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Part-1

Prosecution Replenish

An Endeavour for Learning and Excellence

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

सर्वेषां स्वस्ति भवतु । सर्वेषां शान्तिर्भवतु ।
सर्वेषां पूर्नं भवतु । सर्वेषां मङ्गलं भवतु ॥
सर्वे भवन्तु सुखिनः। सर्वे सन्तु निरामयाः।
सर्वे भद्राणि पश्यन्तु। मा कश्चित् दुःख भाग्भवेत्॥

Lyrics: English

Sarveshaam Svastir Bhavatu
Sarveshaam Purnam Bhavatu
Sarve Bhavantu Sukhinah
Sarve Bhardrani Pashyantu

Sarveshaam Shaantir Bhavatu
Sarveshaam Mangalam Bhavatu
Sarve Santu Niramayaah
Maa Kadhchit Duhkhabhahg Bhavet

Meaning:

May good befall all,
May all be fit for perfection, and
May all be happy.
May all experience what is good and

May there be peace for all,
May all experience that which is auspicious.
May all be healthy
let no one suffer

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CITATIONS

Ravi S/o Ashok Ghumare VS State of Maharashtra, 03 Oct 2019; 2019 0 AIR(SC) 5170; 2019 9 SCC 622; 2019 3 SCC(Cri) 723; 2019 8 Supreme 661; 2019 0 Supreme(SC) 1100; (THREE JUDGE BENCH)(2:1)

in cases of sexual assault, DNA of the victim and the perpetrator are often mixed. Traditional DNA analysis techniques like “autosomal- STR” are not possible in such cases. Y-STR method provides a unique way of isolating only the male DNA by comparing the Y-Chromosome which is found only in males. It is no longer a matter of scientific debate that Y-STR screening is manifestly useful for corroboration in sexual assault cases and it can be well used as excalpatory evidence and is extensively relied upon in various jurisdictions throughout the world. [“Y-STR analysis for detection and objective confirmation of child sexual abuse” authored by Frederick C. Delfin - Bernadette J. Madrid - Merle P. Tan - Maria Corazon A. De Ungria and “Forensic DNA Evidence: Science and the Law” authored by Justice Ming W. Chin, Michael Chamberlain, A, Y Roja, Lance Gima] Science and Researches have emphatically established that chances of degradation of the ‘Loci’ in samples are lesser by this method and it can be more effective than other traditional methods of DNA analysis. Although Y-STR does not distinguish between the males of same lineage, it can, nevertheless, may be used as a strong circumstantial evidence to support the prosecution case. Y-STR techniques of

DNA analysis are both regularly used in various jurisdictions for identification of offender in cases of sexual assault and also as a method to identify suspects in unsolved cases.
It is noteworthy that the object and purpose of determining quantum of sentence has to be 'society centric' without being influenced by a 'judges' own views, for society is the biggest stake holder in the administration of criminal justice system. A civic society has a 'fundamental' and 'human' right to live free from any kind of psycho fear, threat, danger or insecurity at the hands of anti-social elements. The society legitimately expects the Courts to apply doctrine of proportionality and impose suitable and deterent punishment that commensurate with the gravity of offence.
51. Equally important is the stand-point of a 'victim' which includes his/her guardian or legal heirs as defined in Section 2(wa), Cr.P.C. For long, the criminal law had been viewed on a dimensional plane wherein the Courts were required to adjudicate between the accused and the State. The 'victim' the de facto sufferer of a crime had no say in the adjudicatory process and was made to sit outside the court as a mute spectator. The ethos of criminal justice dispensation to prevent and punish 'crime' would surreptitiously turn its back on the 'victim' of such crime whose cries went unheard for centuries in the long corridors of the conventional apparatus. A few limited rights, including to participate in the trial have now been bestowed on a 'victim' in India by the Act No. 5 of 2009 whereby some pragmatic changes in Cr.P.C. have been made.
52. The Sentencing Policy, therefore, needs to strike a balance between the two sides and count upon the twin test of (i) deterrent effect, or (ii) complete reformation for integration of the offender in civil society. Where the Court is satisfied that there is no possibility of reforming the offender, the punishments before all things, must be befitting the nature of crime and deterrent with an explicit aim to make an example out of the evil-doer and a warning to those who are still innocent. There is no gainsaying that the punishment is a reflection of societal morals. The subsistence of capital punishment proves that there are certain acts which the society so essentially abhores that they justify the taking of most crucial of the rights - the right to life.
The Legislature has impliedly distanced itself from the propounders of "No-Death Sentence" in "No Circumstances" theory and has re-stated the will of the people that in the cases of brutal rape of minor children below the age of 12 years without murder of the victim, 'death penalty' can also be imposed. In the Statement of Objects and Reasons of amendment, Parliament has shown its concern of the fact that "in recent past incidents of child sexual abuse cases administering the inhuman mindset of the accused, who have been barbaric in their approach to young victim, is rising in the country." If the Parliament, armed with adequate facts and figures, has decided to introduce capital punishment for the offence of sexual abuse of a child, the Court hitherto will bear in mind the latest Legislative Policy even though it has no applicability in a case where the offence was committed prior thereto. The judicial precedents rendered before the recent amendment came into force, therefore, ought to be viewed with a purposive approach so that the legislative and judicial approaches are well harmonised.
the facts like (i) lack of criminal antecedents; (ii) no record of anti-social conduct prior to the crime; (iii) appellant being 25-30 years of age; (iv) brutality of crime cannot be a ground to award death sentence and (v) the appellant belongs to poor section of society, are not fit grounds against imposition of death penalty, in such cases.

Lakshman VS State of Karnataka, 17 Oct 2019: 2019 0 AIR(SC) 5268; 2019 9 SCC 677; 2019 3 SCC(Cri) 760; 2019 0 Supreme(SC) 1153;
Whether any Schedules were appended to the agreement or not, a finding is required to be recorded after full fledged trial. Further, as the contract is for the purpose of procuring the land, as such the same is of civil nature, as held by the High Court, is also no ground for quashing. **Though the contract is of civil nature, if there is an element of cheating and fraud it is always open for a party in a contract, to prosecute the other side for the offences alleged. Equally, mere filing of a suit or complaint filed under Section 138 of the N.I. Act, 1881 by itself is no ground to quash the proceedings.**

In a given case, whether there is any mens rea on the part of the accused or not is a matter which is required to be considered having regard to the facts and circumstances of the case and contents of the complaint etc.

Ravishankar @ Baba Vishwakarma VS State of Madhya Pradesh, 03 Oct 2019; 2019 0 AIR(SC) 5347; 2019 9 SCC 689; 2019 3 SCC(Cri) 768; 2019 8 Supreme 689; 2019 0 Supreme(SC) 1102; (THREE JUDGE BENCH)

On a detailed examination of precedents, it appears to us that it would be totally imprudent to lay down an absolute principle of law that no death sentence can be awarded in a case where conviction is based on circumstantial evidence. Such a standard would be ripe for abuse by seasoned criminals who always make sure to destroy direct evidence. Further in many cases of rape and murder of children, the victims owing to their tender age can put up no resistance. In such cases it is extremely likely that there would be no ocular evidence. It cannot, therefore, be said that in every such case notwithstanding that the prosecution has proved the case beyond reasonable doubt, the Court must not award capital punishment for the mere reason that the offender has not been seen committing the crime by an eye-witness. Such a reasoning, if applied uniformally and mechanically will have devastating effects on the society which is a dominant stakeholder in the administration of our criminal justice system.

Such imposition of a higher standard of proof for purposes of death sentencing over and above **'beyond reasonable doubt'** necessary for criminal conviction is similar to the **"residual doubt"** metric adopted by this Court in Ashok Debbarma vs. State of Tripura, (2014) 4 scc 747 wherein it was noted that:

"in our criminal justice system, for recording guilt of the accused, it is not necessary that the prosecution should prove the case with absolute or mathematical certainty, but only beyond reasonable doubt. Criminal Courts, while examining whether any doubt is beyond reasonable doubt, may carry in their mind, some "residual doubt", even though the Courts are convinced of the accused persons' guilt beyond reasonable doubt."

58. Ashok Debbarma (supra) drew a distinction between a 'residual doubt', which is any remaining or lingering doubt about the defendant's guilt which might remain at the sentencing stage despite satisfaction of the 'beyond a reasonable doubt' standard during conviction, and reasonable doubts which as defined in Krishan v. State, (2003) 7 scc 56 are "actual and substantive, and not merely imaginary, trivial or merely possible". These 'residual doubts' although not relevant for conviction, would tilt towards mitigating circumstance to be taken note of whilst considering whether the case falls under the 'rarest of rare' category.

GARGI VS STATE OF HARYANA, 19 Sep 2019 : 2019 0 AIR(SC) 4864; 2019 12 Scale 617; 2019 9 SCC 738; 2019 3 SCC(Cri) 785; 2019 0 Supreme(SC) 1042;

The presence of marks of resistance would depend on a variety of factors, including the method and manner of execution of the act of strangulation by the culprits; and mere want of such marks cannot be decisive of the matter. Equally, it is not laid down as an absolute rule in medical jurisprudence that in all cases of strangulation, hyoid bone would invariably be fractured. On the contrary, medical jurisprudence suggests that only in a fraction of such cases, a fracture of hyoid bone is found.

merely for the reason of acquittal of co-accused, another accused in a criminal case may not be acquitted if cogent evidence against him is available and his case could be segregated from the case against the acquitted co-accused.

15. In the present case, the very approach of the investigating agency had been shrouded in so much of unexplained obscurities that a question perforce arises if there had been a fair and unbiased investigation of the crime in question?

15.1. The manner of dealing with this case by the investigating agency, right at the inception, has left a few serious questions unanswered i.e., as to when did the police receive information about dead body of the husband of the appellant, by what mode, and through whom? PW-9 in his testimony before the Court conveniently stated that such an information was received through "telephonic message" but did not state the particulars of such informant. No entry in the roznamcha or general

diary has been produced to show that such an information was duly entered in the record before proceeding for investigation. Significantly, in the first note drawn up in the matter at 5.30 a.m. on 02.05.1997 (EX. PH/1), PW-9 only stated that 'the information was received at the police station'. The fact that it had been a telephonic information is conspicuously missing in Ex.PH/1. This aspect has got a material bearing in the matter because the defence witness DW-3 specifically testified to the fact that he was the first person informed by the appellant about the demise of Tirloki Nath; and that he went to the police station at about 9.30 p.m. on 01.05.1997 and divulged the information. He further asserted having accompanied the police to the site and having conveyed the information to PW-7.

15.2. It is also noteworthy that as per PW-7, he got the information from one T.R. Malhotra at about 11.30 p.m. who, in turn, had received the information on telephone from a colleague of the deceased. Neither any enquiry was made from the said T.R. Malhotra nor any other effort was made to find out the colleague of the deceased who had telephoned him.

15.3. In the face of such a gap in the prosecution evidence, there appears no reason to disbelieve the testimony of DW-3 Surinder Kumar Bhat as regards the time of information to police and himself being the informant. In such a scenario, it remains absolutely inexplicable as to why the information given by DW-3 was not reduced in writing and the proceedings were not conducted on that basis. This question magnifies itself to tougher questions for the prosecution as to the time when PW-9 ASI Amar Singh reached the site and with whom. From the evidence on record and surrounding facts, it appears that the said ASI had reached the site at around 10.30 p.m. accompanied by DW-3 Surinder Kumar Bhat. The toughness of these questions further amplifies into the harder, and unanswered, question for the investigating agency as to why for a long period of about 4 to 5 hours at the site, the ASI (PW-9) did not carry out any investigation and did not record any statement.

15.4. It is not the case of prosecution that the ASI (PW-9) was prevented by any reason to immediately attend on his duties after reaching the site. It is also not the case that he attempted to make any enquiry from any person until arrival of the complainant and other family members of the deceased. Even if it be assumed that the other family members of the deceased were on the way and the ASI knew about this fact, nothing had prevented him from attending on his duties of investigation. Strangely enough, even the first panchnama was prepared only after reaching of the complainant. It is also not clear as to why the statements of the children of the deceased were not taken when his daughter, 16 years of age, was very much present at the site. It is also not explained as to why in this kind of matter, carrying suspicious overtones, PW-9 did not make any enquiry from any of the neighbours, who were available at the site; and from the tenant, who was residing at the ground floor of the same building and whose washroom was allegedly being used by the deceased (as per the assertion of PW-8)? It is difficult to say that the conduct of this Investigating Officer (PW-9) had been totally free from doubt.

15.5. Apart from the above-noted omissions at the very initial stage, we find absolutely no reason that the Investigating Officer PW-10, even after allegedly making enquiries in the locality regarding the character of the appellant from 5-10 persons, neither mentioned this fact in the investigation report nor recorded the statement of anyone of them. This Investigating Officer further stated to have joined the children of the appellant in the investigation but did not record their statements either. This Officer also did not bother to take the statement of the tenant, whose testimony would have been of immense significance, looking to the nature of accusations as also the factors related with the building in question.

15.6. Moreover, in this matter, where it was prima facie appearing that the clues available at the site might play a significant role in reaching to the real culprits, it is also intriguing to notice that the Investigating Officer did not take even elementary care to obtain fingerprints from the material objects and to get them analysed properly. The Investigating Officer (PW-10) has stated, rather with impunity, that he did not take any fingerprints at all, even while admitting that the fingerprint expert did visit the site. It is not stated that the so-called expert expressed inability to collect such prints for any reason. It is left only for one to wonder as to for what purpose did the so-called fingerprint expert visit the site, if no prints were to be taken at all!

15.7. The above-mentioned unexplained shortcomings, perforce, indicate that in this case, the investigation was carried out either with pre-conceived notions or with a particular result in view. It is difficult to accept that the investigation in this case had been fair and impartial. From another viewpoint, on the facts and in the circumstances of this case, the omissions on the part of investigating agency cannot be ignored as mere oversight. These omissions, perforce, give rise to adverse inferences against the prosecution.
16. In this case, it is also interesting to notice that though the prosecution had cited the other relations of the deceased as witnesses, including his mother and brother-in-law (husband of PW-8 - who had otherwise signed the inquest report; but did not examine them before the Court. Withholding of relevant witnesses could only lead to further adverse inference that if examined, they would not have supported the prosecution case. This is apart from the fact that the investigating agency avoided to include any independent witness in the investigation and did not carry out necessary enquires from the persons other than in-laws of the appellant.

