'd humor the old man and asked, "So how many have you caught today?"

The old man replied, "You're the eighth."

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PROSECUTION REPLENISH

An Endeavour for learning and excellence

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"Great minds discuss ideas.
Average minds discuss events.
Small minds discuss people"
– Eleanor Roosevelt

CITATIONS

Constitution of India – Articles 19(1)(a) and 21 and section 499, Indian Penal Code, 1860 – Balancing of fundamental rights – No article in Part III is an island but part of a continent – Balancing of fundamental rights a constitutional necessity – Court duty bound to strike a balance so that the values are sustained – Injury to reputation – Basic ingredient of defamation – Reputation an inherent component of Article 21, should not be allowed to be sullied solely to enable another individual to have its freedom (of expression) – Word "defamation" having been used in the Constitution, defamation as a criminal offence held covered by Article 19(2).
Code of Criminal Procedure, 1973 – Section 199 – Different treatment for public servants – a Public servant entitled to file a complaint through public prosecutor in respect of his conduct in discharge of public functions – Protection for official acts of public servants – They cannot be subjected to defamatory attacks because of discharge of their due functions – Thus they constitute a different class – Criticism and defamation – Distinction – One is bound to tolerate criticism, dissent and discordance but not expected to tolerate defamatory attack – Therefore, engagement of Public Prosecutor cannot be found fault with – Submission that the provision, by prescribing filing of complaint in court of Session instead of Magistrate, curtails right of appeal – Fallacy – While prescribing filing of complaint before Sessions court, provision provides three safeguards – Namely, (i) filing by the public prosecutor; (ii) necessity of obtaining sanction from the appropriate Government and (iii) Court of Session is superior court than the Magistrate to deal such case – Thus sufficient protection is given and right to appeal to High Court not curtailed – Submission not acceptable – No justification to declare the provisions ultra vires. (Para 192, 193)
Code of criminal Procedure, 1973 – Section 199 – Criminal defamation – Neither any FIR can be filed nor can any direction be issued under Section 156(3) CrPC – Therefore responsibility of the Magistrate is more – Criminal law cannot be set into motion as a matter of course – Application of mind in the case of complaint is imperative. (Para 196, 197) **2016 0 Supreme(SC) 379 = (2016) 3 SCC (Cri) 1 = (2016) 7 SCC 221 Subramanian Swamy Vs Union of India**

'Good Samaritan Guidelines' issued vide notification dated 12.5.2015 by Ministry of Road Transport and Highways, Government of India approved with certain modifications.
Acknowledgement mentioning the name of Samaritan, address, time, date, place of occurrence and confirming that the injured person was brought by the said Samaritan; to be issued on demand.
Affidavit of Good Samaritan, if filed, shall be treated as complete statement by the Police official while conducting the investigation. Statement if to be recorded, complete statement shall be recorded in a single examination.
Appearance of Good Samaritans not to be insisted by courts. Commission may be appointed u/s 284, CrPC, if required.
Guidelines would be without prejudice to liability of driver of a motor vehicle involved in a road accident u/s 134, Motor Vehicles Act, 1988.
2016 0 Supreme(SC) 263 = (2016) 3 SCC (cri) 133 = (2016) 7 SCC 194; Savelife foundation and another Vs. Union of India and another BATCH

In J.K. International ((2001) 3 SCC 462), a three-Judge Bench was adverting in detail to Section 302 CrPC. In that context, it has been opined that the private person who is permitted to conduct prosecution in the Magistrate's Court can engage a counsel to do the needful in the court in his behalf. If a private person is aggrieved by the offence committed against him or against any one in whom he is interested he can approach the Magistrate and seek permission to conduct the prosecution by himself. This Court further proceeded to state that it is open to the court to consider his request and if the court thinks that the cause of justice would be served better by granting such permission the court would generally grant such permission. Clarifying further, it has been held that the said wider amplitude is limited to Magistrate's Court, as the right of such private individual to participate in the conduct of prosecution in the sessions court is very much restricted and is made subject to the control of the public prosecutor.

We have already explained the distinction between Sections 301 and 302 CrPC. The role of the informant or the private party is limited during the prosecution of a case in a Court of Session. The counsel engaged by him is required to act under the directions of public prosecutor. As far as Section 302 CrPC is concerned, power is conferred on the Magistrate to grant permission to the complainant to conduct the prosecution independently.

It may be clearly stated here that the said provision applies to every stage including the stage of framing charge inasmuch as the complainant is permitted by the Magistrate to conduct the prosecution

2016 (3) Crimes 405 (SC); 2016 0 Supreme(SC) 701; Dhariwal Industries Ltd. Vs. Kishore Wadhwani & Ors,

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

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

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

(a) Indian Evidence Act, 1872 – Section 32 – Multiple dying declarations – Each dying declaration has to be considered independently on its own merit for appreciating its evidentiary value – One cannot be rejected because of the contents of the other. (Para 27)

(b) Indian Evidence Act, 1872 – Section 32 – Conviction can be recorded on the basis of the dying declaration alone if wholly reliable. (Para 28)

(c) Indian Evidence Act, 1872 – Section 32 – Dying declaration – Need not necessarily be in question answer form – First two declarations similar in content – Corroborated by evidence Third declaration quite different – Stating cause of fire being chimney in the house and that the deceased was sleeping – Evidence disproving the same – Burn injuries not accidental – Courts below rightly rejecting third declaration and convicting the accused. (Para 29, 30, 31, 34, 38, 39)

2016 0 Supreme(SC) 485; 2016(3) Crimes 232 (SC) ; Raju Devade Vs State of Maharashtra.

Union of India directed to make necessary amendments in Food Safety and Standards Act, 2006 including penal provisions at par with those contained in Section 272 of the Indian Penal Code, 1860 (State amendments included), i.e., life imprisonment with or without fine.
The Food Safety and Standards Act, 2006 should be implemented in a more effective manner.
High risk areas should be identified and food samples taken from those areas.
Adequate lab testing infrastructure with NABL accreditation should be ensured.
Snap short surveys should be conducted periodically both in the State as well as at the national level by FSSAI.
Appropriate State level Committee shall be constituted as is done in the State of Maharashtra to take the review of the work done to curb the milk adulteration in the district and in the State by the authorities.
Website should be set up by State authorities specifying the functioning and responsibilities of food safety authorities and also creating awareness about complaint mechanisms. All States should also have and maintain toll free telephonic and online complaint mechanism.
The States/Food Authority/Commissioner of Food Safety shall inform the general public of the nature of risk to health and create awareness of Food Safety and Standards. They should also educate school children by conducting workshops and teaching them easy methods for detection of common adulterants in food, keeping in mind indigenous technological innovations (such as milk adulteration detection strips etc.)

2016 0 Supreme(SC) 598; 2016 (3) Crimes 288 (SC); https://indiankanoon.org/doc/75522969/; Swami Achyutanand Tirth & Ors. Vs. Union of India & Ors

Narcotic Drugs and Psychotropic Substances Act, 1985 – Section 42 and 50 – Appellant challenging conviction on ground of non-compliance of section 42 and 50 – Recovery having been made in public place, section 42 not attracted – Section 50 complied with in so far as a Gazetted officer was called and recovery was made in his presence – Trial court and High Court concurrently convicting appellant – No error

2016 0 Supreme(SC) 489; 2016 (3) Crimes 297 (SC) Jagat Singh Vs. State of Uttarakhand.

Criminal Laws - Non-examination of a witness
Whether fatal, when prosecution has otherwise proved its case by sufficient evidence - Held - No - It was not necessary for prosecution to examine all witnesses cited by it - Prosecution can decide sufficiency of evidence and as to how many witnesses it should examine. In this case, since witnesses examined, proved prosecution's case beyond reasonable doubt, non-examination of a few witnesses, cited by it, was not fatal.
Criminal Laws - Appreciation of evidence
Concurrent findings recorded by courts below, against appellant - Held, the exercise of appreciating the evidence cannot be taken in this appeal before Apex court, specially when there is no extreme perversity or arbitrariness in the findings of the High Court.
Narcotic Drugs and Psychotropic Substances Act, 1985 - Section 20
No evidence adduced by appellant to challenge conviction under Section 20, except plea of denial in statement under Section 313 CrPC - Affidavit of one 'M', was relied upon by defence, but could not be proved as 'M' was neither examined nor cross-examined - Held, affidavit was rightly not treated as a piece of evidence by courts below - Evidence adduced by prosecution remained unrebutted.
Narcotic Drugs and Psychotropic Substances Act, 1985 - Section 42 , Section 43 , Section 50

Plea of Non-Compliance - Held, cannot be accepted. Search was made in public place and in presence of gazetted officer, after giving an offer to the appellant as required under the NDPS Act - Quantity of the contraband recovered was commercial in nature - Thus conviction under Section 20 by courts below is maintained.