Sadayappan @ Ganesan VS State, Represented By Inspector of Police, 26 Apr 2019; 2019 0 AIR(SC) 2191; 2019 3 CriCC 18; 2019 6 Scale 785; 2019 9 SCC 257; 2019 3 SCC(Cri) 843; 2019 0 Supreme(SC) 495;
Criminal law jurisprudence makes a clear distinction between a related and interested witness. A witness cannot be said to be an “interested” witness merely by virtue of being a relative of the victim. The witness may be called “interested” only when he or she derives some benefit from the result of a litigation in the decree in a civil case, or in seeing an accused person punished. [See: Sudhakar v. State, (2018) 5 scc 435].

Prabhash Kumar Singh VS State of Bihar (Now Jharkhand), 12 Sep 2019; 2019 9 SCC 262; 2019 3 SCC(Cri) 847; 2019 0 Supreme(SC) 1057;
As there is clear eyewitness account of the incident and none of the two eyewitnesses could be shaken during cross-examination and they had stuck to the recollection of the facts relating to the incident, the mere fact that the weapon of assault or the bullet was not recovered cannot demolish the prosecution case.
It must also be remembered that the process of digestion in normal, healthy persons may continue for a long time after death.’

Raj Kumar VS State Of Uttar Pradesh, 04 Oct 2019; 2019 0 AIR(SC) 4902; 2019 9 SCC 427; 2019 3 SCC(Cri) 874; 2019 8 Supreme 603; 2019 0 Supreme(SC) 1109;
once standards are laid down by the Legislature then those standards have to be followed. In items like milk which is a primary food, under the Act, it is not necessary to also prove that the food item had become unfit for human consumption or injurious to health. In cases of food coming under the Act, it is not required to prove that article of food was injurious to health.
The Act does not make a distinction between cases coming under it on the basis of the degree of adulteration. It does not provide for aggravation of offence based on the extent of contamination. The offence and punishment are the same whether the adulteration is great or small. Food pollution, even if it be only to the slightest extent, if continued in practice, would adversely affect the health of every man, woman and child in the country. Hence even marginal or border line variations of the prescribed standards under the Act are matters of serious concern for all and as public interests are involved in them, the maxim, De Minimis Non Curat Lex. law does not concern itself about trifles, does not apply to them.

FAINUL KHAN VS STATE OF JHARKHAND, 04 Oct 2019; 2019 0 AIR(SC) 4858; 2019 9 SCC 549; 2019 3 SCC(Cri) 886; 2019 7 Supreme 705; 2019 0 Supreme(SC) 1106;
The fact that there is no injury report, in our opinion, can at best be classified as a defective investigation but cannot raise doubts about the credibility of their being injured witnesses in the same occurrence.

Merely because no questions were put to the appellants under Sec 313 CrPC with regard to the individual assault made by each of them, it cannot be said in the facts of the case that any prejudice has been caused to them.

Pramod Suryabhan Pawar VS State of Maharashtra, 21 Aug 2019; 2019 0 AIR(SC) 4010; 2019 0 AIIMR(Cri)(SC) 3949; 2019 11 Scale 209; 2019 9 SCC 608; 2019 3 SCC(Cri) 903; 2019 0 Supreme(SC) 901;
the "consent" of a woman with respect to Section 375 must involve an active and reasoned deliberation towards the proposed act. To establish whether the "consent" was vitiated by a "misconception of fact" arising out of a promise to marry, two propositions must be established. The promise of marriage must have been a false promise, given in bad faith and with no intention of being adhered to at the time it was given. The false promise itself must be of immediate relevance, or bear a direct nexus to the woman's decision to engage in the sexual act.
Caste abuse on whatsapp cannot be termed as made in public view.
PHYSICAL RELATION ON FALSE PROMISE TO MARRY MAY OR MAY NOT AMOUNT TO RAPE, EACH CASE HAS TO BE DECIDED BASING ON ITS FACTS.

Ramesh Cardiac Multi Specialty Hospital (P) Ltd. VS Musunuri Satyanarayana, 10 Jul 2019: 2019 3 ALT(Cri) 75; 2019 0 Supreme(AP) 139;
a private complaint against a medical Doctor or a FIR against a medical Doctor should not be proceeded with or entertained unless and until it has supported by an independent impartial opinion given by another Doctor, who is specialized in the same filed. Even in the matter of arrest, unless and until the arrest is necessary, arrest has to be withheld.

M/s Biogenetic Drugs Private Limited and another Vs The State of Telangana; 2019(2) ALD (Crl) 899; http://tshcstatus.nic.in/hcorders/2018/crlp/crlp_11424_2018.pdf;
there is a bar of limitation to the allegation of the drug not in confirmation with the standards required with prescribed punishment u/sec.27-(d) of the Act and u/sec.468 CrPC, the limitation is three years from the date of seizure of the drug
The limitation has to be reckoned by date of filing the complaint and not the subsequent taking of cognizance.

RA Chem Pharma Limited, Rep. by its Managing Director, J. Rajendra Rao VS State of A. P. Rep. by the Public Prosecutor, 01 Nov 2018; 2019 1 ALT(Cri) 152; 2018 0 Supreme(AP) 732; 2019(2) ALD (Crl) 904;
it is not the case of prosecution or the complainant that the petitioners are manufacturing and selling any spurious or adulterated drugs, but manufacturing products without obtaining licence, in contravention of Sections 18(a), 18(b) and Section 18(a)(vi) punishable under Sections 27(b)(ii), 27(d) and Rule 74(o) read with Schedule 'M' of the Act. Therefore, no power is conferred on the Special Sessions Judge to try the said offences
the Sessions Judge, If he finds that the case is not triable by the Court of Sessions, the Sessions Judge duty is to frame charges and transfer the case to any Chief Judicial Magistrate or Judicial Magistrate of First Class for trial in accordance with law, direct the accused to appear before the Court on a specified date.
persuaded by various judgments of other High Courts, followed by the judgment of this Court in M/s. Gaba Pharmaceuticals case ({2016 (1) ALT (Crl.) 18 (A.P.) = 2016 (1) ALD (Crl.) 980}), I am of the considered view that G.O.Ms.No.98, dated 06.09.2011, does not confer any jurisdiction on the Special Sessions Judge to try the offences punishable under Sections 27 (b) and 27 (d) of the Act and the Special Judge erroneously assumed jurisdiction though the alleged violation of Section 18 (a)(vi), 18 (c) and 18 (b) are under the offences punishable under Sections 27 (b) and (d) and on the other hand, the G.O., conferred power on the Special Sessions Judge to try certain offences referred in the G.O., but not the offences punishable under Sections 27 (b) and (d).

M. Hanumantha Rao VS State of A. P., 30 Aug 2019; 2019 3 ALT(Cri) 115; 2019 0 Supreme(AP) 137; 2019(2) ALD (Crl) 923(AP)

The Hon'ble Supreme Court of India has held that the factors that weighed with the Magistrate to order the investigation under Section 156 (3) Cr.P.C. should be reflected in the order, although a detailed explanation or detailed reasons are not warranted.

All the four judgments relied upon by the counsel for the petitioner and the one relied upon by the learned counsel for the respondent are passed by coordinate Benches of two judges each. In that view of the matter, as per the settled principles of judicial precedents, the latest view will have to be preferred.

in Priyanka Srivastava's case 2015 (3) ALT (Crl.) 26 (SC) : (2015) 6 SCC 287 (supra), the Hon'ble Supreme Court said that the affidavit should accompany the application under Section 156(3) Cr.P.C. The affidavit in this case is very very brief. It does not disclose any facts mentioned in the complaint. The Hon'ble Supreme Court of India noted that unscrupulous litigants can take steps in the Court of law and in order to prevent an unscrupulous litigant from taking advantage of the system and to encourage honest citizens to have free access to judicial system, the Hon'ble Supreme Court of India mandated the filing of an affidavit. This is the purpose of the affidavit. The affidavit in the opinion of this Court should contain a statement on oath at least briefly of all the relevant particulars and events/offences which are mentioned in the complaint that is filed. This would enable the Magistrate to verify the truth and also the veracity of the allegations made in the complaint. Mere filing of any affidavit will not suffice. Sufficient details of the alleged offence with dates and description of the events however brief are necessary in the affidavit to meet the test laid down in Priyanka Srivastava's 2015 (3) ALT (Crl.) 26 (SC) : (2015) 6 SCC 287 (supra) case. This affidavit would make the applicant more responsible.

D. Desai Madhav VS State, 12 Jul 2019; 2019 3 ALT(Cri) 20; 2019 0 Supreme(AP) 95; 2019 (2) ALD (Crl) 931(AP)

the sequence of events that are detailed in the doctors report which lead to the filing of the FIR do show that the preparations for harvesting the kidney began even before the patient was declared as brain dead. The doctors' observation in the case sheet that the kidneys are suitable for transplantation and the admission of the recipient of the harvested kidney much prior to the patient being declared brain dead are important facts. The Jeevandan authorities gave the approval at 8.46 p.m. on 19-4-2019 and the kidney was allotted to the Simhapuri hospital by Jeevandan for the recipient at 10.15 p.m. on 19-4-2019. But, prior to that itself the recipient was admitted into the hospital. In addition, the waiver of the fee of Rs.1,28,354/- and the payment of Rs. 20,000/- does lead to a prima facie conclusion that the kidney was harvested for commercial purposes.

Therefore, if a doctor harvests an organ, it cannot be said by any stretch of interpretation that he has committed an "atrocity" under the SC ST POA Act more so under Section 3(1)(e) of the SC ST POA Act. As per the Doctors version, the wife gave consent and as a token of gratitude they have not charged the hospital expenses. Whether this is the payment or consideration for harvesting a human organ will have to be determined, but it definitely cannot be said to be an "atrocity". There is neither extreme cruelty nor violence nor is there any heinous crime involved in this case.

Rapolu Mahalakshmi Vs State of Telangana and others; 04.07.2019; 2019(2) ALD (Crl) 950(TS)

It has repeatedly come to the notice of this court that the investigating agencies, especially the police, instead of furnishing complete details about the offender to the public prosecutor, fail to do so. Therefore, the public prosecutor is not harmed with the complete criminal record of the offender. Hence, the public prosecutor is not in a position to vehemently oppose the bail application. Resultantly, many a times, the alleged offender is granted bail by the courts. Even thereafter, the state does not move a petition for cancellation of bail. Instead, it lets the offender go scot free. Therefore, the state fails to perform its duty within the arena of criminal Justice system. In such a scenario, faced with the raising crime rate, the state turns to the use of preventive detention laws to tackle the menace of crime in the society. Therefore, even for petty cases, the offenders are being

preventively detained by the state. Needless to say, such a use of preventive powers amounts to colourable excess of power, which cannot be sustained in the eye of law.
Too frequent misuse of preventive laws would naturally undermine the faith of the people in the administrative system of the state. Instead of seeing the state as a protector, the state would be seen as a persecutor by the people. When personal liberty is invaded at the drop of a hat, the state ceases to be a democratic one. Rather, it transforms itself into a fascist regime.

Sanjeev Kumar Gupta VS State of Uttar Pradesh, 25 Jul 2019; 2019 0 AIR(SC) 4364; 2019 10 Scale 9; 2019 7 Supreme 1; 2019 0 Supreme(SC) 783; 2019(2) ALD (Crl) 958(SC)
Section 7A r/w Rule 12, Juvenile Justice (Care and Protection of Children) Rules 2007 - First attended school records showing 17 December 1995 as date of birth of second respondent certificate based on records of second school (from 5th class to matriculation) showing 17 December 1998 as date of birth - Driving licence, Aadhaar card and Voter card showing 17 December 1995 as date of birth - Held, matriculation certificate cannot be given precedence.

Ranjit Kumar Haldar VS State of Sikkim, 25 Jul 2019: 2019 0 AIR(SC) 3542; 2019 7 SCC 684; 2019 6 Supreme 705; 2019 0 Supreme(SC) 787; 2019(2) ALD (Crl) 969(SC)
In respect of the appellant Mamta Mohanta, there is evidence of recovery of dead body concealed in a house on the basis of her disclosure statement, where she was allegedly living with the other appellant along with the deceased and her two children. The recovery of dead body concealed under the wooden planks covered by mud and stones is very strong incriminating circumstance against Mamta Mohanta to maintain her conviction. Apart from such incriminating circumstance, there is a statement of Doma Lepcha (PW-2) before whom she has confessed. Phurba Lepcha (PW-4) is the husband of Doma Lepcha (PW-2) who supports this testimony.

23. The argument that Krishna Kanta Burman who translated the Bengali version into Nepali was not examined when the above mentioned First Information Report was lodged is wholly inconsequential. Such First Information Report was only in respect of information of death. The Investigating Officer has carried out investigation de-horsthe version given by the informant in the First Information Report. Therefore, non-examination of Krishna Kanta Burman does not create any doubt on the prosecution case.

24. In respect of an argument that no DNA Test was conducted to identify the dead body, is not tenable. The dead body was recovered on the statement of wife of the deceased who has stated in the disclosure statement that dead body of her husband is concealed under the wooden planks in a room which was in her possession. Apart from the said statement, Ravi Deb (PW-3) identified the dead body from the wearing apparels of the deceased such as sweater and a mala. None of the witnesses have been cross-examined to the effect that dead body was not of the deceased. Therefore, the argument raised is not tenable

P. Rajagopal VS State of Tamil Nadu, 29 Mar 2019; 2019 0 AIR(SC) 2866; 2019 2 PLJR(SC) 294; 2019 5 SCC 403; 2019 0 Supreme(SC) 375;2019(2) ALD (Crl) 989(SC); (SARAVANA BHAVAN CASE)
Normally, the Court may reject the case of the prosecution in case of inordinate delay in lodging the first information report because of the possibility of concoction of evidence by the prosecution. However, if the delay is satisfactorily explained, the Court will decide the matter on merits without giving much importance to such delay. The Court is duty bound to determine whether the explanation afforded is plausible enough given the facts and circumstances of the case. The delay may be condoned if the complainant appears to be reliable and without any motive for implicating the accused falsely. [See Apren Joseph v. State of Kerala, (1973) 3 SCC 114; Mukesh v. State (NCT of Delhi), (2017) 6 SCC 1].
The acquittal of co-accused by extending benefit of doubt will not automatically benefit the other accused.
In the matter on hand, the entire family of PW1 was at the mercy of Accused No. 1, who was very rich and influential. Accused No. 1 acted as a benefactor to the family and had helped them

financially and otherwise on multiple occasions. Under such circumstances, PW1 might have been reluctant to lodge a complaint immediately after the occurrence of the said incident, especially when Accused No. 1 had employed his henchmen to keep the house and movements of PW1 and her family under surveillance. Moreover, no material has been brought to our notice by the defence to prove that the delay in filing the F.I.R. was with the intention of false implication. Thus, the explanation given by PW1 for the delay remains untainted.

State Of Rajasthan VS Sahi Ram, 27 Sep 2019; 2019 0 AIR(SC) 4723; 2019 0 Supreme(SC) 1082; 2019 (2) ALD (Crl) 1012(SC);

in none of the decisions of this Court, non-production of the contraband material before the Court has singularly been found to be sufficient to grant the benefit of acquittal.

If the seizure of the material is otherwise proved on record and is not even doubted or disputed the entire contraband material need not be placed before this Court. If the seizure is otherwise not in doubt, there is no requirement that the entire material ought to be produced before the Court. At times the material could be so bulky, for instance as in the present material when those 7 bags weighed 223 kgs that it may not be possible and feasible to produce the entire bulk before the Court. If the seizure is otherwise proved, what is required to be proved is the fact that the samples taken from and out of the contraband material were kept intact, that when the samples were submitted for forensic examination the seals were intact, that the report of the forensic experts shows the potency, nature and quality of the contraband material and that based on such material, the essential ingredients constituting an offence are made out.

JAGBIR SINGH VS STATE (N. C. T. OF DELHI), 04 Sep 2019; 2019 0 AIR(SC) 4321; 2019 3 Crimes(SC) 389; 2019 12 Scale 57; 2019 8 SCC 779; 2019 7 Supreme 641; 2019 0 Supreme(SC) 988; 2019 (2) ALD (Crl) 1025(SC)

We are not much impressed by the contention of the State that the statements made at the hospital on 24.01.2008 and to the Police Officer on 25.01.2008, are not dying declarations. Under Section 32 of the Evidence Act any statement made by a person as to the cause of his death or to any circumstance of the transaction which resulted in his death would be relevant. Once it is proved that such statement is made by the deceased then it cannot be brushed aside on the basis that it is not elaborate or that it was not recorded in a particular fashion. We have already noted that the principle that the statement is brief, would not detract from it being reliable. Equally, when there are divergent dying declarations it is not the law that the court must invariably prefer the statement which is incriminatory and must reject the statement which does not implicate the accused. The real point is to ascertain which contains the truth.

State of Kerala VS Rasheed, 30 Oct 2018; 2019 0 AIR(SC) 721; 2019 1 ALT(Cri)(SC) 157; 2019 0 CrLJ 1516; 2019 1 KLD 1; 2019 2 KLJ 398; 2018 4 KLT 783; 2018 4 LawHerald(SC) 2852; 2019 1 MLJ(Cri) 326; 2019 1 OLR 159; 2018 4 PLJR(SC) 374; 2018 14 Scale 461; 2019 1 SCJ 311; 2018 0 Supreme(SC) 1100; 2019(2) ALD Crl 1048(SC)

While deciding an Application under Section 231(2) of the Cr.P.C., a balance must be struck between the rights of the accused, and the prerogative of the prosecution to lead evidence.

The following factors must be kept in consideration:

- possibility of undue influence on witness(es);
- possibility of threats to witness(es);
- possibility that non-deferral would enable subsequent witnesses giving evidence on similar facts to tailor their testimony to circumvent the defence strategy;
- possibility of loss of memory of the witness(es) whose examination-in-chief has been completed;
- occurrence of delay in the trial, and the non-availability of witnesses, if deferral is allowed, in view of Section 309(1) of the Cr.P.C. [“309. Power to postpone or adjourn proceedings.–(1) In every inquiry or trial the proceedings shall be continued from daytoday until all the witnesses in

attendance have been examined, unless the Court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded…"

See also Vinod Kumar v. State of Punjab, (2015) 3 SCC 220; and, Lt. Col. S.J. Chaudhary v. State (Delhi Administration), (1984) 1 SCC 722].

These factors are illustrative for guiding the exercise of discretion by a Judge under Section 231(2) of the Cr.P.C.

12. The following practice guidelines should be followed by trial courts in the conduct of a criminal trial, as far as possible:

i. a detailed case-calendar must be prepared at the commencement of the trial after framing of charges;

ii. the case-calendar must specify the dates on which the examination-in-chief and cross-examination (if required) of witnesses is to be conducted;

iii. the case-calendar must keep in view the proposed order of production of witnesses by parties, expected time required for examination of witnesses, availability of witnesses at the relevant time, and convenience of both the prosecution as well as the defence, as far as possible;

iv. testimony of witnesses deposing on the same subject-matter must be proximately scheduled;

v. the request for deferral under Section 231(2) of the Cr.P.C. must be preferably made before the preparation of the case-calendar;

vi. the grant for request of deferral must be premised on sufficient reasons justifying the deferral of cross-examination of each witness, or set of witnesses;

vii. while granting a request for deferral of cross-examination of any witness, the trial courts must specify a proximate date for the cross-examination of that witness, after the examination-in-chief of such witness(es) as has been prayed for;

viii. the case-calendar, prepared in accordance with the above guidelines, must be followed strictly, unless departure from the same becomes absolutely necessary;

ix. in cases where trial courts have granted a request for deferral, necessary steps must be taken to safeguard witnesses from being subjected to undue influence, harassment or intimidation.

DARSHAN SINGH VS STATE OF PUNJAB, 06 Dec 2019; 2019 0 Supreme(SC) 1333;

The conduct of the appellants of not being available in the village is a strong circumstance of their conduct post death.

23. There is no evidence led by the prosecution of administering Aluminum Phosphide but the postmortem report indicates fracture of Hyoid bone. As per postmortem report, the Dupatta around the neck of the deceased had two turns which is unusual for a woman, more so, for a woman of the age of deceased. The argument that no ligature mark was found on the deceased is of no relevance as the body had been infected with maggots. Therefore, the ligature mark on the soft tissue would not have survived.

24. Furthermore, the bottle of acid was recovered on the basis of disclosure made by accused Swaran Kaur. The photographs that were taken showed disfigurement of the face of the deceased. Such disfigurement was caused by pouring of acid with intention to avoid identification of the dead body.

25. Although the witness (PW-14) of last seen could not identify the appellants, but the fact remains that he identified that a jute bag was thrown by a man and a woman who came on a TVS Motorcycle. Therefore, even though the witness could not identify the appellants in court as the persons who had thrown the jute bag, the fact that the jute bag was thrown by a man and a woman on a TVS motorcycle is relevant in chain of events in support of the prosecution case.

STATE OF TELANGANA VS MANAGIPET @ MANGIPET SARVESHWAR REDDY, 06 Dec 2019; 2019 0 Supreme(SC) 1336;

The scope and ambit of a preliminary inquiry being necessary before lodging an FIR would depend upon the facts of each case. There is no set format or manner in which a preliminary inquiry is to be conducted. The objective of the same is only to ensure that a criminal investigation process is not initiated on a frivolous and untenable complaint. That is the test laid down in Lalita Kumari.
33 . In the present case, the FIR itself shows that the information collected is in respect of disproportionate assets of the Accused Officer. The purpose of a preliminary inquiry is to screen wholly frivolous and motivated complaints, in furtherance of acting fairly and objectively. Herein, relevant information was available with the informant in respect of prima facie allegations disclosing a cognizable offence. Therefore, once the officer recording the FIR is satisfied with such disclosure, he can proceed against the accused even without conducting any inquiry or by any other manner on the basis of the credible information received by him. It cannot be said that the FIR is liable to be quashed for the reason that the preliminary inquiry was not conducted. The same can only be done if upon a reading of the entirety of an FIR, no offence is disclosed. Reference in this regard, is made to a judgment of this Court reported as State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 wherein, this Court held interaliathat where the allegations made in the FIR or the complaint, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out a case against the accused and also where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.
34. Therefore, we hold that the preliminary inquiry warranted in Lalita Kumari is not required to be mandatorily conducted in all corruption cases. It has been reiterated by this Court in multiple instances that the type of preliminary inquiry to be conducted will depend on the facts and circumstances of each case. There are no fixed parameters on which such inquiry can be said to be conducted. Therefore, any formal and informal collection of information disclosing a cognizable offence to the satisfaction of the person recording the FIR is sufficient.
The sanction can be produced by the prosecution during the course of trial, so the same may not be necessary after retirement of the Accused Officer.

ABCD VS Union of India, 10 Dec 2019; 2019 0 Supreme(SC) 1346;
Making a false statement on oath is an offence punishable under Section 181 of the IPC[Indian Penal Code, 1860] while furnishing false information with intent to cause public servant to use his lawful power to the injury of another person is punishable under Section 182 of the IPC [Indian Penal Code, 1860]. These offences by virtue of Section 195(1)(a)(i) of the Code [Code of Criminal Procedure, 1973] can be taken cognizance of by any court only upon a proper complaint in writing as stated in said Section.

Raja VS State by The Inspector Of Police, 10 Dec 2019; 2019 0 Supreme(SC) 1352;
there is no hard and fast rule about the period within which the TIP must be held from the arrest of the accused. In certain cases, this Court considered delay of 10 days to be fatal while in other cases even delay of 40 days or more was not considered to be fatal at all.
As has been repeatedly laid down by this Court, what is important is the identification in Court and if such identification is otherwise found by the Court to be truthful and reliable, such substantive evidence can be relied upon by the Court.

Puneet Dalmia VS Central Bureau of Investigation, Hyderabad, 16 Dec 2019; 2019 0 Supreme(SC) 1367;
Dispensation with personal appearance/attendance can be allowed where there is nothing is on record that at any point of time, any effort has been made by appellant to stall/delay trial.

Anokhilal VS State Of Madhya Pradesh, 18 Dec 2019; 2019 0 Supreme(SC) 1390;

It is neither advisable nor practicable to fix any time-limit for trial of offences. Any such rule is bound to be qualified one. Such rule cannot also be evolved merely to shift the burden of proving justification on to the shoulders of the prosecution.

In Re : Assessment of The Criminal Justice System In Response To Sexual Offences VS ., 18 Dec 2019: 2019 0 Supreme(SC) 1394;

This Court in the case of State of Kerala v. Rasheed, AIR 2019 SC 721 has held as followings:-

The following practice guidelines should be followed by trial courts in the conduct of a criminal trial, as far as possible:

i. a detailed case-calendar must be prepared at the commencement of the trial after framing of charges;

ii. the case-calendar must specify the dates on which the examination-in-chief and cross-examination (if required) of witnesses is to be conducted;

iii. the case-calendar must keep in view the proposed order of production of witnesses by parties, expected time required for examination of witnesses, availability of witnesses at the relevant time, and convenience of both the prosecution as well as the defence, as far as possible;

iv. testimony of witnesses deposing on the same subject matter must be proximately scheduled;

v. the request for deferral under Section 231(2) of the Cr.P.C. must be preferably made before the preparation of the case calendar;

vi. the grant for request of deferral must be premised on sufficient reasons justifying the deferral of cross- examination of each witness, or set of witnesses;

vii. while granting a request for deferral of cross-examination of any witness, the trial courts must specify a proximate date for the cross-examination of that witness, after the examination- in-chief of such witness(es) as has been prayed for;

viii. the case-calendar, prepared in accordance with the above guidelines, must be followed strictly, unless departure from the same becomes absolutely necessary;

ix. in cases where trial courts have granted a request for deferral, necessary steps must be taken to safeguard witnesses from being subjected to undue influence, harassment or intimidation."

STATUS REPORTS REGARDING INVESTIGATION including medical examination, FSL methods and reports, TRIAL and COMPENSATION in consonance with sec 173(1A) are called for from the State and Central Governments.

Akshay Kumar Singh VS State (NCT of Delhi), 18 Dec 2019;2019 0 Supreme(SC) 1395;

These contentions and other contentions assailing the case of the prosecution were all raised earlier and upon consideration of evidence, the same were rejected by this Court. The review petition is not for re-hearing of the appeal on reappreciation of the evidence over and over again. A party is not entitled to seek review of the judgment merely for the purpose of rehearing of the appeal and a fresh decision.

This Court considered the three dying declarations in the light of the well-settled principles and found that the multiple dying declarations inspire the confidence of the Court and are credible.

So far as the plea of alibi, contention of the petitioner is that he was not present in Delhi on the night of 16.12.2012 and that he accompanied his sister-in-law Sarita Devi (DW-15) along with her son Kundan. He boarded Mahabodhi Express on 15.12.2012 and left for Aurangabad, Bihar from Platform No.9, New Delhi Railway Station.- Considering the evidence of DWs 12, 14 and 15 in Para (256), this Court has observed that DWs 12, 14 and 15 are all relatives of accused Akshay Kumar Singh alias Thakur and that as observed by both the courts, they tried to wriggle the petitioner out of the messy situation as is the natural instinct of the family members- The plea of alibi taken by the petitioner-accused and the evidence adduced by the petitioner has been well-considered by this Court in Paras (247) to (269). Upon appreciation of evidence, this Court affirmed the findings of the trial court and the High Court rejecting the plea of alibi and held that plea of alibi taken by the petitioner is an afterthought. We do not find any error apparent on the face of the record in consideration of evidence and rejection of the plea of alibi. The appreciation of evidence in rejecting

the plea of alibi does not suffer from any error apparent on the face of the record and this cannot be urged as a ground for review.