2016 0 Supreme(SC) 488; 2016(3) Crimes 300 (SC) Mahiman Singh Vs.State of Uttrakhand

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

2016 0 Supreme(SC) 588; 2016 (3) Crimes 303 (SC) SUDHIR CHAUDHARY ETC. Vs. STATE (NCT OF DELHI)

NDPS ACT. since PW-7 himself was the gazetted officer, it was not necessary for him to ensure compliance of Section 42 as held by this Court in Prabha Shankar Dubey vs. State of M.P. (2003) 8 Supreme 565 = (2004) 2 SCC 56 and lastly, so far as compliance of the requirement of Section 50 is concerned, it was found and indeed rightly that the offer to search the appellant was given to him in writing and on his giving consent, he was accordingly searched.

2016 0 Supreme(SC) 496; 2016(3) Crimes 307 (SC) Sekhar Suman Verma Vs. The Superintendent of N.C.B. & Anr.

(a) Code of Criminal Procedure, 1973 – Section 378 and Article 227, Constitution of India – Reversing an order of acquittal – An order of acquittal should not be interfered in absence of manifest illegality and perversity in the trial court's findings and reasons resulting in grave miscarriage of justice – An order of acquittal should not be interfered merely because two views are possible. (Para 26, 27)
(b) Criminal trial – Appreciation of evidence – Evidence of chance witness – Can be relied if his presence is adequately explained. (Para 29)
(c) Criminal trial – Appreciation of evidence – Contradictions in testimony – Such testimony cannot be relied upon for conviction. (Para 30)
(d) Code of Criminal procedure, 1973 – Section 161 – Statements of witnesses given to police u/s 161 not confronted to them and marked as exhibits – IO in his deposition not mentioning those statements u/s 161 – Such statements cannot be relied upon for conviction. (Para 35)

2016 0 Supreme(SC) 586; 2016 (3) Crimes 310 (SC) Baby @ Sebastian & anr Vs. Circle Inspector of Police, Adimaly.

(a) Criminal trial – Circumstantial evidence – Proximity of last seen and murder – Evidence of last seen rightly relied upon by courts below. (Para 15)
(b) Criminal trial – Circumstantial evidence – Accused last seen with victim in proximity of time of murder – Dead body and clothes and other articles recovered at the instance of the accused – Conduct of the accused, recovery of clothes which was worn by him at the time of occurrence and recovery of keys which were with the deceased when he left the house completes the chain of events – Circumstances unerringly pointing out that guilt of the accused – No error in conviction. (Para 15)
(c) Criminal trial – Circumstantial evidence – Motive – It is impossible to prove what precisely impelled the murderer to kill a particular person – Motive, if proved, would supply a link in the chain of circumstantial evidence – Absence of motive, however, cannot be a ground to reject the prosecution case. (Para 17)

2016 0 Supreme(SC) 486; 2016(3) Crimes 320 (SC); 2016 (2) ALD (Crl) 490 (SC) Praful Sudhakar Parab Vs. State of Maharashtra.

Conviction can be based on evidence of hostile witness if corroborated by other reliable evidence.

2016 0 Supreme(SC) 582; 2016 (3) Crimes 339 (SC) Devraj Vs State of Chhattisgarh.

(a) Code of Criminal Procedure, 1973 – Section 197 – Can be construed narrowly as well as widely – If construed too narrowly, the section will be rendered altogether sterile – In the wider sense, it will cover every act constituting an offence, committed in the course of the same transaction in which the official duty is performed or purports to be performed – Right approach lies between these two extremes – Public servant not entitled to protection of section 197 in every offence – Only an act constituting an offence, directly and reasonably connected with official duty will require sanction for prosecution. (Para 13, 14)

(b) Code of Criminal Procedure, 1973 – Section 197 – Fabricating false records and misappropriation of funds and cheating cannot be official duty of a public servant – Official capacity only enables him to fabricate the record or misappropriate the public fund or cheat – Official duty cannot be said to be integrally connected with official duty. (Para 20, 21

(c) Code of Criminal Procedure, 1973 – Section 197 – Acts of omission or commission totally alien to the discharge of the official duty – Section 197 cannot be invoked – Instantly issue being entrustment and missing of the entrusted items – The act cannot be done as public servant – Breach of trust cannot be connected with official duty – Section 197 not attracted. (Para 22)

(d) Code of Criminal Procedure, 1973 – Section 197 – Employees of Corporations – Section draws distinction – In case of higher ranked officials only sanction should be required – If a public servant is appointed to another office, his official acts in later office would relate to his former office. (Para 24)

(e) Administration of justice – Conduct of case by Government Companies or the public undertakings – Favourable decision in Md. Hadi Raja not cited before High Court – Supreme Court cannot take notice thereof – Concerted effort should be made by the Government Companies or the public undertakings. (Para 26, 27)

2016 0 Supreme(SC) 470; 2016 (2) ALD (Crl) 365 (SC); Punjab State Warehousing Corp. Vs. Bhushan Chander & Anr.

Provisions of section 42, NDPS Act are mandatory.

In a case falling under section 42(1), section 43 will not be attracted.

2016 (2) ALD (Crl) 376 (SC); 2016 0 Supreme(SC) 487; State of Rajasthan Vs.Jag Raj Singh @ Hansa

Narcotic Drugs and Psychotropic Substances Act, 1985 – Section 42 and 50 – Search officer himself a gazette officer – Not necessary to ensure compliance of section 42 – Offer to search given to appellant in writing – Appellant searched only after his consent – Section 50 complied with – No error in conviction

2016 0 Supreme(SC) 496; 2016(2) ALD (Crl) 388(SC); Sekhar Suman Verma Vs. The Superintendent of N.C.B. & Anr

When a dying declaration was already recorded by the Magistrate, ordinarily there would be no need for the Police to record another dying declaration.

2016 0 Supreme(AP) 105; 2016(2) ALD (Crl) 413; Kothala Srinu Vs.The State of Andhra Pradesh

The law is well settled that the testimony of an injured witness has a high probative value. (See State of M.P. vs. Mansingh [(2003) 10 SCC 414])

True, it may be that the Police may have failed to seize the blood stained clothes, but in our opinion, that by itself may not be the sufficient reason for us to disbelieve the presence of P.W.2 at the scene of offence

Though P.W.1 is the brother of the deceased and thereby, he is an interested witness, the fact that he is also a victim of the attack by the accused lends high credibility to his testimony, as ordinarily a victim is not expected to shield the real culprits and implicate the persons, who have not perpetrated the offence unless there exists strong motive for false implication.

The maxim **"falsus in uno falsus in omnibus"** meaning, false in one thing, false in everything is a dangerous one especially in India for if a whole body of the testimony were to be rejected, because the witness was evidently speaking an untruth in some aspect, it is to be feared that administration of criminal justice would come to a dead stop. Witnesses just cannot help in giving embroidery to a story, however true in the main. Therefore, it has to be appraised in each case as to what extent the evidence is worthy of acceptance, but merely because in some respects the Court considers the same to be insufficient for placing reliance on the testimony of a witness, it does not necessarily follow as a matter of law that it must be disregarded in all respects as well. The evidence has to be sifted with care. The aforesaid dictum is not a sound rule for the reason that one hardly comes across a witness whose evidence does not contain a grain of untruth or at any rate an exaggeration, embroideries and embellishment. (see Sohrab vs. State of M.P. [(1972)3 SCC 751] and Ugar Ahir vs. State of Bihar [AIR 1965 SC 277])

The ratio in the above decisions was followed in Shakila Abdul Gafar Khan vs. Vasant Raghunath Dhoble [(2003)7 SCC 749], wherein the Supreme Court at para-25 held:

"**It is the duty of Court to separate grain from chaff.** Falsity of particular material witness or material particular would not ruin it from the beginning to end. The maxim "falsus in uno falsus in omnibus" has no application in India and the witnesses cannot be branded as liar. The maxim "falsus in uno falsus in omnibus" has not received general acceptance nor has this maxim come to occupy the status of rule of law. It is merely a rule of caution. All that it amounts to, is that in such cases testimony may be disregarded, and not that it must be disregarded. The doctrine merely involves the question of weight of evidence which a Court may apply in a given set of circumstances, but it is not what may be called 'a mandatory rule of evidence'. (See Nisar Ali vs. The State of U.P. [AIR 1957 S.C. 366])

2016 0 Supreme(AP) 160; 2016(2) ALD (Crl) 425 (A.P). Karri Nageswara Rao @ Bujji & Another Vs. The State of Andhra Pradesh.

Injury caused by knife, which is a sharp edged. Medical evidence stating that injuries are caused by blunt object. Independent Witness stating that accused stabbed injured with knife. M.C. not fatal.

2016(2) ALD (Crl) 439; Utchula Raghavulu Vs State of A.P.

We hold that the stage for investigation under Rule 7 by a police officer (not lesser in rank than Dy. Superintendent of Police) arises only after registration of the FIR. Where complaint did not disclose commission of an offence attracting the penal provisions of the Act and consequently FIR was not registered, it is not open to 1st respondent to contend that what was done by 2nd respondent amounts to "investigation" under Rule 7. When the information contained in the complaint did not disclose the commission of an offence under the Act and it was found to be insufficient to attract the penal provisions of the Act, and no FIR has been registered on the said ground, the question of investigation under Rule 7 of the said Rules does not arise for that Rule comes into play only when an FIR is registered on a complaint which discloses commission of an offence under the Act.

2016 (2) ALD (Crl) 460; 2015 0 Supreme(AP) 24;K. Aravinda Rao, IPS Vs. A. Sunder Kumar Das, IPS & Others

In the case of the present appellants, there was no question of the appellants' getting any protection by a sanction. The High Court was absolutely right in relying on the decision in Prakash Singh Badal to hold that the appellants in both the appeals had abused entirely different office or offices than the one which they were holding on the date on which cognizance was taken and, therefore, there was no necessity of sanction under Section 19, P.C. Act. Where the public servant had abused the office which he held in the check period but had ceased to hold "that office" or was holding a different office, then a sanction would not be necessary. Where the alleged misconduct is in some different capacity than the one which is held at the time of taking cognizance, there will be no necessity to take the sanction. **2016 0 Supreme(SC) 681; L. NARAYANA SWAMY Vs STATE OF KARNATAKA & ORS**

we think it appropriate to record the requisite conclusions and, thereafter, proceed to issue the directions:-

(a) An accused is entitled to get a copy of the First Information Report at an earlier stage than as prescribed under Section 207 of the Cr.P.C.

(b) An accused who has reasons to suspect that he has been roped in a criminal case and his name may be finding place in a First Information Report can submit an application through his representative/agent/parokar for grant of a certified copy before the concerned police officer or to the Superintendent of Police on payment of such fee which is payable for obtaining such a copy from the Court. On such application being made, the copy shall be supplied within twenty-four hours.

(c) Once the First Information Report is forwarded by the police station to the concerned Magistrate or any Special Judge, on an application being filed for certified copy on behalf of the accused, the same shall be given by the Court concerned within two working days. The aforesaid direction has nothing to do with the statutory mandate inhered under Section 207 of the Cr.P.C.

(d) The copies of the FIRs, unless the offence is sensitive in nature, like sexual offences, offences pertaining to insurgency, terrorism and of that category, offences under POCSO Act and such other offences, should be uploaded on the police website, and if there is no such website, on the official website of the State Government, within twenty-four hours of the registration of the First Information Report so that the accused or any person connected with the same can download the FIR and file appropriate application before the Court as per law for redressal of his grievances. It may be clarified here that in case there is connectivity problems due to geographical location or there is some other unavoidable difficulty, the time can be extended up to forty-eight hours. The said 48 hours can be extended maximum up to 72 hours and it is only relatable to connectivity problems due to geographical location.

(e) The decision not to upload the copy of the FIR on the website shall not be taken by an officer below the rank of Deputy Superintendent of Police or any person holding equivalent post. In case, the States where District Magistrate has a role, he may also assume the said authority. A decision taken by the concerned police officer or the District Magistrate shall be duly communicated to the concerned jurisdictional Magistrate.

(f) The word 'sensitive' apart from the other aspects which may be thought of being sensitive by the competent authority as stated hereinbefore would also include concept of privacy regard being had to the nature of the FIR. The examples given with regard to the sensitive cases are absolutely illustrative and are not exhaustive.

(g) If an FIR is not uploaded, needless to say, it shall not enure per se a ground to obtain the benefit under Section 438 of the Cr.P.C.

(h) In case a copy of the FIR is not provided on the ground of sensitive nature of the case, a person grieved by the said action, after disclosing his identity, can submit a representation to the Superintendent of Police or any person holding the equivalent post in the State. The Superintendent of Police shall constitute a committee of three officers which shall deal with the said grievance. As far as the Metropolitan cities are concerned, where

Commissioner is there, if a representation is submitted to the Commissioner of Police who shall constitute a committee of three officers. The committee so constituted shall deal with the grievance within three days from the date of receipt of the representation and communicate it to the grieved person.

(i) The competent authority referred to hereinabove shall constitute the committee, as directed herein-above, within eight weeks from today.

(j) In cases wherein decisions have been taken not to give copies of the FIR regard being had to the sensitive nature of the case, it will be open to the accused/his authorized representative/parokar to file an application for grant of certified copy before the Court to which the FIR has been sent and the same shall be provided in quite promptitude by the concerned Court not beyond three days of the submission of the application.

(k) The directions for uploading of FIR in the website of all the States shall be given effect from 15th November, 2016. **2016 0 Supreme(SC) 692; Youth Bar Association of India Vs. Union of India and Others**

Pendency of the criminal case cannot be the sole basis to suspend disciplinary proceedings for indefinite period. **2016 0 Supreme(SC) 724; State Bank of India & Ors. Vs. Neelam Nag.**

Connection of contraband with appellant having been established, it was for the appellant to show that he had effected sale to an authorized person.
Concurrent findings of courts below should not be interfered with.
In case of recovery of contraband in open, public place section 43 shall apply and not section 42.
Adequate compliance of section 43 rather than strict compliance is sufficient.
Section 67 requires satisfaction of the court about voluntariness of the statement and that the person making such statement was not made accused at that time. The prosecution version is based not only on the statement under Section 67 but also on the evidence of recovery of the contraband immediately after sale and the circumstances showing that the contraband was sold by the appellant to the co-accused, without any authorization. Thus, we do not find any ground to interfere with the conviction and sentence awarded to the appellant. **2016 0 Supreme(SC) 698; GIRISH RAGHUNATH MEHTA Vs. INSPECTOR OF CUSTOMS AND ANOTHER**

Under section 301 CrPC prosecution in a Sessions Court cannot be conducted by anyone other than the public prosecutor. Counsel for private person can act only under instructions of Public Prosecutor.
Section 302 is intended only for magistrate courts. Complainant seeking to conduct the case himself, has to file a written application making out a case so that the Magistrate can exercise the jurisdiction and form the requisite opinion. Section 302 applies to every stage including the stage of framing charge, if complainant is permitted by the Magistrate to conduct the prosecution. **2016 0 Supreme(SC) 701; Dhariwal Industries Ltd. Vs. Kishore Wadhwani & Ors**

(a) Indian Evidence Act, 1872 – Section 157 – This section envisages two categories of statements of witnesses, which can be used for corroboration. First is the statement made by a witness to any person at or about the time when the incident took place. The second is the statement made by him to any authority legally competent to investigate the matter. Such statements gain admissibility, no matter that it was made long after the incident. But if the statement was made to non-authority, it loses its probative value due to lapse of time. A person ordered by State Government – Becomes legally competent to investigate into the matter – Statements recorded by him are legally admissible for the purpose of corroboration. (Para 19)

(b) Administrative law – To make a person an authority legally competent to investigate, it is not necessary that he should be having authority which flows from a Statute. (Para 19)
(c) Criminal trial – Evidence – Sole witness – Having no reason to depose falsely against appellant-accused – Should be relied upon. (Para 20)
(d) Indian Penal Code, 1860 – Section 354 – A man using criminal force on the woman intending thereby to outrage her modesty – Liable for conviction – Intention cannot be proved by direct evidence – To be inferred from attending circumstances – On evidence, held, appellant-accused had requisite culpable intention. (Para 24)
(e) Criminal trial – Delay in lodging complaint – Not fatal if duly explained. (Para 26)
(f) Criminal trial – Forging of signature – Opinion of hand writing expert – Only an opinion evidence – Cannot be conclusive – In order to be relied it should be corroborated either by clear, direct evidence or by circumstantial evidence – Instantly witnesses establishing that the deceased signed in their presence – No reason to disbelieve. (Para 27, 30)
It is undoubtedly correct that if intention or knowledge is one of the ingredients of any offence, it has got to be proved like other ingredients for convicting a person. But, it is also equally true that those ingredients being state of mind may not be proved by direct evidence and may have to be inferred from the attending circumstances of a given case.
No particular number of witnesses is required for proving a certain fact. It is the quality and not the quantity of the witnesses that matters. Evidence is weighed and not counted. Evidence of even a single eye witness, truthful, consistent and inspiring confidence is sufficient for maintaining conviction. It is not necessary that all those persons who were present at the spot must be examined by the prosecution in order to prove the guilt of the accused. Having examined all the witnesses, even if other persons present nearby not examined, the evidence of eye-witness cannot be discarded
2016 0 Supreme(SC) 743; S.P.S. Rathore Vs. C.B.I. & Anr.