Kanwar Pal Singh VS State of Uttar Pradesh, 18 Dec 2019; 2019 0 Supreme(SC) 1396;
As noticed above, in the written submissions the appellant has relied upon Belsund Sugar Company Limited ((1999) 9 SCC 620), Sharat Babu Digumarti ((2017) 2 SCC 18) and Suresh Nanda ((2008) 3 SCC 674) to contend that where there is a special act dealing with a special subject, resort cannot be taken to a general act. The said submission has no force in view of the ratio in Sanjay ((2014) 9 SCC 772) as quoted above which specifically refers to Section 26 of the General Clauses Act and states that the offence under Section 4 read with Section 21 of the Mines Regulation Act is different from the offence punishable under Section 379 of the IPC. Thus, they are two 'different' and not the 'same offence'. It would be relevant to state here that the Delhi High Court in its decision reported as Sanjay v. State, (2009) 109 DRJ 594, which was impugned in Sanjay (supra), had accepted an identical argument to hold that once an offence is punishable under Section 21 of the Mines Regulation Act, the offence would not be punishable under Section 379 of the IPC. This reasoning was rejected by this Court and the judgment of the Delhi High Court was reversed. The contention relying on the same reasoning before us, therefore, must be rejected.
the offence under Section 21 read with Section 4 of the Mines Regulation Act and Section 379 of the IPC are different and distinct. The aforesaid reasoning compels us to reject the contention of the appellant that the action as impugned in the FIR is a mere violation of Section 4 which is an offence cognizable only under Section 21 of the Mines Regulation Act and not under any other law. There is no bar on the Court from taking cognizance of the offence under Section 379 of the IPC. We would also observe that the violation of Section 4 being a cognizable offence, the police could have always investigated the same, there being no bar under the Mines Regulation Act, unlike Section 13(3)(iv) of the TOHO Act.
We would also reject the contention raised by the appellant in the written submissions that the alleged theft of sand is not punishable under Section 379 read with Section 378 of the IPC as sand is an immovable property as per Section 3 (26) of the General Clauses Act. In the present case, sand had been excavated and was thereupon no longer an immovable property. The sand on being excavated would lose its attachment to the earth, ergo, it is a movable property or goods capable of being stolen.
While examining the issue, this Court in Sanjay (supra) took notice of the decision in H.N. Rishbud v. State of Delhi, AIR 1955 SC 196 wherein this Court has held that a defect or illegality in investigation, however serious, has no direct bearing on the competence or the procedure relating to the taking of the cognizance or trial. The cardinal principle of law as noted by this Court in Directorate of Enforcement v. Deepak Mahajan, (1994) 3 SCC 440 is that every law is designed to further the ends of justice and should not be frustrated on mere technicalities.

State Of Uttar Pradesh VS Ravindra @ Babloo, 18 Dec 2019; 2019 0 Supreme(SC) 1397;
It cannot be laid down as a general proposition of law that unless an overt act is proved against a person who is alleged to be a member of an unlawful assembly, it cannot be said that he is a member of an assembly.
In a case of a mob assault, especially when there is no doubt with regard to ocular evidence, to look for corroboration of each injury by correlating it with evidence of a prosecution witness to a particular accused and then to discredit prosecution case on that basis cannot be upheld.

Ramji Singh VS State Of Uttar Pradesh, 11 Dec 2019;2019 0 Supreme(SC) 1354;
FIR is not supposed to be an encyclopedia detailing all facts in extenso.
Mere delay in compliance of Section 157 of Cr.P.C. by itself is not fatal to prosecution.
Site plan only gives a general idea and is not a true to scale map.
When ocular evidence is direct and clear and fully supported by medical evidence, negligence of investigation team cannot be used by defence in support of their case.

Suraj Jagannath Jadhav VS State of Maharashtra, 13 Dec 2019; 2019 0 Supreme(SC) 1364;

Applying the law laid down by this Court in the cases of Bhagwan ((2014) 4 SCC 270) and Santosh ((2015) 7 SCC 641) to the facts of the case on hand and the manner in which the accused poured the kerosene on the deceased and thereafter when she was trying to run away from the room to save her, the accused came from behind and threw a matchstick and set her ablaze, we are of the opinion that the death of the deceased was a culpable homicide amounting to murder and Section 300 fourthly shall be applicable and not Exception 4 to Section 300 IPC as submitted on behalf of the accused. We are in complete agreement with the view taken by the learned Trial Court as well as the High Court convicting the accused for the offence punishable under Section 302 of the IPC.

Bhawna Bai VS Ghanshyam, 03 Dec 2019; 2019 8 Supreme 475; 2019 0 Supreme(SC) 1315;

As pointed out earlier, at the stage of framing the charge, the court is not required to hold an elaborate enquiry; only prima facie case is to be seen. As held in Knati Bhadra Shah and another v. State of West Bengal (2000) 1 SCC 722, while exercising power under Section 228 Crl.P.C., the judge is not required record his reasons for framing the charges against the accused.

Mahipal VS Rajesh Kumar @ Polia, 05 Dec 2019; 2019 8 Supreme 732; 2019 0 Supreme(SC) 1323;

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

State of NCT of Delhi VS Shiv Charan Bansal, 05 Dec 2019; 2019 8 Supreme 708; 2019 0 Supreme(SC) 1325;

The Court while considering the question of framing charges under Section 227 of the Cr.P.C has the power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case has been made out against the accused. The test to determine prima facie case would depend upon the facts of each case.

If the material placed before the court discloses grave suspicion against the accused, which has not been properly explained, the court will be fully justified in framing charges and proceeding with the trial.

The probative value of the evidence brought on record cannot be gone into at the stage of framing charges. The Court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the ingredients constituting the alleged offence.

At this stage, there cannot be a roving enquiry into the pros and cons of the matter, the evidence is not to be weighed as if a trial is being conducted.

Himagiri Enterprises Private Limited VS State of Telangana, 17 Oct 2019; 2019 3 ALT(Cri) 212; 2019 0 Supreme(Telangana) 294;

Considering the position of law laid down in the aforesaid decisions of the Apex Court and having regard to the facts and circumstances of the case, I am of the considered view that no party to the trial can be denied an opportunity to produce relevant documents which were not brought on record due to inadvertence and if the said documents are received, no prejudice would be caused to the

defence as an adequate opportunity would be available to the accused to cross-examine the witnesses and to lead rebuttal evidence.

Daduvai Pallavi, w/o. D. Mohan Das VS State of Telangana, rep. by its Prl. Secretary, Stamps and Registration Department, Secretariat, Hyderabad, 16 Oct 2019; 2019 6 ALT 129; 2019 0 Supreme(Telangana) 273;
It is made clear that mere registration of deed of conveyance does not confer title to the property and it is made clear that this order does not preclude the Government to take appropriate steps as warranted by law and to assert its title.

Seelam Venkata Reddy VS State of A. P., 01 Oct 2019; 2019 3 ALT(Cri) 204; 2019 0 Supreme(AP) 159;
The trial Court upon considering the said evidence on record and on proper appreciation of the same arrived at a right conclusion that P.W. 2 is a minor and that the accused had continuous sexual intercourse with her for a period of seven months till she became a pregnant and thereby rightly recorded a finding of guilt against him and convicted him for the said offences and punished him for the said offences. Upon reappraisal of the evidence on record, this Court also found that P.W. 2 is a minor both for the purpose of Section 376 IPC and under the POCSO Act, 2012 and the accused had sexual intercourse with her repeatedly for seven months till she became pregnant and thereby rendered himself liable for punishment under Section 376(2)(n) of IPC and Section 6 of the POCSO Act, 2012.

BREACH OF TRUST VS CONTRACT
in the case of S.W. Palanitkar and Ors. vs. State of Bihar and Anr, (2002) 1 scc 241 held that every breach of contract may not result in a penal offence, but in the very same judgment, the Court has held that breach of trust with mens rea gives rise to a criminal prosecution as well.

BAN ON INTERNET AND SECTION 144
The use of Section 144 CrPC to shut down the internet has been held to be legal by the Gujrat High Court in the case of Gaurav Sureshbhai Vyas v. The State of Gujrat (https://indiankanoon.org/doc/29352399/). The petitioner had challenged the government shutting down the internet in the parts of Gujrat. He argued that the government should not have blocked the internet as a whole for the state and the government should have instead invoked Section 69A of the Information Technology Act that allowed for the government to block specific sites 'in the interest of sovereignty and integrity of India'. The court rejected both the arguments and held that the government had not completely blocked the internet, as the public still had access to broadband services and wi-fi. The court also held that while section 69A of the IT Act was meant to block certain websites, but under section 144 of CrPC, the government could issue directions to persons who are responsible for extending internet access. The court held that in case of a law and order situation, it is up to the government to decide how best to bring the situation under control, and if it decides to block the mobile broadband access in such a situation, then the court should not interfere with this.

Corroboration of extra judicial confession-not necessary ingredient:
Extra-judicial confession of accused need not in all cases be corroborated. In Madan Gopal Kakkad vs. Naval Dubey, (1992) 3 SCC 204, this court after referring to Piara Singh vs. State of Punjab, (1977) 4 SCC 452 held that the law does not require that the evidence of an extra-judicial confession should in all cases be corroborated. The rule of

prudence does not require that each and every circumstance mentioned in the confession must be separately and independently corroborated.

TIP

Munshi Singh Gautam v. State of M.P., (2005) 9 SCC 631: (SCC pp. 642-45, paras 16-17 & 19)

"16. As was observed by this Court in Matru v. State of U.P., (1971) 2 SCC 75 identification tests do not constitute substantive evidence. They are primarily meant for the purpose of helping the investigating agency with an assurance that their progress with the investigation into the offence is proceeding on the right lines. The identification can only be used as corroborative of the statement in court. (See Santokh Singh v. Izhar Hussain, (1973) 2 SCC 406.) The necessity for holding an identification parade can arise only when the accused are not previously known to the witnesses. The whole idea of a test identification parade is that witnesses who claim to have seen the culprits at the time of occurrence are to identify them from the midst of other persons without any aid or any other source. The test is done to check upon their veracity. In other words, the main object of holding an identification parade, during the investigation stage, is to test the memory of the witnesses based upon first impression and also to enable the prosecution to decide whether all or any of them could be cited as eyewitnesses of the crime. The identification proceedings are in the nature of tests and significantly, therefore, there is no provision for it in the Code and the Evidence Act. It is desirable that a test identification parade should be conducted as soon as after the arrest of the accused. This becomes necessary to eliminate the possibility of the accused being shown to the witnesses prior to the test identification parade. This is a very common plea of the accused and, therefore, the prosecution has to be cautious to ensure that there is no scope for making such an allegation. If, however, circumstances are beyond control and there is some delay, it cannot be said to be fatal to the prosecution.

17. It is trite to say that the substantive evidence is the evidence of identification in court. Apart from the clear provisions of Section 9 of the Evidence Act, the position in law is well settled by a catena of decisions of this Court. The facts, which establish the identity of the accused persons, are relevant under Section 9 of the Evidence Act. As a general rule, the substantive evidence of a witness is the statement made in court. The evidence of mere identification of the accused person at the trial for the first time is from its very nature inherently of a weak character. The purpose of a prior test identification, therefore, is to test and strengthen the trustworthiness of that evidence. It is, accordingly, considered a safe rule of prudence to generally look for corroboration of the sworn testimony of witnesses in court as to the identity of the accused who are strangers to them, in the form of earlier identification proceedings. This rule of prudence, however, is subject to exceptions, when, for example, the court is impressed by a particular witness on whose testimony it can safely rely, without such or other corroboration. The identification parades belong to the stage of investigation, and there is no provision in the Code which obliges the investigating agency to hold or confers a right upon the accused to claim a test identification parade. They do not constitute substantive evidence and these parades are essentially governed by Section 162 of the Code. Failure to hold a test identification parade would not make inadmissible the evidence of identification in court. The weight to be attached to such identification should be a matter for the courts of fact. In appropriate cases it may accept the evidence of identification even without insisting on corroboration. (See Kanta Prashad v. Delhi Admn, AIR (1958) SC 350., Vaikuntam Chandrappa v. State of A.P., AIR (1960)

SC 1340, Budhsen v. State of U.P, (1970) 2 SCC 128 and Rameshwar Singh v. State of J&K, (1971) 2 SCC 715 .)

* * *

19. In Harbajan Singh v. State of J&K, (1975) 4 SCC 480, though a test identification parade was not held, this Court upheld the conviction on the basis of the identification in court corroborated by other circumstantial evidence. In that case it was found that the appellant and one Gurmukh Singh were absent at the time of roll call and when they were arrested on the night of 16-12-1971 their rifles smelt of fresh gunpowder and that the empty cartridge case which was found at the scene of offence bore distinctive markings showing that the bullet which killed the deceased was fired from the rifle of the appellant. Noticing these circumstances this Court held: (SCC p. 481, para 4)

'4. In view of this corroborative evidence we find no substance in the argument urged on behalf of the appellant that the investigating officer ought to have held an identification parade and that the failure of Munshi Ram to mention the names of the two accused to the neighbours who came to the scene immediately after the occurrence shows that his story cannot be true

311 CrPC

In State of Haryana v. Ram Mehar and others, (2016) 8 SCC 762 the Apex Court held as under:

"The exercise of power under Section 311 Cr.P.C. can be sought to be invoked either by the prosecution or by the accused persons or by the Court itself. The High Court has been moved by the ground that the accused persons are in the custody and the concept of speedy trial is not nullified and no prejudice is caused, and, therefore, the principle of magnanimity should apply. Suffice it to say, a criminal trial does not singularly centres around the accused. In it there is involvement of the prosecution, the victim and the victim represents the collective. The cry of the collective may not be uttered in decibels which are physically audible in the court premises, but the court has to remain sensitive to such silent cries and the agonies, for the society seeks justice. Therefore, a balance has to be struck. Regard being had to the concept of balance, and weighing the factual score on the scale of balance, the High Court has fallen into absolute error in axing the order passed by the trial Court. When the concept of fair trial is limitlessly stretched, having no boundaries, the orders like the present one may fall in the arena of sanctuary of errors. Hence, the necessity of doctrine of balance is reiterated."

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NEWS

- GOVERNMENT OF TELANGANA- Home (Courts) Department – Creation of (504) posts in the (36) Fast Track Sessions Courts(FTSCs), @ (14) posts each Fast Track Sessions Court for expeditious disposal of cases of Rape and Protection of Children against Sexual Offences (POCSO) Act in all the Districts in the State of Telangana - Orders – Issued- G.O.Ms.No.104, FINANCE (HRM-II) DEPARTMENT Dated:30.12.2019

- GOVERNMENT OF TELANGANA- Fast Track Special Courts – Establishment of 36 Fast Track Special Courts for expeditious trial and disposal of Rape and POCSO Act cases in all Districts in the State of Telangana – Orders – Issued- G.O.Ms.No. 58, LAW (LA, LA&J-HOME-COURTS.A2) DEPARTMENT Dated: 19-12-2019

- GOVERNMENT OF TELANGANA- Home (Courts) Department – Creation of (267) additional posts under the control of Director of Prosecutions, Telangana State,

Hyderabad – Orders –Issued- G.O.Ms.No.97 FINANCE (HRM-II) DEPARTMENT Dated:19.12.2019

- THE CITIZENSHIP(AMENDMENT)ACT, 2019 published in Govt. of India Gazette Extraordinary Part II Section I dated 12.12.2019.