(a) Indian Evidence Act, 1872 – Section 133 – Accomplice witness – PW 10 and 11 involved in the crime before and after although not participating in actual abduction and murder – Are accomplices – Absence of pardon granted by any court does not mean that an accomplice ceases to be an accomplice – However, he would be a competent witness. (Para 55, 57)

AIR 1968 SC 938; (2011) 5 SCC 161 – Relied upon

AIR 1952 SC 54; AIR 1963 SC 599 – Referred

(b) Indian Evidence Act, 1872 – Section 133 – Accomplice witness – Credibility of evidence – Needs corroboration by other independent evidence – However, evidence of two accomplices cannot be used to corroborate with each other – Such corroboration must be both in respect of the crime as well as the identity of the accused. (Para 60, 61, 63)

AIR 1957 SC 637; [1916] 2 KB 658; (1969) 3 SCC 429; (1979) 4 SCC 312; AIR 1970 SC 1330 – Relied upon

(c) Criminal trial – Conviction – Appellant-accused acquitted of charge of conspiracy u/s 120-B, IPC – No evidence of their direct involvement – Accomplice evidence not corroborated by independent witness – Conviction not sustainable. (Para 63)

(1999) 5 SCC 253; (2001) 3 SCC 468; AIR 1947 Lah 220; AIR 1936 Cal 101; (2005) 1 SCC 237 – Referred

(d) Indian Penal Code, 1860 – Section 120-B, 302 and 365 – No evidence to connect accused-appellants A-3, A-4 and A-15 either to the crime, or to the deceased – Having acquitted the appellants of charges u/s 120-B, trial court was duty bound to establish involvement of each of the accused persons individually in each offence – Conviction u/s 302 and 365 IPC held bad. (Para 65, 66)

(e) Indian Penal Code – Section 109 and 120-B – Appellants acquitted of charges u/s 120-B – No overt act on part of appellants established – Conviction u/s 109 not sustainable. (Para 67, 68)

AIR 1962 SC 876; (1988)3 SCC 609 – Relied upon

Per Arun Mishra, J.

(f) Indian Penal Code, 1860 – Section 302 – For conviction u/s 302 it is not necessary that corpus delicti is found – Conviction can be based on other evidence. (Para 25)

(g) Indian Penal Code, 1860 – Section 302 – Deceased abducted by appellants – Murdered and cremated under fictitious name after two days – Appellants not explaining what they did after abduction – Open to court to draw adverse presumption that the abductor was the murderer also. (Para 26)

(2003) 11 SCC 761; (2001) 8 SCC 311 – Relied upon

(h) Indian Penal Code, 1860 – Sections 365, 387, 302, 347, 364, 109 and 201 – Accused A-3, A-4 and A-15 acting upon conspiracy of A-1 and A-2 participated in abduction, murder and cremation of the deceased – Trial court rightly convicting the accused u/s 365, 387, 302, 347, 364, 109 and 201. (Para 37)

(i) Criminal trial – Conviction – Confessional statements and recoveries pursuant thereto – Corroborating evidence of PW 10 and 11 – Conviction justified. (Para 47)

(j) Indian Penal Code, 1860 – Section 387 – Evidence of PW 10 establishing involvement of A-3, A-4 and A-15 along with other accused persons in the abduction of the deceased – Conviction u/s 387 held justified. (Para 48)

(k) Indian Penal Code, 1860 – Section 120-B – Accused appellants convicted u/s 365 r/w section 109; sections 387 and 302 r/w section 109; section 347 r/w section 109; section 364 r/w section 109 and section 201 – When charge u/s 109 is established, acquittal u/s 120-B is of no avail – Offence u/s 109 and 120-B distinguished – Conviction proper. (Para 49, 51)

(2004) 12 SCC 521 – Relied upon

(l) Criminal trial – Recovery – Car – Name of registered owner immaterial – Its use in offence and recovery is material aspect – Car in possession of PW 10 – Lent to accused – Recovery of the car at the instance of accused cannot be ignored. (Para 55)

[2016] 0 Supreme(SC) 760 Somasundaram @ Somu Vs State Rep. by Dy. Comm. of Police Criminal Appeal Nos. 403 of 2010, 827 & 828 of 2013 Decided On : 28-09-2016

Though LIFE imprisonment means imprisonment of Life, the court can fix a fixed term sentence without remission.

The High Court has declined to enhance the sentence from imprisonment for life to death, but has imposed a fixed term sentence. It curtails the power of remission after fourteen years as envisaged under Section 433-A.

Vikas Yadav Vs State of U.P. decided on 3/10/2016.

Acquittal of co-accused in a separate trial cannot be a ground for acquittal. **Brij Lal Vs State of Rajasthan, 2016 (3) Crimes 363 (SC); 2016 0 Supreme(SC) 647;**

the investigation on an inquiry under Section 174 of the Code is distinct from the investigation as contemplated under Section 154 of the Code relating to commission of a cognizable offence and in the case on hand there was no FIR registered with the P.S. Mulana neither any investigation nor any report under Section 173 of the Code was submitted. Therefore, challenge to impugned FIR under Crime No. 194 of 2005 registered by P.S. Bhilai Nagar could not be assailed on the ground that it was second FIR in the garb of which investigation or fresh investigation of the same incident was initiated. **2016 (3) Crimes 377 (SC); 2016 0 Supreme(SC) 652; Manoj Kumar Sharma & Ors. Vs State of Chhattisgarh & Anr**

(a) Fair trial – An insegregable facet of Article 21, Constitution of India – Fair trial means a trial conducted in such a manner which would totally ostracise injustice, prejudice, dishonesty and favouritism – It would include speedy trial – Fair trial entails the interests of the accused, the victim and of the society – Court is duty-bound to see that neither the

prosecution nor the defence takes unnecessary adjournments and take the trial under their control. (Para 21, 22, 23)
(b) 13Code of Criminal Procedure, 1973 – Section 311 – Court has wide discretion if fresh evidence is essential to be obtained to the just decision of the case – Recall of a witness cannot be allowed for the asking or reasons related to mere convenience – Change of counsel cannot be a ground for recall. (Para 33)
© Code of Criminal Procedure, 1973 – Section 311 – Criminal trial should proceed in accordance with section 309 – Without unwanted delay – Recall of witnesses cannot be allowed on grounds of accused persons being in custody, prosecution having been allowed to recall some of its witnesses earlier, illness of the counsel, and magnanimity commands fairness should be shown – Criminal justice is not accused-centric – Balance has to be struck between interests of the accused, the victim and the society – Concept of fair trial cannot be stretched limitlessly. (Para 37, 38)
2016 (3) Crimes 388(SC); 2016 0 Supreme(SC) 660; State of Haryana Vs Ram Mehar & Others Etc.

Once membership of an unlawful assembly is established, it is not incumbent on the prosecution to establish whether any specific overt act has been assigned to any accused
2016 0 Supreme(SC) 667; 2016 (3) Crimes 420(SC) Bharwad Navghanbhaj Jakshibhai & Ors. Vs State of Gujarat

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

NEWS

- Prosecution Replenish congratulates
  - Smt Ashirvadam Paul of 2008 APP Batch,
  - Sri Srinivasu of 2011 APP Batch, and
  - Ms Rita Lalchand of 2015 APP Batch

  On being posted as Junior Civil Judges, having been selected in the recruitment of 2014 Batch and wishes them all the best in their new responsibilities towards the society.

ON A LIGHTER VEIN

I was at the customer-service desk, returning a pair of jeans that was too tight.

"Was anything wrong with them?" the clerk asked.

"Yes," I said. "They hurt my feelings."

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PROSECUTION REPLENISH

An Endeavour for learning and excellence

Vol- V Part 10 Monthly Leaflet October, 2016

A CREATIVE MAN IS MOTIVATED BY THE DESIRE TO ACHIEVE, NOT BY THE DESIRE TO BEAT OTHERS.

AYN RAND

CITATIONS

Merely because a witness was declared hostile, his entire evidence cannot be treated as effaced from the record, his testimony, to the extent found reliable, can be acted upon. **Devraj Vs State of Chhattisgarh; 2016 (2) ALD (Crl) 554 (SC); https://indiankanoon.org/doc/193811258/; 2016(3) ALT (crl) 126.**

penal provisions required strict construction and when the phrases of a statute are not defined, they have to be understood in the natural, ordinary or popular sense. That being so, the phrase relative of the husband employed in Section 498A IPC should be understood as relatives of the husbands side with whom he obtained relationship by way of blood, marriage or adoption.
When there is no definition in statute, we have to necessarily fallback on precedential jurisprudence. **Shaik Riayazun Bee v. State of Andhra Pradesh,2016 SCC OnLine Hyd 130; 2016 (2) ALD (Crl) 576; https://indiankanoon.org/doc/198285867/**

Criminal Procedure Code, 1973 — Ss. 190, 209, 226, 228 to 235, 240 to 244, 246 to 248, 251 to 255 and 394 — Criminal trial: A criminal court cannot continue proceedings against a dead person and find him guilty. **U. Subhadramma v. State of A.P., (2016) 7 SCC 797**

Criminal Procedure Code, 1973 — S. 31(1): Person convicted of several offences at one trial and sentenced to multiple sentences of life imprisonment, the same cannot be directed to run consecutively. They can only run concurrently. In law they stand superimposed on each other. **Muthuramalingam v. State, (2016) 8 SCC 313**

Criminal Trial — Identification — Identification by voice — Voice sample — Process for drawing: Underlying process for drawing voice samples must be fair and reasonable, having due regard to mandate of Art. 21 of the Constitution. Also, it is not open to accused to dictate course of investigation. Hence, there is no substance in submission, that text which is to be read by appellants in course of drawing their voice samples should contain no part of inculpatory words which are a part of disputed recorded conversation. A commonality of words, held, is necessary to facilitate a spectrographic examination. **Sudhir Chaudhary v. State (NCT of Delhi), (2016) 8 SCC 307**