- GOVERNMENT OF ANDHRA PRADESH- General Administration (SC-F) Department – Permission to Utilize the services of Sri H. Venkatesh, Legal Advisor-cum-Special Public Prosecutor (Retired) as Legal Advisor- cum-Special Public Prosecutor in the office of Anti-Corruption Bureau, Vijayawada on re-employment basis for a period of (3) three years – Orders – Issued-. G.O.RT.No. 2732, GENERAL ADMINISTRATION (SC-F) DEPARTMENT, Dated: 03-12-2019

- Govt of India Gazette notification dt. 13.12.2019- The Arms (Amendment) Act, 2019

- MINISTRY OF HOME AFFAIRS- NOTIFIED the 14.12.2019 as the appointed day as the date on which the provisions of the said Arms Amendment Act, 2019, shall come into force.

- GOVERNMENT OF ANDHRA PRADESH- Public Services - Special Rules for Andhra Pradesh Prosecution Services – Recruitment to the post of Additional Public Prosecutors, Grade-II and Assistant Public Prosecutors – Selection Committee re-constituted – Orders –Issued- G.O.Ms.No.164 HOME (COURT.A) DEPARTMENT, Dated:10.12.2019.

- GOVERNMENT OF ANDHRA PRADESH- Public Services – A.P.State Prosecution Services - Promotions – Senior Assistant Public Prosecutors - Promotion to the post of Additional Public Prosecutor Grade-II on temporary basis – Orders – Issued- G.O.MS.No. 176 , HOME (COURTS.A) DEPARTMENT, Dated: 27-12-2019.

- GOVERNMENT OF ANDHRA PRADESH- Public Services – Prosecutions Department - Senior Assistant Public Prosecutors fit for promotion to the category of Additional Public Prosecutors Grade-II in Prosecutions Department for the panel year 2019-20 - Inclusion of the names of eligible Senior Assistant Public Prosecutors - Orders – Issued- G.O.MS.No. 175, HOME (COURTS.A) DEPARTMENT, Dated: 27-12-2019

- Govt of India Gazette notification dt. 5.12.2019- The Prohibition of Electronic Cigarettes (Production, Manufacture, Import, Export, Transport, Sale, Distribution, Storage and Advertisement) Act, 2019. And it has come into force on the 18th day of September, 2019.

- Govt of India Gazette notification dt. 5.12.2019- The Transgender Persons (Protection of Rights) Act, 2019.

- Government of A.P.- passed DISHA Bill for timely investigation and trial of Sexual offence cases- issued by G.O.Ms. No. 18 WOMEN DEVELOPMENT, CHILD AND DISABLED WELFARE dept dated 31-12-2019.

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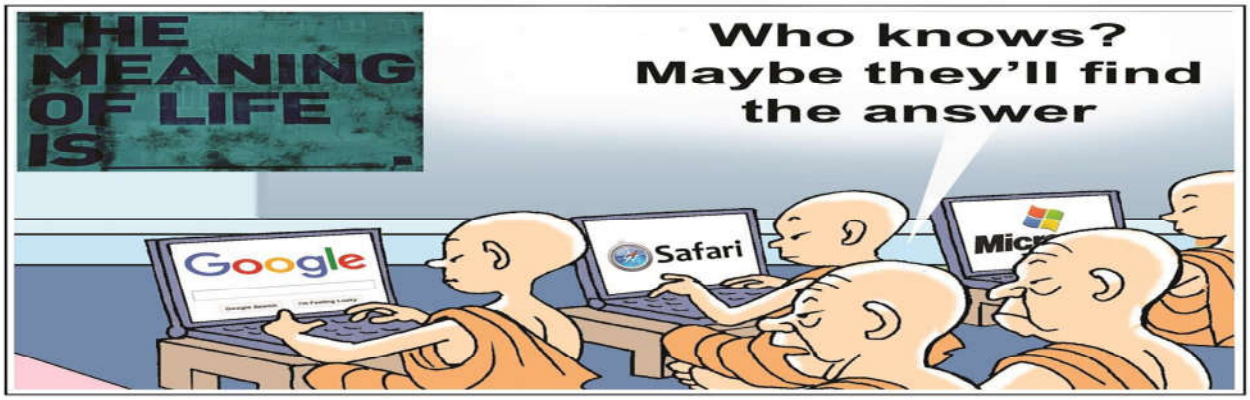
ON A LIGHTER VEIN

iToons Sunil Agarwal & Ajit Ninan



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Vol- IX
Part-2

Prosecution Replenish

An Endeavour for Learning and Excellence

February, 2020

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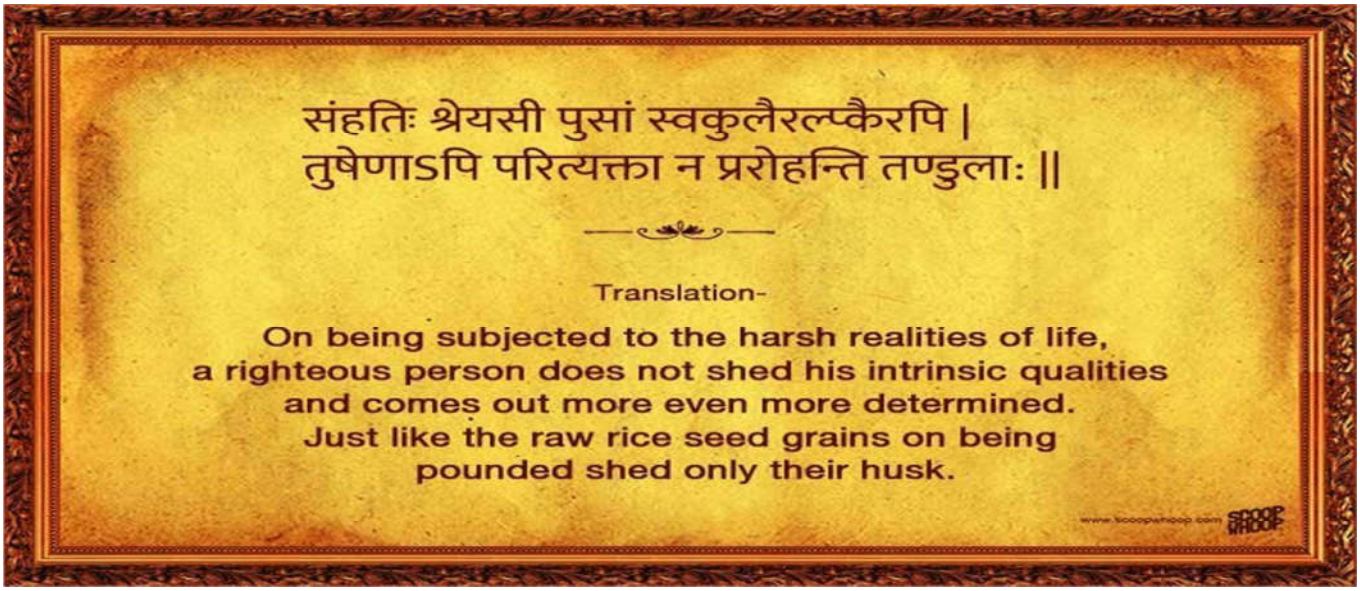
"Let Noble Thoughts Come To Me From All Directions"



CITATIONS

Ishwari Lal Yadav VS State of Chhattisgarh, 03 Oct 2019; 2019 4 Crimes(SC) 67; 2019 10 SCC 423; 2019 10 SCC 437; 2020 1 SCC(Cri) 13; 2020 1 SCC(Cri) 1; 2019 8 Supreme 644; 2019 0 Supreme(SC) 1101;

Learned counsel also relied on the judgment of this Court in the case of Shambu Nath Mehra (AIR 1956 SC 404). In the aforesaid judgment this Court has held that in a criminal case burden of proof is on the prosecution and Section 106 is certainly not intended to relieve it of that duty. It is held that on the contrary, it is designed to meet certain exceptional cases in which it would be impossible, or at any rate disproportionately difficult, for the prosecution to establish facts which are “especially” within the knowledge of the accused and which he could prove without difficulty or inconvenience

Extra judicial confession is a weak piece of evidence and court must ensure that same inspires confidence and is corroborated by other prosecution evidence.

Rohtas VS State of Haryana, 05 Nov 2019; 2019 0 AIR(SC) 5684; 2019 0 Supreme(SC) 1226; 2020 1 SCC Cri 47; 2019 10 SCC 554;

a wrong relief given to co-accused should also be given to the appellants against whom clinching evidence has come on record about the manner in which the offence was committed by them.

Indubitably, just because the witnesses are related cannot be the basis to discard their evidence, if it is otherwise natural and truthful. Their evidence has commended to the Trial Court as well as the High Court as truthful and we see no reason to deviate from that concurrent view taken by the Courts below. It is the duty of the Court to separate the grain from the chaff and then to arrive at a finding of guilt of an accused or otherwise, notwithstanding the fact that evidence is found to be deficient qua another accused named in the same offence. The maxim falsus in uno, falsus in omnibus has not received general acceptance in India nor has this maxim come to occupy the status of rule of law.

The so-called deficiencies pointed out by the appellants in the investigation or the prosecution case, in our opinion, are insignificant and trivial and cannot be the basis to reject the whole evidence

The fact that the blood group of the human blood stained soil cannot be ascertained, can be no basis to discard that piece of evidence.

In a recent decision in Dilawar Singh & Ors. vs. State of Haryana, (2015) 1 SCC 737 the Court restated that while analysing the evidence of eye witnesses, it must be borne in mind that there is bound to be variations and difference in the behaviour of the witnesses or their reactions from situation to situation and individual to individual. There cannot be uniformity in the reaction of witnesses. The Court must not decipher the evidence on unrealistic basis. There can be no hard and fast rule about the uniformity in human reaction.

Rajender @ Rajesh @ Raju VS State (NCT of Delhi), 24 Oct 2019; 2019 0 Supreme(SC) 1195; 2019 10 SCC 623; 2020 1 SCC Cri 63.

with respect to conspiracy, it is trite law that the existence of three elements must be shown–a criminal object, a plan or a scheme embodying means to accomplish that object, and an agreement or understanding between two or more people to cooperate for the accomplishment of such object.

Section 106 of the Indian Evidence Act, 1872 provides that the burden of proof for any fact that is especially within the knowledge of a person lies upon such person. Thus, if a person is last seen with the deceased, he must offer an explanation as to how and when he parted company with the deceased. In other words, he must furnish an explanation that appears to the Court to be probable and satisfactory, and if he fails to offer such an explanation on the basis of facts within his special knowledge, the burden cast upon him under Section 106 is not discharged. Particularly in cases resting on circumstantial evidence, if the accused fails to offer a reasonable explanation in discharge of the burden placed on him, such failure by itself can provide an additional link in the chain of circumstances proved against him. This, however, does not mean that Section 106 shifts the burden of proof of a criminal trial on the accused. Such burden always rests on the prosecution. Section 106 only lays down the rule that when the accused does not throw any light upon facts which are specially with in his/her knowledge and which cannot support any theory or hypothesis compatible with his innocence, the Court can consider his failure to adduce an explanation as an additional link which completes the chain of incriminating circumstances.

in Sonu v. State of Haryana, (2017) 8 SCC 570. In that case, an objection regarding the mode/method of proof of call detail records (CDRs) of mobile phones recovered from the accused was raised for the first time before the Supreme Court. Drawing a distinction between objections relating to admissibility or relevance of facts and objections as to the mode or method of proof of facts, the Court observed as follows:

> "32. It is nobody's case that CDRs which are a form of electronic record are not inherently admissible in evidence. The objection is that they were marked before the trial court without a certificate as required by Section 65-B(4). It is clear from the judgments referred to supra that an objection relating to the mode or method of proof has to be raised at the time of marking of the document as an exhibit and not later. The crucial test, as affirmed by this Court, is whether the defect could have been cured at the stage of marking the document. Applying this test to the present case, if an objection was taken to the CDRs being marked without a certificate, the Court could have given the prosecution an opportunity to rectify the deficiency. It is also clear from the above judgments that objections regarding admissibility of documents which are per se inadmissible can be taken even at the appellate stage. Admissibility of a document which is inherently inadmissible is an issue which can be taken up at the appellate stage because it is a fundamental issue. The mode or method of proof is procedural and objections, if not taken at the trial, cannot be permitted at the appellate stage. If the objections to the mode of proof are permitted to be taken at the appellate stage by a party, the other side does not have an opportunity of rectifying the deficiencies. The learned Senior Counsel for the State referred to statements under Section 161 CrPC, 1973 as an example of documents falling under the said category of inherently inadmissible evidence. CDRs do not fall in the said category of documents. We are satisfied that an objection that CDRs are unreliable due to violation of the procedure prescribed in Section 65-B(4) cannot be permitted to be raised at this stage as the objection relates to the mode or method of proof."

Krishna Prasad Verma (D) Thr. Lrs. VS State Of Bihar, 26 Sep 2019; 2019 0 AIR(SC) 4852; 2019 4 KLT 173; 2019 0 Supreme(SC) 1166; 2019 10 SCC 640; 2020 1 SCC Cri 78;

In case a judicial officer passes orders which are against settled legal norms but there is no allegation of any extraneous influences leading to the passing of such orders then the appropriate action which the High Court should take is to record such material on the administrative side and place it on the service record of the judicial officer concerned. These matters can be taken into consideration while considering career progression of the concerned judicial officer. Once note of the wrong order is

taken and they form part of the service record these can be taken into consideration to deny selection grade, promotion etc., and in case there is a continuous flow of wrong or illegal orders then the proper action would be to compulsorily retire the judicial officer, in accordance with the Rules. We again reiterate that unless there are clear-cut allegations of misconduct, extraneous influences, gratification of any kind etc., disciplinary proceedings should not be initiated merely on the basis that a wrong order has been passed by the judicial officer or merely on the ground that the judicial order is incorrect.

State Of Rajasthan VS Sahi Ram, 27 Sep 2019; 2019 0 AIR(SC) 4723; 2020 0 CrLJ 153; 2019 0 Supreme(SC) 1082; 2019 10 SCC 649; 2020 1 SCC Cri 85;

The High Court accepted the submission and concluded that only two samples-packets and one bag of poppy straw weighing 2.5 kg were produced and exhibited while the entire contraband material was not produced and exhibited. Relying on the decisions of this Court in Noor Aga v. State of Punjab & Another, (2008) 16 SCC 417, Jitendra & Another v. State of Madhya Pradesh, (2004) 10 SCC 562, Ashok alias Dangra Jaiswal v. State of Madhya Pradesh, (2011) 5 SCC 123 and Vijay Jain v. State of Madhya Pradesh, (2013) 14 SCC 527 it was observed that failure to exhibit Muddamal and contraband material was fatal to the case of prosecution.

the mere production of a laboratory report that the samples tested was narcotics cannot be conclusive proof by itself. The sample seized and that tested have to be co-related.

If the seizure of the material is otherwise proved on record and is not even doubted or disputed the entire contraband material need not be placed before this Court. If the seizure is otherwise not in doubt, there is no requirement that the entire material ought to be produced before the Court.

Javed Abdul Rajjaq Shaikh VS State Of Maharashtra, 06 Nov 2019; 2019 0 AIR(SC) 5721; 2019 4 Crimes(SC) 198; 2019 0 Supreme(SC) 1236; 2019 10 SCC 778; 2020 1 SCC Cri 101;

Much may not turn on the injuries which are alleged to have been noted in the Inquest not being noted in the post mortem note.

In the work by Modi, scratches, abrasion fingernail and bruises on the face, neck and other parts of the body are usually present in the case of strangulation.

It is no doubt true that in the case of hanging, fracture of the larynx and trachea is very rare and that too it may be found in judicial hanging. On the other hand, fracture on the larynx, trachea and hyoid bone indicates strangulation.

in the case of throttling by hand, fracture of the larynx and trachea cannot occur. It occurs in strangulation. He deposed that by using hand and blunt object like stone and stick, if strangulation is caused, in that case fracture of the larynx, trachea and hyoid bone have been found also. We have noticed that throttling is constriction produced by pressure of fingers and palm upon throat. In ligature strangulation it can be either by leg or by any other means. Mugging is when strangulation is brought about with the foot, knee, bend of elbow or some other solid substances.

The differences between hanging and strangulation have been highlighted by Modi on Medical Jurisprudence and Toxicology, 25th Edition, as follows:

Hanging	Strangulation
1. Most suicidal.	1. Mostly homicidal.
2. Face-Usual pale and petechiae rare.	2. Face-Congested, livid and marked with petechiae.
3. Saliva-Dribbling out of mouth down on the chin and chest.	3. Saliva-No such dribbling
4. Neck-Stretched and elongated in fresh bodies.	4. Neck-Not so.
5. External signs of asphyxia usually not well marked.	5. External signs of asphyxia, very well marked (minimal if death due to vasovagal and carotid sinus effect.
6. Ligature mark-Oblique, Non-continuous placed high Up in the neck between the	6. Ligature mark-Horizontal or transverse continuous, round the neck, low down in the

Chin and the larynx, the Base of the groove or furrow Being hard, yellow and Parachment-like.	neck below the thyroid, the base of the groove or furrow being soft and reddish.
7. Abrasions and ecchymoses round about the edges of the ligature mark, rare.	7. Abrasions and ecchymoses round about the edges of the ligature Mark, common.
8. Subcutaneous tissues Under the mark-White, Hard and glistening.	8. Subcutaneous tissues under the mark-Ecchymosed.
9. Injury to the muscles of Neck-Rare.	9. Injury to the muscles of the neck-Common.
10. Carotid arteries, Internal coats ruptured in	10. Carotid arteries, internal coats ordinarily ruptured.
11. Fracture of the larynx and trachea-Very rare and may be found that too in judicial hanging.	11. Fracture of the larynx, trachea and hyoid bone.
12. Fracture-dislocation of the cervical vertebrae- Common in judicial hanging.	12. Fracture-dislocation of the the cervical vertebrae-Rare.
13. Scratches, abrasions and bruises on the face, neck and other parts of the body-Usually not present.	13. Scratches, abrasions fingernail marks and bruises on the face, neck and other parts of the body-
14. No evidence of sexual Assault.	14. No evidence of sexual assault.
15. Emphysematous bullae on Surface of the lungs- Not present.	15. Emphysematous bullae on the surface of the lungs - May be Present.

As to what is the distinction between strangulation and throttling is also dealt within the self-same work:

> "Definition-Strangulation is defined as the compression of the neck by a force other than hanging. Weight of the body has nothing to do with strangulation.
>
> 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.
>
> When constriction is produced by the pressure of the fingers and palms upon the throat, it is called as throttling. When strangulation is brought about by compressing the throat with a foot, knee, bend of elbow, or some other solid substances, it is known as mugging (strangle hold).
>
> A form of strangulation, known as Bansdola, is sometimes practised in northern India. In the form, a strong bamboo or lathi (wooden club) is placed across the throat and another across the back of the neck. These are strongly fastened one end. A rope is passed round the other end, which is bound together, and the unfortunate victim is squeezed to death. The throat is also pressed by placing a lathi or bamboo across the front of the neck and standing with a foot on each of lathi or bamboo.
>
> Garrotting is another method that was used by thugs around 1862 in India. A rope or a loincloth is suddenly thrown over the head and quickly tightened around neck. Due to sudden loss of consciousness, there is no struggle. The assailant is then able to tie the ligature."

STATE OF MADHYA PRADESH VS MAN SINGH, 04 Nov 2019 2019 0 AIR(SC) 5622; 2019 4 Crimes(SC) 243; 2019 10 SCC 161; 2019 2 SCC(L&S) 787; 2019 0 Supreme(SC) 1224;2020 1 SCC Cri 132

the provisions of Section 4 of the Act which mandates that before releasing any offender on probation of good conduct, the Court must obtain a report from the Probation Officer and can then order his release on his entering bonds with or without sureties, to appear and receive sentence when called upon during such period, not exceeding three years, or as the Court may direct, and in the meantime to keep peace and good behaviour. The proviso to sub-section (1) of Section 4 clearly provides that Court cannot order release of such an offender unless it is satisfied that the offender or his surety has a fixed place of abode or regular occupation in the place over which the Court can exercise jurisdiction. Sub-section (2) lays down that before making any order under sub-section (1), the Court shall take into consideration the report of the Probation Officer. This Court in a number of judgments

has held that before passing an order of probation, it is essential to obtain the report of the Probation Officer concerned. Reference in this behalf may be made to M.C.D. vs. State of Delhi & Anr, AIR 2005 SC 2658.

After disposing of a case on merits, the Court becomes functus officio and Section 362 CrPC expressly bars review and specifically provides that no Court after it has signed its judgment shall alter or review the same except to correct a clerical or arithmetical error

We are also constrained to observe that the High Court in its order directed that the sentence which the accused has already undergone, would not affect his service career. We fail to understand under what authority the High Court could have passed such an order. Even in a case where the High Court grants benefit of probation to the accused, the Court has no jurisdiction to pass an order that the employee be retained in service. This Court in State Bank of India & Ors. vs. P. Soupramaniane, AIR 2019 SC 2187 clearly held that grant of benefit of probation under the Act does not have bearing so far as the service of such employee is concerned. This Court held that the employee cannot claim a right to continue in service on the ground that he was released on probation. It was observed:

> "The release under probation does not entitle an employee to claim a right to continue in service. In fact the employer is under an obligation to discontinue the services of an employee convicted of an offence involving moral turpitude. The observations made by a criminal court are not binding on the employer who has the liberty of dealing with his employees suitably."

State of West Bengal VS Indrajit Kundu, 18 Oct 2019; 2019 0 AIR(SC) 5164; 2019 10 SCC 188; 2019 0 Supreme(SC) 1164; 2020 1 SCC Cri 136;

the High Court by recording a finding that terming the deceased as a call-girl, there was no utterance which can be interpreted to be an act of instigating, goading or solicitation or insinuation, the deceased to commit suicide. By referring to the case law decided by this Court wherein similar utterances like, “to go and die” does not constitute an offence for abetment, allowed the application filed by the respondents. It is observed in the order that the act or conduct of the accused, however insulting and abusive, will not by themselves suffice to constitute abetment of commission of suicide, unless those are reasonably capable of suggesting that the accused intended by such acts, the consequence of suicide. By discussing the case law on the subject, the High Court allowed the application by setting aside the order of the Trial Court and discharged the respondents-accused from the charge. The names of the accused were also named in the Suicide note by the deceased. (The Hon’ble Supreme Court concurred with High court)

To draw the inference of instigation it all depends on facts and circumstances of the case, whether the acts committed by the accused will constitute direct or indirect act of incitement to the commission of suicide is a matter which is required to be considered in facts and circumstances of each case.

M. Srikanth VS State Of Telangana, 21 Oct 2019; 2019 0 AIR(SC) 5363; 2019 10 SCC 373; 2020 1 SCC(Cri) 178; 2019 0 Supreme(SC) 1178;

O.S. No. 239 of 2004 has already been filed by the complainant against her brother, accused No. 1 and her three sisters inter alia for partition and separate possession which is stated to be pending. As such, the documents alleged to be fraudulent in the complaint will fall for consideration in the said suit. A possibility of contradictory finding in civil proceeding as against criminal proceedings cannot be ruled out. Though, the complainant had filed Writ Petition Nos. 23017/2009 and 23672/2009 to restrain construction on the plot in question, the same was dismissed on 28.10.2009. However, there is no mention with regard to the same in the complaint. This Court in Sardool Singh vs. Nasib Kaur, (1987) Supp. SCC 146 observed as follows:

> “2. A civil suit between the parties is pending wherein the contention of the respondent is that no will was executed whereas the contention of the appellants is that a will has been executed by the testator. A case for grant of probate is also pending in the court of learned District Judge, Rampur. The civil court is therefore seized of the question as regards the validity of the will. The matter is sub judice in the aforesaid two cases in civil courts. At this juncture the respondent cannot therefore be permitted to institute a criminal prosecution on the allegation that the will is a forged one. That question will have to be decided by the civil court after

recording the evidence and hearing the parties in accordance with law. It would not be proper to permit the respondent to prosecute the appellants on this allegation when the validity of the will is being tested before a civil court. We, therefore, allow the appeal, set aside the order of the High Court, and quash the criminal proceedings pending in the Court of the Judicial Magistrate, First Class, Chandigarh in the case entitled Smt Nasib Kaur v. Sardool Singh. This will not come in the way of instituting appropriate proceedings in future in case the civil court comes to the conclusion that the will is a forged one. We of course refrain from expressing any opinion as regards genuineness or otherwise of the Will in question as there is no occasion to do so and the question is wide open before the lower courts."

State of Tamil Nadu VS Elephant G. Rajendran, 12 Apr 2019; 2019 3 ALT(SC) 83; 2019 4 Supreme 422; 2019 0 Supreme(SC) 436; 2019 14 SCC 29; 2020 1 SCC Cri 187;
in Vineet Narain and others vs. Union of India and another, (1998) 1 SCC 226, held that Govt. Agencies including CBI had not carried out their public duty to investigate the offences disclosed; this Court would monitor the investigations. This Court laid down following in paragraphs 8 and 9:
"8. The sum and substance of these orders is that the CBI and other governmental agencies had not carried out their public duty to investigate the offences disclosed; that none stands above the law so that an alleged offence by him is not required to be investigated; that we would monitor the investigations, in the sense that we would do what we permissibly could to see that the investigations progressed while yet ensuring that we did not direct or channel those investigations or in any other manner prejudice the right of those who might be accused to a full and fair trial. We made it clear that the task of the monitoring court would end the moment a charge-sheet was filed in respect of a particular investigation and that the ordinary processes of the law would then take over. Having regard to the direction in which the investigations were leading, we found it necessary to direct the CBI not to report the progress of the investigations to the person occupying the highest office in the political executive; this was done to eliminate any impression of bias or lack of fairness or objectivity and to maintain the credibility of the investigations. In short, the procedure adopted was of "continuing mandamus".
The judgments as noted above indicate that the High Courts and this Court in their several judgments have included retired Police Officers to be part of SIT or to head a SIT.

M. Abbas Haji VS T. N. Channakeshava, 19 Sep 2019; 2019 0 AIR(SC) 4617; 2019 5 KHC 20; 2019 9 SCC 606; 2019 4 SCC(Civ) 664; 2019 3 SCC(Cri) 901; 2019 0 Supreme(SC) 1167;2020 1 ALD Crl 1(SC);
The legal heirs, in such a case, are neither liable to pay the fine or to undergo imprisonment. However, they have a right to challenge the conviction of their predecessor only for the purpose that he was not guilty of any offence.
the opinion of the handwriting expert was only an opinion and not conclusive;

Madhu Rani VS State (Govt. of NCT of Delhi), 21 Oct 2019; 2019 0 AIR(SC) 5470; 2019 0 Supreme(SC) 1414; 2020 1 ALD Crl 4(SC)
It is true that there was no direction as to who would be entitled to encash the FDR after a period of three years. However, the fixed deposit was opened in the name of the respondent no.2, as a condition for grant of anticipatory bail. The direction to keep the FDR unencashed for three years or till the disposal of the chargesheet, whichever was later, makes it obvious that once the appellant was discharged, the appellant would be entitled to the amount in the fixed deposit. It was for the appellant to withdraw the amount accrued in the fixed deposit, deposited by the appellant as a condition for grant of anticipatory bail.

NEVADA PROPERTIES PRIVATE LIMITED THROUGH ITS DIRECTORS VS STATE OF MAHARASHTRA, 24 Sep 2019; 2019 0 AIR(SC) 4554; 2019 4 Crimes(SC) 515; 2020 0 CrLJ 308; 2019 4 EastCrC(SC) 316; 2019 4 JLJR(SC) 203; 2019 4 KHC 782; 2019 4 KLT 179; 2019 4

PLJR(SC) 199; 2019 4 RLW(Raj) 2760; 2019 12 Scale 826; 2019 0 Supreme(SC) 1066; 2020 1 ALD Crl 21(SC) (THREE JUDGE BENCH)

The Criminal Law Amendment Ordinance, 1944 is a permanent Ordinance which was promulgated during the Second World War. It was adopted by the Presidential Adaptation of Laws Order, 1950 issued under the powers conferred by clause (2) of Article 372 of the Constitution, thus, making it effective in the territory of India and, therefore, continues to remain in force.