Criminal Procedure Code, 1973 — Ss. 197 and 319 — Sanction for prosecution: Sanction under S. 197 CrPC and/or sanction required under a special statute (as postulated under S. 19 of Prevention of Corruption Act, 1988), is a mandatory prerequisite even where cognizance is taken under S. 319

CrPC. Further held, determination rendered by court under S. 319 CrPC is not subservient to decision of competent authority under S. 197 CrPC as order granting or declining sanction can be assailed by taking recourse to judicial review. **Surinderjit Singh Mand v. State of Punjab, (2016) 8 SCC 722**

Criminal Procedure Code, 1973 — Ss. 311/231(2), 309 and 482 — Recall of witnesses: Interests of victim/the collective (represented through the prosecution) and accused must be balanced. Concept of fair trial cannot be limitlessly stretched to permit recall of witnesses endlessly on ground of magnanimity, etc. **State of Haryana v. Ram Mehar, (2016) 8 SCC 762**

though the appellant was charged for offence under Section 302 IPC, he was made aware of the basic ingredients of the offence under Section 306 IPC. In the light of these facts, we feel that it is a fit case for convicting the appellant for the offence punishable under Section 306 IPC instead of under Section 302 IPC. **Patan Shabbir Khan Vs State of A.P. 2016 (2) ALD (Crl) 582**

It appears that more than twenty hours after that, the appellant sustained the injuries as found by the Medical Officer. Therefore, it cannot be said that the appellant has sustained the injuries in the same transaction in which he attacked the deceased and that the non-explanation thereof by the prosecution adversely affects its case. Since the appellant sustained injuries sufficiently long after the main incident took place, it is for him to explain as to how he sustained the injuries. However, he is conspicuously silent about the same. **Atmuri Panduranga Rao @ Babu Rao Vs State of A.P. 2016 (2) ALD (Crl) 585.**

it is clear that ordinarily a dying declaration recorded by a superior officer has higher evidentiary value and also the earliest version given out by the victim deserves more credence. In the instant case, the earliest version was recorded by the Judicial Magistrate. However, the same Magistrate has recorded Ex.P14, another dying declaration which was preceded by Ex.P8, statement recorded by PW.9. When there are conflicting dying declarations, the statement given out in the dying declaration which is more consistent with the circumstances and the evidence on record deserves acceptance. **Mohd.Osman Ali and others Vs. The State, 2016 (2) ALD (Crl) 593.**

the embellishments in the evidence of P.W.1 in the statement under Section 161 of CrPC and the deposition before the Court referred to above, do not materially affect the case of the prosecution and consequently they are without any significance.

In a catena of judgments, the Supreme Court held that it is for the accused to explain the incriminating circumstances, if there is clear evidence that he was last seen with the deceased (See Joseph v. State of Kerala , Ram Gulam Chaudhary v. State of Bihar and Sahadevan v. State).

In Naina Mohd., Re. , it was held that Section 106 of the Indian Evidence Act does not shift the burden of proof in a criminal trial, which is always upon the prosecution and that it lays down the rule

that when the accused does not throw any light upon facts which are specifically 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.

When the deceased has met with an unnatural death at her house where the accused was last seen with her, the onus lies on him under Section 106 of the Indian Evidence Act to give satisfactory explanation to the incriminating circumstances specifically within his knowledge. The principle in Naina Mohd., Re (4 supra), was quoted with approval by the Supreme Court in State of Rajasthan v. Kashi Ram . Applying this principle of law to the facts of this case, this Court has no hesitation to hold that the appellant failed to discharge the onus lying on him to satisfactorily explain as to the incriminating circumstances under with his wife was done to death. **Sannikanti @ Saniganti Srinu @ Srinivasa Rao vs State of A.P. 2016 (2) ALD (Crl) 614.**

Acquittal of co-accused in a separate trial cannot be a ground for acquittal.

Trial court overlooking vital evidence specially those brought out in cross-examination and acquitting the accused. High Court relying on cogent evidence can reverse the order of acquittal.

Criminal trial – Recovery – Accused-appellant admitting having fired at crowd – Gun recovered at his instance – Recovery substantiated – Signature of accused persons on 'mazhar'– Contention that weapon was not recovered from the appellant – Rejected. (Para 19) **Brij Lal Versus State of Rajasthan, 2016 (2) ALD (Crl) 648 ; 2016 0 Supreme(SC) 647;**

the death or disappearance of any person when such person is in the custody of the Police or in any lawful custody, it shall be enquired by a Judicial Magistrate or the Metropolitan Magistrate, within whose local jurisdiction the offence has been Committed and not by Executive Magistrate.

Relief for registering a case under Section 302 IPC against the Policemen cannot be ordered in the absence of a finding recorded in that respect **Mohamad Nazma Begum Vs State of A.P. 2016 0 Supreme(SC) 688;**

(a) Narcotic Drugs and Psychotropic Substances Act, 1985 – Section 42, 43 and 50 – Recovery made in public place in presence of gazette officer after giving offer to the appellant as required under the Act – Quantity of contraband recovered from appellant commercial in nature – Appellant under section 313 CrPC not putting up any defence – Conviction not unjustified. (Para 14, 15)

(b) Criminal trial – Evidence – Defence relying upon an affidavit by one Maan Singh – Maan Singh not examined, affidavit not proved – Cannot be construed as evidence. (Para 16)

(c) Criminal trial – Evidence – Examination of witness – Appellant assailing conviction on ground of non-examination of a named prosecution witness – Held, not necessary to examine all witnesses if case is proved otherwise. (Para 18, 19)

2016 3 Crimes(SC) 300; 2016 0 CrLJ 4407; 2016 6 Supreme 152; 2016 0 Supreme(SC) 488; Mahiman Singh Vs. State of Uttrakhand; 2016 (2) ALD (Crl) 695 (SC)

Code of Criminal Procedure, 1973 – Sections 207 – Held, accused entitled to get a copy of First Information Report at an earlier stage than as prescribed u/s 207 – On an application certified copy of FIR shall be supplied within 24 hours – In case FIR is forwarded to Magistrate, certified copy shall be supplied within two working days – FIR, except in sensitive offences, shall be uploaded on official website within 24 hours and 48 hours extendable up to 7 hours in places with connectivity problems – Decision not to upload FIR shall be taken by an officer not lower in rank than Dy. SP – Non-uploading of FIR shall; not be ground for claiming remedy u/s 438 – In case of non-supply of FIR on ground of sensitive nature of offence competent authority, on representation form aggrieved person, shall constitute a committee to deal with the grievance within three days – Such committees directed to be constituted within eight weeks – Even in case of sensitive offences, aggrieved person can obtain certified copy of FIR from the court – Court shall, on application, provide certified copy within three days – Directions will be effective from 15th November, 2016; **Youth Bar Association of India Versus Union of India and Others 2016 (4) Crimes 1 (SC); 2016 0 Supreme(SC) 692**

Indian Penal Code, 1860 – Section 149 – After establishing membership of an unlawful assembly, prosecution is not required to establish whether any specific overt act has been assigned to any accused – Mere membership of the unlawful assembly is sufficient – Every member of an unlawful assembly is vicariously liable for the acts done by others; **2016 0 Supreme(SC) 667; 2016(4) Crimes 4; Bharwad Navghanbhaj Jakshibhai & Ors. Versus State of Gujarat.**

The seizure of lungi not conclusive proof; finger prints on the blood stained knife not taken; Appellant found unconscious; Not making seizure immediately and non-mentioning of lungi in seizure memo – Not sufficient to doubt credibility of prosecution story.
Code of Criminal Procedure, 1973 – Section 313 – Unnatural deaths in the house – Appellant present – Non disclosure as to how his family members died – Important to believe prosecution story.
As to the fact that in the General Diary entry (Ext. P-37) there is no mention of commission of murder of his wife and children by the appellant, it is sufficient to say that the General Diary entries are summary entries relating to movement of police, or relating to the fact that some information regarding an offence has been given at the police station. The doubts created in the present case on the ground that what more could have been mentioned in the General Diary, or that there are minor variations in the statements of PW-1 Ishwar Pradhan, PW-2 Santosh Kumar Mahar, PW-3 Neelkanth Sahu and PW-5 Dan Singh Dewangan, cannot be said to be reasonable doubt. And this Court cannot close its eyes to the ring of truth in the prosecution evidence. **Dhal Singh Dewangan Versus State of Chhattisgarh2016 0 Supreme(SC) 737; 2016 (4) Crimes 17 (SC) (FB).**

To make a person an authority legally competent to investigate, it is not necessary that he should be having authority which flows from a Statute.

Statements recorded by a person made competent by State Government by an order are legally admissible for the purpose of corroboration.

Evidence of the sole witness having no reason to depose falsely against appellant-accused should be relied upon.