Section 102 postulates seizure of the property. Immovable property cannot, in its strict sense, be seized, though documents of title, etc. relating to immovable property can be seized, taken into custody and produced. Immovable property can be attached and also locked/sealed. It could be argued that the word 'seize' would include such action of attachment and sealing. Seizure of immovable property in this sense and manner would in law require dispossession of the person in occupation/possession of the immovable property, unless there are no claimants, which would be rare. Language of Section 102 of the Code does not support the interpretation that the police officer has the power to dispossess a person in occupation and take possession of an immovable property in order to seize it. In the absence of the Legislature conferring this express or implied power under Section 102 of the Code to the police officer, we would hesitate and not hold that this power should be inferred and is implicit in the power to effect seizure. Equally important, for the purpose of interpretation is the scope and object of Section 102 of the Code, which is to help and assist investigation and to enable the police officer to collect and collate evidence to be produced to prove the charge complained of and set up in the charge sheet. The Section is a part of the provisions concerning investigation undertaken by the police officer. After the charge sheet is filed, the prosecution leads and produces evidence to secure conviction. Section 102 is not, per se, an enabling provision by which the police officer acts to seize the property to do justice and to hand over the property to a person whom the police officer feels is the rightful and true owner. This is clear from the objective behind Section 102, use of the words in the Section and the scope and ambit of the power conferred on the Criminal Court vide Sections 451 to 459 of the Code. The expression 'circumstances which create suspicion of the commission of any offence' in Section 102 does not refer to a firm opinion or an adjudication/finding by a police officer to ascertain whether or not 'any property' is required to be seized. **The word 'suspicion' is a weaker and a broader expression than 'reasonable belief' or 'satisfaction'.** The police officer is an investigator and not an adjudicator or a decision maker. This is the reason why the Ordinance was enacted to deal with attachment of money and immovable properties in cases of scheduled offences.

In case and if we allow the police officer to 'seize' immovable property on a mere 'suspicion of the commission of any offence', it would mean and imply giving a drastic and extreme power to dispossess etc. to the police officer on a mere conjecture and surmise, that is, on suspicion, which has hitherto not been exercised. We have hardly come across any case where immovable property was seized vide an attachment order that was treated as a seizure order by police officer under Section 102 of the Code. The reason is obvious. Disputes relating to title, possession, etc., of immovable property are civil disputes which have to be decided and adjudicated in Civil Courts. We must discourage and stall any attempt to convert civil disputes into criminal cases to put pressure on the other side (See Binod Kumar and Others v. State of Bihar and Another, (2014) 10 SCC 663). Thus, it will not be proper to hold that Section 102 of the Code empowers a police officer to seize immovable property, land, plots, residential houses, streets or similar properties. Given the nature of criminal litigation, such seizure of an immovable property by the police officer in the form of an attachment and dispossession would not facilitate investigation to collect evidence/material to be produced during inquiry and trial. As far as possession of the immovable property is concerned, specific provisions in the form of Sections 145 and 146 of the Code can be invoked as per and in accordance with law. Section 102 of the Code is not a general provision which enables and authorises the police officer to seize immovable property for being able to be produced in the Criminal Court during trial. This, however, would not bar or prohibit the police officer from seizing documents/ papers of title relating to immovable property, as it is distinct and different from seizure of immovable property. Disputes and matters relating to the physical and legal possession and title of the property must be adjudicated upon by a Civil Court.

FAINUL KHAN VS STATE OF JHARKHAND, 04 Oct 2019; 2019 0 AIR(SC) 4858; 2019 4 Crimes(SC) 96; 2020 0 CrLJ 60; 2019 9 SCC 549; 2019 3 SCC(Cri) 886; 2019 7 Supreme 705; 2019 0 Supreme(SC) 1106; 2020 1 ALD Crl 41(SC)

The absence of any injury report with regard to P.Ws. 7 and 8 may at best be a case of defective investigation. It cannot discredit them as injured eye witnesses in view of the nature of their oral evidence and that of P.W. 11, the officer-in-charge of the Kisko police station where the deceased and the injured were taken for treatment. There are concurrent findings with regard to the presence of the appellants. There is ample evidence of the appellants sharing a common object with the co-accused.

no prejudice has been caused to the appellants and the omission by the court in framing charge under Section 147 alone against four persons only was a mere inadvertent omission. The presence of one bruise injury on the deceased is also not considered relevant in the facts of the case. The objection about a defective charge, without any evidence of the prejudice caused, has been raised for the first time in the present appeal and for that reason also merits no consideration.

GARGI VS STATE OF HARYANA, 19 Sep 2019; 2019 0 AIR(SC) 4864; 2020 0 CrLJ 173; 2019 12 Scale 617; 2019 9 SCC 738; 2019 3 SCC(Cri) 785; 2019 0 Supreme(SC) 1042; 2020 1 ALD Crl 48(SC);

The manner of dealing with this case by the investigating agency, right at the inception, has left a few serious questions unanswered i.e., as to when did the police receive information about dead body of the husband of the appellant, by what mode, and through whom? PW-9 in his testimony before the Court conveniently stated that such an information was received through "telephonic message" but did not state the particulars of such informant. No entry in the roznamcha or general diary has been produced to show that such an information was duly entered in the record before proceeding for investigation. Significantly, in the first note drawn up in the matter at 5.30 a.m. on 02.05.1997 (EX. PH/1), PW-9 only stated that 'the information was received at the police station'. The fact that it had been a telephonic information is conspicuously missing in Ex.PH/1. This aspect has got a material bearing in the matter because the defence witness DW-3 specifically testified to the fact that he was the first person informed by the appellant about the demise of Tirloki Nath; and that he went to the police station at about 9.30 p.m. on 01.05.1997 and divulged the information. He further asserted having accompanied the police to the site and having conveyed the information to PW-7.

15.2. It is also noteworthy that as per PW-7, he got the information from one T.R. Malhotra at about 11.30 p.m. who, in turn, had received the information on telephone from a colleague of the deceased. Neither any enquiry was made from the said T.R. Malhotra nor any other effort was made to find out the colleague of the deceased who had telephoned him.

15.3. In the face of such a gap in the prosecution evidence, there appears no reason to disbelieve the testimony of DW-3 Surinder Kumar Bhat as regards the time of information to police and himself being the informant. In such a scenario, it remains absolutely inexplicable as to why the information given by DW-3 was not reduced in writing and the proceedings were not conducted on that basis. This question magnifies itself to tougher questions for the prosecution as to the time when PW-9 ASI Amar Singh reached the site and with whom. From the evidence on record and surrounding facts, it appears that the said ASI had reached the site at around 10.30 p.m. accompanied by DW-3 Surinder Kumar Bhat. The toughness of these questions further amplifies into the harder, and unanswered, question for the investigating agency as to why for a long period of about 4 to 5 hours at the site, the ASI (PW-9) did not carry out any investigation and did not record any statement.

15.4. It is not the case of prosecution that the ASI (PW-9) was prevented by any reason to immediately attend on his duties after reaching the site. It is also not the case that he attempted to make any enquiry from any person until arrival of the complainant and other family members of the deceased. Even if it be assumed that the other family members of the deceased were on the way and the ASI knew about this fact, nothing had prevented him from attending on his duties of investigation. Strangely enough, even the first panchnama was prepared only after reaching of the complainant. It is also not clear as to why the statements of the children of the deceased were not taken when his daughter, 16 years of age, was very much present at the site. It is also not explained as to why in this

kind of matter, carrying suspicious overtones, PW-9 did not make any enquiry from any of the neighbours, who were available at the site; and from the tenant, who was residing at the ground floor of the same building and whose washroom was allegedly being used by the deceased (as per the assertion of PW-8)? It is difficult to say that the conduct of this Investigating Officer (PW-9) had been totally free from doubt.

15.5. Apart from the above-noted omissions at the very initial stage, we find absolutely no reason that the Investigating Officer PW-10, even after allegedly making enquiries in the locality regarding the character of the appellant from 5-10 persons, neither mentioned this fact in the investigation report nor recorded the statement of anyone of them. This Investigating Officer further stated to have joined the children of the appellant in the investigation but did not record their statements either. This Officer also did not bother to take the statement of the tenant, whose testimony would have been of immense significance, looking to the nature of accusations as also the factors related with the building in question.

15.6. Moreover, in this matter, where it was prima facie appearing that the clues available at the site might play a significant role in reaching to the real culprits, it is also intriguing to notice that the Investigating Officer did not take even elementary care to obtain fingerprints from the material objects and to get them analysed properly. The Investigating Officer (PW-10) has stated, rather with impunity, that he did not take any fingerprints at all, even while admitting that the fingerprint expert did visit the site. It is not stated that the so-called expert expressed inability to collect such prints for any reason. It is left only for one to wonder as to for what purpose did the so-called fingerprint expert visit the site, if no prints were to be taken at all!

15.7. The above-mentioned unexplained shortcomings, perforce, indicate that in this case, the investigation was carried out either with pre-conceived notions or with a particular result in view. It is difficult to accept that the investigation in this case had been fair and impartial. From another viewpoint, on the facts and in the circumstances of this case, the omissions on the part of investigating agency cannot be ignored as mere oversight. These omissions, perforce, give rise to adverse inferences against the prosecution.

16. In this case, it is also interesting to notice that though the prosecution had cited the other relations of the deceased as witnesses, including his mother and brother-in-law (husband of PW-8 - who had otherwise signed the inquest report; but did not examine them before the Court. Withholding of relevant witnesses could only lead to further adverse inference that if examined, they would not have supported the prosecution case. This is apart from the fact that the investigating agency avoided to include any independent witness in the investigation and did not carry out necessary enquires from the persons other than in-laws of the appellant.

a careful examination of the above Section shows that if the person defamed is a public servant or a Minister or any authority mentioned in Clause (2) of Section 199 Cr.P.C., then the complaint has to be made by the Public Prosecutor with the sanction of the State Government and the said complaint is to be filed in a Court of Sessions and it is the Court of Sessions which is competent to take cognizance of the said case within the prescribed period of limitation. Although Clause (6) of Section 199 Cr.P.C empowers the person aggrieved also to file a complaint in the Court of Judicial Magistrate of First Class having jurisdiction, the said Magistrate has to take cognizance of the said case only on a complaint made by the aggrieved person. In the instant case, the said procedure is not followed. In utter violation of the procedure prescribed under Section 199 Cr.P.C., the prosecution was launched in this case by way of filing charge-sheet by the Police. The procedure prescribed under Section 199 Cr.P.C is totally contravened. No Court can take cognizance of the case in contravention of the procedure prescribed under Section 199 Cr.P.C. So the present final report/ charge-sheet is vitiated on that legal ground and cannot be sustained.

The material on record discloses that it is a fact that the Sub Inspector of Police, I Town Police Station, Bhimavaram, reached the scene of offence on the information received by him and he prepared a special report and thereafter went to the police station and registered the said special report as an FIR and he investigated the case and filed the charge-sheet. In the 3-Judge Bench judgment of the Apex Court in the case of Mohan Lal v. State of Punjab, the Supreme Court held:

"Fair investigation is foundation of fair trial and requires informant and Investigating Officer not to be same persons especially in laws carrying reverse burden of proof and when informant and Investigating Officer is same person, investigation is said to be vitiated."
in view of the latest 3-Judge Bench judgment of the Apex Court in Mohan Lal's case wherein it is authoritatively held that a fair investigation, which is but the very foundation of a fair trial, necessarily postulates that the informant and the investigator must not be the same person and justice must not only be done, but must appear to be done also and any possibility of bias or a predetermined conclusion has to be excluded and thereby settled the law and set at naught the controversy stating that when the informant is the police officer that he cannot be the investigating officer and if any investigation is conducted by him it will be vitiated, the point is held affirmatively in favour of the petitioners holding that the investigation done by the investigating officer in this case who registered the said crime on the basis of the special report prepared by him is vitiated. So even in that score also, the present proceedings in C.C.No.901 of 2014 are liable to be quashed. Thus the prosecution case bristles with several fatal legal infirmities in this case which cuts the case of the prosecution at its roots.
Gadiraju Venkata Satya Subramanya Raju & Others v/s State of A.P.; 2020 (1) ALT(Cri) 68; 2020 1 ALD Crl 160(AP); http://tshcstatus.nic.in/hcaporders/2014/202100142892014_1.pdf

The evidence of dog tracking even if admissible is not ordinarily given much weight. In Babu Maqbul Shaikh Vs. State of Maharashtra (6 1993 Cr. L.J. 2808(Bombay) it was held that tracker dog's evidence must pass the test of scrutiny and reliability as in the case of any other evidence. The following guidelines were laid down :
"(a) There must be a reliable and complete record of the exact manner in which the tracking was done and a panchnama in respect of the dog tracking evidence will have to be clear and complete. It will have to be properly proved and will have to be supported by the evidence of the handler.
(b) There must be no discrepancies between the version as recorded in the panchnama and the evidence of the handler as deposed before the Court.
(c)The evidence of the handler will have to pass the test of cross examination independently.
(d)Some material will have to be placed before the court by the handler, such as the type of training imparted to the dog, its past performance, achievements, reliability, etc. supported, if possible, by documents."
In the instant case, the prosecution failed to bring the master of the dog into the witness box, depriving the right of the accused to cross-examine him, though the investigating Officer in his evidence stated about the dog squad leading them to the house of A1. Further, there is no incriminating material on record to show that there was any positive smelling/identification of the criminal by the dog. Apart from that, the evidence of the Investigating Officer would show that no articles or finger prints belonging to the accused were found at the scene of offence. There was also no iota of evidence as to the objects, which were smelled by the dog near the dead body of the deceased so as to find out the culprits and to lead the police to the house of A1. Therefore, it will be most unsafe to attach any weight to the evidence adduced by the prosecution, as regards the dog quad tracking the accused.
The other circumstance that remains for consideration is recovery of sickle and the blood stained shirt of the accused. These two articles were sent to Forensic Science Laboratory. Item Nos.9 and 10 referred to in letter of advice-Ex.P11 belonged to A1. As per the FSL report-Ex.P12, blood was detected on items No.9 and 10 and origin of blood stains was found as human, but the blood group on blood stains thereon could not be determined. Therefore, mere recovery of articles would not itself indicate that it was the accused, who are the perpetrators of the crime.
Sugali Dungavath Lakshma Naik @ Anda and others Vs State of Andhra Pradesh; 2020 1 ALD Crl 172(AP); http://tshcstatus.nic.in/hcaporders/2012/201900012812012_3.pdf

CRIMINAL TRIALS SHOULD NOT BE MADE CASUALTY FOR SUCH LAPSES IN THE INVESTIGATION OR PROSECUTION.