Intention cannot be proved by direct evidence. It has to be inferred from attending circumstances.

Delay in lodging complaint is not fatal if duly explained.

Opinion of hand writing expert is only an opinion evidence, cannot be conclusive. **2016 0 Supreme(SC) 743; 2016 (4) Crimes 40 (SC); S.P.S. Rathore Versus C.B.I. & Anr**

Where accused persons having common object to cause such injury which is sufficient in ordinary course of nature to cause death cause such injury, the case falls u/s 300, thirdly and the accused persons would be liable to be convicted u/s 302.

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

Conviction can be made even in absence of motive if there is direct trustworthy evidence of witnesses as to commission of an offence. **2016 0 Supreme(SC) 834; 2016 (4) Crimes 68 (SC) ; Saddik @ Lalo Gulam Hussein Shaikh & Ors. Versus State of Gujarat.**

Criminal procedure code.. sec.. 320 and 482.. quash of proceedings based on settlement - quashing of criminal proceedings can also be based on settlement between private parties and also on a compromise between the offender and victim- the said power dues l does not extend to crimes against the society. **2016(3) ALT (crl) 103(SC) J.Ramesh Kamath and others vs Mohana Kurup and others.**

IPC- sec. 302,306 criminal procedure code 216, alteration of charges it is permissible for the court to alter or add to any charge at any time before judgment is pronounced. Prejudice to accused- with the alteration or addition to a charge, if any prejudice is going to be caused to the accused, Court has to proceed with trial as if it altered or added the original charge. Provisions of sec. 216 and 217cr.p.c. are mandatory in nature. **2016(3) ALT (crl). 119(sc) R.Rachaiah vs Home Secretary, Bangalore.**

Indian penal code 1860 section 307 and 302 motive to commit the offence lends additional support to finding of court- however absence of clear proof of motive does not necessarily lead to contra conclusion- where the evidence of eye witness is clear and circumstances prove guilt, motive would lose all its importance. **Karri Nageswara Rao vs State of Andhra Pradesh; 2016(3) ALT (crl) 143(DB) AP**

at the initial stage of framing of charge strong suspicion is sufficient to frame the same, at that stage trial court is expected to sift and weigh evidence only For Limited purpose of finding out whether or not there is a prima facie case, once finding is on positive lines trial court fully justified in framing

charge and proceeding ahead. **Boyapati Suryanarayana and others vs State of Andhra Pradesh 2016 (3) ALT criminal 157 (a p)**

no requirement in law the dying declaration should be recorded only by Judicial Magistrate alone, **2016(3) ALT crl 161 DB AP Elaprolu Ramesh and another vs State of Andhra Pradesh**

Criminal Procedure Code section 319 and 482 Power is to be invoked not as a matter of course, with the invocation of such power is imperative to meet the ends of justice, Merely on the basis of the evidence of pw1 the petitioners ought not have impleaded as accused more particularly Imn view the fact that the investigating agency has excluded them. **2016(3) ALT (crl) 216 (DB) AP Paladugu Kumar and others vs T.Vijay Sarathy and others**

violation of order promulgated by sub divisional police officer.. the complaint ought to be filed by sdpo or any other person to whom such sdpo is administratively subordinate and otherwise no Court is competent is to take cognizance of such a complaint in accordance with section 195 (1)(a)c r.p.c- **2016(3) ALT (crl) 221 (DB) AP Gali Muddu krishnama Naidu vs State of AP**

NOSTALGIA

In Himachal Pradesh Administration v. Shri Om Prakash, (1972) 1 SCC 249 in paragraph 7, this Court has observed as under:- "……..It is not beyond the ken of experienced able and astute lawyers to raise doubts and uncertainties in respect of the prosecution evidence either during trial by cross-examination or by the marshalling of that evidence in the manner in which the emphasis is placed thereon. But what has to be borne in mind is that the penumbra of uncertainty in the evidence before a court is generally due to the nature and quality of that evidence. It may be the witnesses as are lying or where they are honest and truthful, they are not certain. It is therefore, difficult to expect a scientific or mathematical exactitude while dealing with such evidence or arriving at a true conclusion. Because of these difficulties corroboration is sought wherever possible and the maxim that the accused should be given the benefit of doubt becomes pivotal in the prosecution of offenders which in other words means that the prosecution must prove its case against an accused beyond reasonable doubt by a sufficiency of credible evidence. The benefit of doubt to which the accused is entitled is reasonable doubt - the doubt which rational thinking men will reasonably, honestly and conscientiously entertain and not the doubt of a timid mind which fights shy - though unwittingly it may be - or is afraid of the logical consequences, if that benefit was not given. Or as one great Judge said it is "not the doubt of a vacillating mind that has not the moral courage to decide but shelters itself in a vain and idle scepticism". It does not mean that the evidence must be so strong as to exclude even a remote possibility that the accused could not have committed the offence. If that were so the law would fail to protect society as in no case can such a possibility be excluded. It will give room for fanciful conjectures or untenable doubts and will result in deflecting the course of justice if not thwarting it altogether. It is for this reason the phrase has been criticised. Lord Goddard, C.J., in Rox v. Kritz [1950 (1) KB 82 at 90], said that when in explaining to the juries what the prosecution has to establish a Judge begins to use the words "reasonable doubt" and to try to explain what is a reasonable doubt and what is not, he is much more likely to confuse the jury than if he tells them in plain language. "It is the duty of the prosecution to satisfy you of the prisoner's guilt". What in effect this approach amounts to is that the greatest possible care should be taken by the Court in convicting

an accused who is presumed to be innocent till the contrary is clearly established which burden is always in the accusatory system, on the prosecution. The mere fact that there is only a remote possibility in favour of the accused is itself sufficient to establish the case beyond reasonable doubt….."

W.B. v. Mir Mohammad Omar and others, (2000) 8 SCC 382 this Court has observed as under:- "…..Castigation of investigation unfortunately seems to be a regular practice when the trial courts acquit the accused in criminal cases. In our perception it is almost impossible to come across a single case wherein the investigation was conducted completely flawless or absolutely foolproof. The function of the criminal courts should not be wasted in picking out the lapses in investigation and by expressing unsavoury criticism against investigating officers. If offenders are acquitted only on account of flaws or defects in investigation, the cause of criminal justice becomes the victim. Effort should be made by courts to see that criminal justice is salvaged despite such defects in investigation……."

NEWS

- Prosecution Replenish congratulates
  - **Sri P. Sreenath garu,** who is posted as Addl. Public Prosecutor Grade-II, Assistant Sessions Court, Madanapalle, Chittoor District and
  - **Smt. PSA. Jyothi garu,** who is posted as Addl. Public Prosecutor Grade-II, Assistant Sessions Court, Gudiwada, Krishna District,

  ON PROMOTION.

- Public Services – Prohibition & Excise Department– Gazetted Services – Creation of One (1) post of Legal Advisor-cum-Public Prosecutor in the Office of the Commissioner of Prohibition and Excise Department, Telangana State, Hyderabad Orders – Issued. REVENUE (EXCISE.I) DEPARTMENT G.O.RT.No. 435 Dated: 03-10-2016.

ON A LIGHTER VEIN

A friend was arguing with me that onion is the only food which gets your tear out. So I throw a coconut on his face to prove him wrong!

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PROSECUTION REPLENISH

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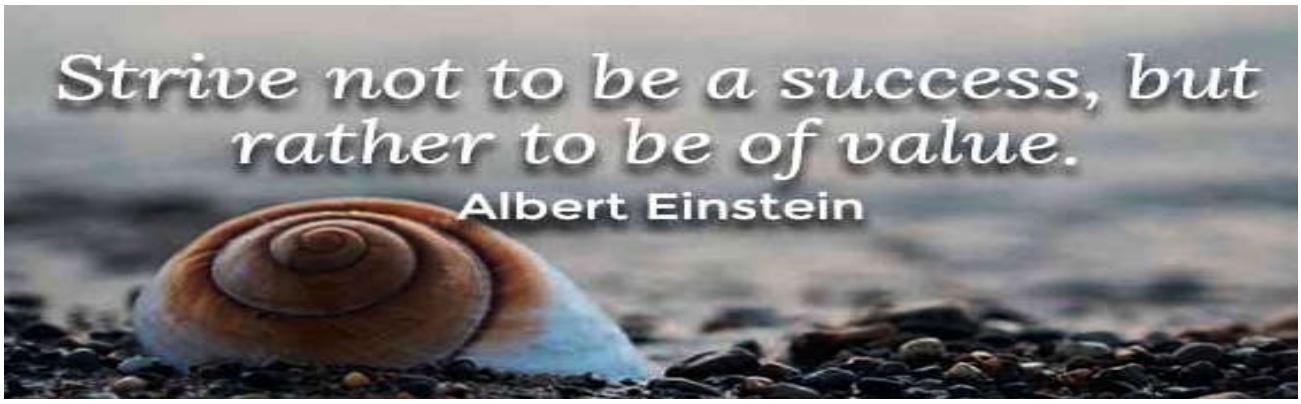
Vol- V Part 12 Monthly Leaflet December, 2016



CITATIONS

The silence of A-1 during his examination under Section 313 Cr.P.C. and the absence of suggestions put to the prosecution witnesses in this regard during entire trial would clearly go against A-1

The trial Court totally believed the extra-judicial confession made by A-1 to a third party who happened to be a retired Sub Inspector of Police and an independent person and there is no need for him to implicate the accused in this case falsely. This extra-judicial confession is an important circumstance which completes the link in the chain of circumstances of the case and proves the guilt of A-1 beyond reasonable doubt that he alone had committed the offence and none others, as the proximity of time of commission of offence and he having been last seen together with the deceased was very close.- upheld by High Court.

the evidence of witnesses in this case i.e. Mandal Revenue Officer, Sub-Registrar and Panchayat Officer and the documents referred supra clearly proved the fact that the dead body of the deceased, his clothes and that of A-1 were seized from the house of the latter's grandfather. This is an important circumstance to prove the guilt of A1 beyond reasonable doubt in the light of the other circumstances.

2016 0 Supreme(AP) 372; 2016 (2) ALD (Crl) 728; Duddebanda Hemanth Kumar @ Hemanth Vs The State of Andhra Pradesh.

While the delay in the FIR reaching the Magistrate may give raise to a reasonable presumption that there might have been confabulations, embellishments and false implications in the FIR, in the absence of any suggestions to that effect by the defence and in the face of the evidence of the eye-witnesses, fully corroborated by medical evidence, we are of the opinion that the delay in the FIR reaching the Court of the Special Judicial Magistrate of First Class for Railways, Nellore, is not fatal to the case of the prosecution in any manner.

In an ordinary situation, people coming in opposite directions notice each other. However, in an extraordinary situation where a person was being brutally attacked with deadly weapons, the attention of everyone who was witnessing such ghastly incident cannot be expected to be on the surroundings and the presence of the persons near the place of incident. **2016 (2) ALD (Crl) 768;**

https://indiankanoon.org/doc/35968295/; Pandeti Vijaya Shekar Raju vs State of A.P.

Even the failure of the prosecution to produce the same weapon as was recovered from the accused will not be fatal to the case of the prosecution because there was no variation in the nature of weapon as described by PW.6 in his evidence and the one which was produced as MO.1 as both happened to be knives. This apart, PW.9-Investigation Officer clearly deposed the fact of recovery of MO.1- Knife from the possession of the accused.

As noted herein before, nothing worth mentioning could be elicited from PWs.1 and 2 to falsify their testimony. The fact that no suggestion was put to these witnesses that the accused did not visit his in laws house or that he was not present in their house during the night of occurrence clearly proves that he was in the company of the deceased when the occurrence has taken place. Such being the case, Section 106 of the Indian Evidence Act, 1872, places burden on the accused to explain as to how his wife has sustained injuries and died. A perusal of the cross-examination of PWs.1 to 3 reveals that no suggestions in this regard were put to them. Even in his examination under Section 313 Cr.P.C, except denying various questions, the accused has not tried to explain as to how his wife might have received injuries leading to her death. Therefore, in the face of the unequivocal evidence that the accused was in the company of the deceased and in the absence of any suggestions coming forth from the accused that there is any possibility of the deceased sustaining injuries in the hands of anybody else, the prosecution was able to establish the guilt of the accused beyond reasonable doubt.

2016 0 Supreme(AP) 250; 2016 (2) ALD (Crl) 777; Chintakayala Kurmaiah Vs The State of Andhra Pradesh

Had PW-4 really demanded money and gave evidence against the accused, as his demand was not met, it could have been natural for A-1 to state the same during examination by the trial Court under Section 313 CrPC. His failure to take such a stand clearly shows that there was no truth in the defence stand on this aspect. No doubt, as could be seen from certain admissions by PW-4 himself and also from the evidence of PW-19, PW-4 has improved his version on aspects such as A-1 requesting A-2 to spare the witness (PW-4) and later A-1s exertions to kill the deceased. This apart, even if we eschew these embroideries from his evidence, we have no reason to doubt that his evidence is worthy of credence.

164 CRPC statement can be used both for corroboration and contradiction. Witness stating that they gave 164 CrPC statements under fear, not found place during the recording of their 164 statements, cannot be believed that they stated the same under fear.

2016 (2) ALD (Crl) 792; 2016 0 Supreme(AP) 428; Syed Chand and others Vs State of Andhra Pradesh.

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

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

"Falsus in uno, falsus in omnibus" has no application in India.
Common object of the members of unlawful assembly can be gathered from their conduct.
Not explaining injury to accused is not enough to reject the prosecution version.
Recoveries and Chemical Analyzer's report only have corroborative value.
Every GD Entry or cryptic information cannot be treated as FIR.
Appellate court is fully empowered to review the evidence and to reach at its own conclusion.
2016 0 Supreme(SC) 790; 2016 (2) ALD (Crl) 834(SC) Bhagwan Jagannath Markad & Ors. Vs State of Maharashtra

When witness is examined on oath at length, it is quite possible for him to make some discrepancies. No true witness can possibly escape from making some discrepant details.
in State of U.P. vs. Zakaullah (1998) 1 SCC 557 wherein it was held as under:-
"13…..We have not come across any case where a trap was conducted by the police in which the phenolphthalein solution was sent to the Chemical Examiner. We know that the said solution is always used not because there is any such direction by the statutory provision, but for the satisfaction of the officials that the suspected public servant would have really handled the bribe money….."
2016 (2) ALD (Crl) 868; 2016 0 CrLJ 4191; 2016 4 Supreme 719; 2016 0 Supreme(SC) 505; Mukhtiar Singh Vs State of Punjab

Code of Criminal Procedure, 1973 – Sections 174, 175, 154 and 157 – Section 174 and 175 provide for inquiries in cases of accidental or suspicious deaths and apparent causes thereof – Not concerned with investigation into details of assault – Does not set criminal law into motion – Quite distinct from investigation u/s 157 set in motion by registering a FIR u/s 154 – Scope and ambit of inquiries u/s 174 very limited – Applicable only when inquest is required – Instantly, information received only stating fact of death – Not disclosing any congnizable offence – Police not submitting any report u/s 173 – Such information cannot be reckoned as FIR u/s 154.
(2016) 3 SCC (Cri) 407; (2016) 9 SCC 1; 2016 0 Supreme(SC) 652; Manoj Kumar Sharma & Ors. Vs State of Chhattisgarh & Anr.

Fingerprints – Photographer not examined – Negatives of the photographs not produced – Not fatal to prosecution case.
Disciplinary proceedings – Acquittal in criminal proceeding – Does not debar employer from taking action in accordance with Rules – Acquittal in criminal case does not entitle a person to automatic reinstatement, unless honourably acquitted – Instantly, appellant acquitted giving benefit of doubt – Not entitled to reinstatement
The evidence adduced by the prosecution must be scrutinized independently of such lapses either in the investigation or by the prosecution or otherwise, the result of the criminal trial would depend upon the level of investigation or the conduct of the prosecution. Criminal trials should not be made casualty for such lapses in the investigation or prosecution.

(2016) 3 SCC (Cri) 426; (2016) 9 SCC 179; 2016 3 Crimes(SC) 140; 2016 3 Crimes(SC) 212; 2016 0 CrLJ 4174; 2016 5 Supreme 522; 2016 0 Supreme(SC) 545; Ajay Kumar Singh Versus The Flag Officer Commanding-in-chief & Ors

Prevention of Corruption Act, 1988 – Section 3 – Special court designated for trying all cases pertaining to NHRM scam throughout the State of UP – Court also authorized to try to cases other the Act – Sole public servant dying – Provisions of CrPC being applicable to trial before the Special Judge, there would be no prejudice if non-PC cases are also tried by him – Paricularly when such non-PC cases are related to NHRM scam under the Act – No bar u/s 26, Cr PC.
2016 0 CrLJ 4400; 2016 0 Supreme(SC) 625; (2016) 3 SCC (Cri) 438; (2016) 9 SCC 281; HCL Infosystem Ltd Vs CBI.

Non-recording of extra judicial confession for a long time may be inconsequential.
Extra judicial confession made to unbiased and unconnected person who stood cross-examination, may be relied for conviction.
Acquittal of co-accused will not be a ground for acquittal of appellant.
Recovery – Nose stud/pin – Deceased wearing identifiable nose pin – Shown in her photograph – Nose pin recovered at the instance of appellant matching with the photograph submitted along with missing person report – Important evidence against appellant.
(2016) 3 SCC (Cri) 452; (2016) 9 SCC 325; 2016 0 Supreme(SC) 679; Kadamanian @ Manikandan Vs State Represented by Inspector of Police.

the protection by way of sanction under Section 197 CrPC is not applicable to the officers of Government Companies or the public undertakings even when such public undertakings are 'State' within the meaning of Article 12 of the Constitution on account of deep and pervasive control of the government. **2016 0 CrLJ 3579; 2016 AIR SC 3014; Punjab State Warehousing Corp. Versus Bhushan Chander & Anr.**

Immoral Trafficking (Prevention) Act, 1956—Sections 3, 4 and 5—Criminal Procedure Code, 1973—Section 482—Prostitution—Seizure of objectionable articles from brothel house—Sections 3 and 4 of the ITP Act no way applicable so far as customers concerned—If any of them indulge in sexual enjoyment with sex worker respectively and for any of them keeping or allowing premises as brothel house or habitually found in company of sex workers or living on that earnings or detaining any person to carry prostitution or such premises within notified and prohibited area it attracts any of Sections 3 to 11 of ITP Act besides sections 370 and 370-A of I.P.C.—Merely because Sections 370 and 370-A IPC not mentioned in police final reports or cognizance orders that is not by itself a ground to quash case proceedings. **2016 0 CrLJ 2764; 2016 0 Supreme(AP) 11;Sahil Patel & Others Versus The State of A.P. Rep. by its Public Prosecutor**

Dying declarations recorded by investigating agencies have to be very scrupulously examined.
In case of more than one dying declaration, intrinsic contradictions in those dying declarations are extremely important—It cannot be that a dying declaration which

supports prosecution alone can be accepted while other innocent dying declarations have to be rejected—Such a trend will be extremely dangerous—However, courts below are fully entitled to act on the dying declarations and make them basis of conviction where dying declarations pass all such tests. (Para 10) **2016 0 CrLJ 4185; 2016 0 Supreme(SC) 535; State of Gujarat Versus Jayrajbhai Punjabhai Varu**

Criminal investigation – Drawing voice sample – Appellants consenting to give voice sample – Objecting to content of the text to be read out – Text extracted from sting operation clipping and included inculpatory words – Held, appellants cannot insist that the text should not contain any inculpatory words – Parts of the disputed conversation has to be used since a commonality of words is necessary to facilitate a spectrographic examination – Texts containing inculpatory words from disputed conversation but not sentences, approved. **2016 8 SCC 307 FB; 2016 6 Supreme 122 FB; 2016 0 Supreme(SC) 588 FB; SUDHIR CHAUDHARY ETC. ETC. Versus STATE (NCT OF DELHI)**

State of Haryana vs Ram Mehar and others; 2016 (3) ALT (crl) 162 SC
High Court failed to appreciate that the witnesses have been sought to be recalled for further cross examination to elicit certain facts for establishing certain discrepancies; and also to be given certain suggestions - this kind of plea in case of this nature and at this stage could not have been allowed to be entertained - Exercise of power under Sec. 311 CrPC can be sought to be invoked by the prosecution or by the court itself – criminal trail does not singularly centres around the accused - in it there is involvement of the prosecution the victim and the victim represents the collective - cry of the collective may not be uttered added in decibels which is physically audible in the court premises, but the court has to remain sensitive to set silent cries and the agonies for the society seeks justice.

Dhariwal Industries Limited v/s Kishor Wadhvani and others; 2016 (3) ALT (crl) 191 SC Criminal Procedure Code, section 301 and 302 - permission to conduct prosecution - The trial court on the basis of an oral prayer, permitted the appellant to be heard long with Public Prosecutor - The role of the role of the private party is limited during the prosecution of a case in a court of sessions - The Counsel engaged by him is required to act under the directions of public prosecutor – As far as section 302 CrPC is concerned, power is conferred on the magistrate to grant permission to the complainant to conduct to the prosecution independently - It is open to the appellant to file an application under Section 302 of Cr.P.C. before the magistrate Court.

it is directed that the following directions shall be scrupulously followed:-
(a) There shall be no commercial exploitation to give financial advantage or any kind of benefit. To elaborate, the National Anthem should not be utilized by which the person involved with it either directly or indirectly shall have any commercial benefit or any other benefit.
(b) There shall not be dramatization of the National Anthem and it should not be included as a part of any variety show. It is because when the National Anthem is sung or played it is imperative on the part of every one present to show due respect and

honour. To think of a dramatized exhibition of the National Anthem is absolutely inconceivable.

(c) National Anthem or a part of it shall not be printed on any object and also never be displayed in such a manner at such places which may be disgraceful to its status and tantamount to disrespect. It is because when the National Anthem is sung, the concept of protocol associated with it has its inherent roots in National identity, National integrity and Constitutional Patriotism.

(d) All the cinema halls in India shall play the National Anthem before the feature film starts and all present in the hall are obliged to stand up to show respect to the National Anthem.

(e) Prior to the National Anthem is played or sung in the cinema hall on the screen, the entry and exit doors shall remain closed so that no one can create any kind of disturbance which will amount to disrespect to the National Anthem. After the National Anthem is played or sung, the doors can be opened.

(f) When the National Anthem shall be played in the Cinema Halls, it shall be with the National Flag on the screen.

(g) The abridge version of the National Anthem made by any one for whatever reason shall not be played or displayed. **Shyam Narayan Chouksey v. Union of India (SC) : Law Finder Doc Id # 812207Writ Petitions (Civil) Nos. 855 of 2016. D/d. 30.11.2016.**

NOSTALGIA

No doubt Daily Diary is a document which is in constant use in police station. But no prosecution is expected to produce such diaries as a matter of course in every prosecution case for supporting the police version. If such diaries are to be produced by prosecution as a matter of course in every case, the function of the police station would be greatly impaired. It is neither desirable nor feasible for the prosecution to produce such diaries in all cases. Of course it is open to the defence to move the court for getting down such diaries if the defence wants to make use of it.

Kalpnath Rai vs State (Through Cbi) on 6 November, 1997 Equivalent citations: 1997 (2) ALD Cri 805, 1998 CriLJ 369, JT 1997 (9) SC 18, 1997 (6) SCALE 689, (1997) 8 SCC 732

NEWS

- The Induction training of the new recruits APP's and Addl PP's Gr-II (DR), has commenced in the state of Andhra Pradesh under the Aegis of Course Director Sri S.R.A. Rosedar, Addl. PP Gr-II.

- Prosecution Replenish congratulates the following Addl PP's Gr-I on being promoted as Public Prosecutors.
  Sarva Sree
  - Sivaram Prasad, PP, PDJ court, Sangareddy.
  - Chandrasekhar, PP, PDJ court, Ranga Reddy.
  - M.Gangaraj Prasad, PP, Prisons and Correctional Dept, Hyderabad.
  - S.K.Rama Rao, PP, PDJ Court, Khammam.
  - Surender Reddy, PP, PDJ Court, Karimnagar.

- Prosecution Replenish regrets to note that Sri Shashi Karan Reddy, Addl.PP Gr-I, Nizamabad, and promoted as PP, PDJ Court, Adilabad, is foregoing the promotion on personal issues and prays the

almighty that he shall bestow the strength and courage to Sri Shashi Karan Reddy Sir, to tide over the issues.

- Prosecution Replenish congratulates the following Addl PP's Gr-II on being promoted as Addl.PP Gr-I.
  Sarva Sree
  - Md. Sardar, Addl PP Gr-I-Cum-DyDOP, Warangal
  - K.V.Rajani, Addl PP Gr-I- cum- DyDOP, Hyderabad
  - J.Srinivas Reddy, Addl PP Gr-I, Medak
  - A.Shanker, Addl PP Gr-I, Telangana Disaster Management, Hyderabad.
  - B.G.Sobha, Addl PP Gr-I, IV AMSJ Court, Hyderabad.
  - P.Shailaja, Addl PP Gr-I, VII AMSJ Court, Hyderabad.
  - C.Ramu, Addl PP Gr-I- cum- DyDOP, Ranga Reddy.

- Prosecution Replenish congratulates the following Sr.APP's on being promoted as Addl. PP Gr-II
  Sarva Sree
  - V.B.Bapanna Sastry, , Addl PP Gr-II, Peddapalli.
  - K.Devadanam, , Addl PP Gr-II, Mahboobabad.
  - T.Rajyalakshmi, , Addl PP Gr-II, ACB, Hyderabad
  - S.Ravinder , Addl PP Gr-II, Asifabad
  - P.Manjula Devi, Addl PP Gr-II, Khammam
  - Rambaksh, Addl PP Gr-II, Medak
  - D.V.Rama Murty, Addl. PP Gr-II, Nagarkurnool
  - K.Durgaji - Addl PP Gr-II, Warangal
  - G.Kasturi Bai- Addl PP Gr-II, Nalgonda

ON A LIGHTER VEIN

An eccentric philosophy professor gave a one question final exam after a semester dealing with a broad array of topics. The class was already seated and ready to go when the professor picked up his chair, plopped it on top of his desk and wrote on the board:

"Using everything we have learned this semester, prove that this chair does not exist."

Fingers flew, erasers erased, notebooks were filled in furious fashion. Some students wrote over 30 pages in one hour attempting to refute the existence of the chair. One member of the class however, was up and finished in less than a minute.

A week later when the grades were posted, the rest of the group wondered how he could have gotten an "A" when he had barely written anything at all.

His answer consisted of two words: "What chair?"

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4-235, Gita Nagar,
Malkajgiri, Hyderabad-500047
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