The three Judge Bench of this Court in Ajay Kumar Singh & Ors. vs. The Flag Officer Commanding-in-Chief & Ors, AIR 2016 SC 3528 while hearing an appeal under Section 30 of the Act held that this Court normally does not re-appreciate evidence and is slow to interfere with the findings of the Tribunal unless there is substantial question of public importance, but when the appreciation of evidence is vitiated by serious error, this Court can re-appreciate the evidence and interfere with the findings recorded by the Tribunal. The Court held as under:

> "20. ...The evidence adduced by the prosecution must be scrutinised 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.

MINOR DISCREPANCIES

In another decision of this Court in State of Uttar Pradesh vs. Ram Kumar & Ors, (2017) 14 SCC 614 it is held that minor discrepancies in the statement of witnesses of trivial nature cannot be a ground to reject evidence as a whole. The Court relied upon the exposition of Brahm Swaroop & Anr. vs. State of Uttar Pradesh, (2011) 6 SCC 288. In paragraph 32 of the said decision, the Court observed, thus :-

> "32. It is a settled legal proposition that while appreciating the evidence of a witness, minor discrepancies on trivial matters, which do not affect the core of the prosecution's case, may not prompt the court to reject the evidence in its entirety. "Irrelevant details which do not in any way corrode the credibility of a witness cannot be labelled as omissions or contradictions." Difference in some minor details, which does not otherwise affect the core of the prosecution case, even if present, would not itself prompt the court to reject the evidence on minor variations and discrepancies. After exercising care and caution and sifting through the evidence to separate truth from untruth, exaggeration and improvements, the court comes to a conclusion as to whether the residuary evidence is sufficient to convict the accused. Thus, an undue importance should not be attached to omissions, contradictions and discrepancies which do not go to the heart of the matter and shake the basic version of the prosecution witness. As the mental capabilities of a human being cannot be expected to be attuned to absorb all the details, minor discrepancies are bound to occur in the statements of witnesses. (See State of U.P. v. M.K. Anthony, State of Rajasthan vs. Om Prakash, State v. Saravanan and Prithu vs. State of H.P.)"

DELAY IN REGISTRATION OF FIR

The significance of registration of FIR without loss of time need not be underscored. This Court in State of Andhra Pradesh vs. M. Madhusudhan Rao, (2008) 15 SCC 582, while dealing with similar arguments, observed in paragraph 30 as follows :-

> "30. Time and again, the object and importance of prompt lodging of the first information report has been highlighted. Delay in lodging the first information report, more often than not, results in embellishment and exaggeration, which is a creature of an afterthought. A delayed report not only gets bereft of the advantage of spontaneity, the danger of the introduction of a coloured version, an exaggerated account of the incident or a concocted story as a result of deliberations and consultations, also creeps in, casting a serious doubt on its veracity. Therefore, it is essential that the delay in lodging the report should be satisfactorily explained."

RATIO DECENDI – When to treat a Precedent as one.

We say so by applying the inversion test as referred to in State of Gujarat and Others v. Utility Users' Welfare Association and Others, (2018) 6 SCC 21 which states that the Court must first carefully frame the supposed proposition of law and then insert in the proposition a word reversing its meaning to get the answer whether or not a decision is a precedent for that proposition. If the answer is in the affirmative, the case is not a precedent for that proposition. If the answer is in the negative, the case is a precedent for the original proposition and possibly for other propositions also. This is one of the tests applied to decide what can be regarded and treated as ratio decidendi of a decision. Reference in this regard can also be made to the decisions of this Court in U.P. State Electricity Board v. Pooran Chandra Pandey and Others, (2007) 11 SCC 92 Commissioner of Income Tax v. Sun Engineering Works (P) Ltd., (1992) 4 SCC 363 and other cases which hold that a decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio. Not every observation found therein nor what logically flows from those observations is the ratio decidendi. Judgment in question has to be read as a whole and the observations have to be considered in light of the instances which were before the Court. This is the way to ascertain the true principles laid down by a decision. Ratio decidendi cannot be decided by picking out words or sentences averse to the context under question from the judgment.

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NEWS

- The Director of Prosecutions, Telangana, celebrated the Republic Day is unique manner styling as "SMARANEEYAM 2020", where the Senior Prosecutors were honoured, the certificates for successful prosecution by way of getting maximum convictions were awarded to the eligible prosecutors, prizes for the winners in various sports and other activities were given, in addition to performing of various cultural activities.
- Prosecution Replenish wishes Sri Shashi Karan Reddy, Deputy Director of Prosecutions (Admin), Nizamabad, Telangana, a very happy and healthy retired life.
- Prosecution Replenish wishes Sri Rosedar, Deputy Director of Prosecutions, Tirupathi, Andhra Pradesh, a very happy and healthy retired life.
- **GOVERNMENT OF ANDHRA PRADESH- G.O.Rt.No: 301 FINANCE (FMU-Home&Courts) DEPARTMENT Dated:06-02-2020-** Budget Estimates 2019-20 - Budget Release Order for Rs. 1,65,68,000 **/-** (Rupees One crore sixty five lakh sixty eight thousand) to Prosecutions Department **-** Orders – Issued
- **GOVERNMENT OF ANDHRA PRADESH-** Home Department – A.P. Prosecution Services - Sri SRA.Rosedar, Additional Public Prosecutor Grade-I, III Additional District and Sessions Judge Court, Tirupathi -Voluntary Retirement from public service with effect from 20.01.2020 A.N.–Permission – Accorded – Orders – Issued- G.O.RT.No. 43, HOME (COURTS.A) DEPARTMENT Dated: 13-01-2020
- **GOVERNMENT OF ANDHRA PRADESH-** Special Rules – Amendment to the Andhra Pradesh State Prosecution Service Rules, 1992 – Notification- Sec 25A CrPC - Orders – Issued- G.O.MS.No. 24, **HOME (COURT.A) DEPARTMENT,** Dated: 04-02-2020
- **GOVERNMENT OF ANDHRA PRADESH-** Home Department – A.P.State Prosecution Services - Promotions - Additional Public Prosecutors Grade-II – Promotion to the category of

Additional Public Prosecutors Grade- I/Deputy Director of Prosecutions on temporary basis - Orders – Issued- G.O.Ms.No.11, HOME (COURTS.A) DEPARTMENT dt. 13.01.2020

Sl.No.	Name of Additional Public Prosecutor Grade-II	Promotional postings
1.	Sri V.Ahzekiel	Promoted as Additional Public Prosecutor Grade-I and posted in I Additional District & Sessions Judge Court, Kurnool, Kurnool District.
2.	R.Jagadeesh	Promoted as Additional Public Prosecutor Grade-I and posted in II Additional District & Sessions Judge Court, Adoni, Kurnool District

- **GOVERNMENT OF TELANGANA-** Home (Courts) Department – Creation of (267) additional posts under the control of Director of Prosecutions, Telangana State, Hyderabad – Amendment- Orders – Issued. G.O.Ms.No.2, **FINANCE (HRM-II) DEPARTMENT,** Dated:22.01.2020

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ON A LIGHTER VEIN

Husband borrowed Rs.250 from wife
After a few days he again borrowed Rs.250
Seeing some money in husband's bag, she asked husband to return the money

When asked how much, wife said that he owes her Rs.4100.
On request, below is working given by wife.

1). Rs. 2 5 0
2). Rs. 2 5 0
Total Rs. 4 10 0

Husband is still finding the school where she learnt Maths.

Later
Husband gave her ₹400 back and asked how much balance he has to pay back.
She wrote✍

₹ 4100
₹ 400

₹ 100

He gave ₹100 back.

Both lived happy ever after.
Only maths died.

*****

Sri G.ShashiKaran Reddy, being felcitated by Smt Vyjayanthi, Hon'ble DOP, Telangana.

Sri Rosedar, being felcitated on his voluntary retirement by prosecutors of Tirupathi

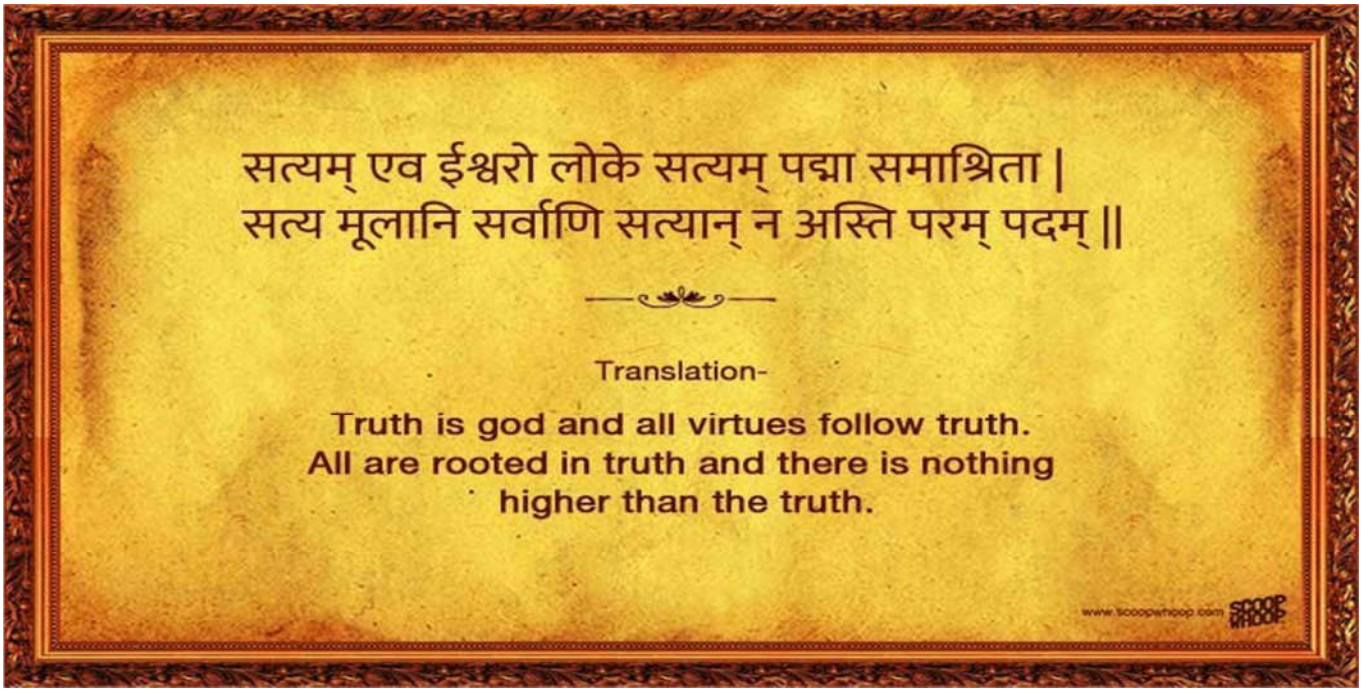
Vol- IX
Part-3

Prosecution Replenish

An Endeavour for Learning and Excellence

March, 2020

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



CITATIONS

Saleem Ahmed VS State, 19 Aug 2019; 2019 0 AIR(SC) 3918; 2019 0 CrLJ 4528; 2019 262 DLT 363; 2019 3 KLT 1125; 2019 2 OLR 588; 2019 11 Scale 29; 2019 0 Supreme(SC) 885; 2020 1 SCC Cri 247; 2019 15 SCC 42.

the filing of FIR after passing of the award by the Lok Adalat was wholly unjust and illegal and the same was not permissible being against the terms of the award and also for want of any subsisting cause of action arising out of demand. It is, therefore, not legally sustainable.

LALTU GHOSH VS STATE OF WEST BENGAL, 19 Feb 2019; 2019 0 AIR(SC) 1058; 2019 1 Crimes(SC) 160; 2019 0 CrLJ 1584; 2019 2 RCR(Cri) 85; 2019 2 RLW(Raj) 1519; 2019 3 Scale 894; 2019 3 Supreme 300; 2019 0 Supreme(SC) 181; 2020 1 SCC Cri 275; 2019 15 SCC 344

As regards the contention that the eye-witnesses are close relatives of the deceased, it is by now well-settled that a related witness cannot be said to be an 'interested' witness merely by virtue of being a relative of the victim. This Court has elucidated the difference between 'interested' and 'related' witnesses in a plethora of cases, stating that a witness may be called interested only when he or she derives some benefit from the result of a litigation, which in the context of a criminal case would mean that the witness has a direct or indirect interest in seeing the accused punished due to prior enmity or other reasons, and thus has a motive to falsely implicate the accused.

The courts cannot expect a victim like the deceased herein to state in exact words as to what happened during the course of the crime, inasmuch as it would be very difficult for such a victim, who has suffered multiple grievous injuries, to state all the details of the incident meticulously and that too in a parrot-like manner.

The Trial Court assumed that the Investigation Officer in collusion with the doctor wilfully fabricated the dying declaration. It is needless to state that the Investigation Officer and the doctor are independent public servants and are not related either to the accused or the deceased. It is not open for the Trial Court to cast aspersions on the said public officers in relation to the dying declaration, more particularly when there is no supporting evidence to show such fabrication.

It cannot be laid down as an absolute rule of law that a dying declaration cannot form the sole basis of conviction unless it is corroborated by other evidence. A dying declaration, if found reliable, and if it is not an attempt by the deceased to cover the truth or to falsely implicate the accused, can be safely relied upon by the courts and can form the basis of conviction. More so, where the version given by

the deceased as the dying declaration is supported and corroborated by other prosecution evidence, there is no reason for the courts to doubt the truthfulness of such dying declaration.

ANKUSH MARUTI SHINDE VS STATE OF MAHARASHTRA, 05 Mar 2019; 2019 0 AIR(SC) 1457; 2019 0 AIIMR(Cri) 2152; 2019 2 ALT(Cri)(SC) 46; 2019 2 MLJ(Cri) 274; 2019 2 RCR(Cri) 265; 2019 4 Scale 266; 2019 0 Supreme(SC) 251; 2020 1 SCC Cri 314; 2019 15 SCC 399

10. It has to be uppermost kept in mind that impartial and truthful investigation is imperative. It is judiciously acknowledged that fair trial includes fair investigation as envisaged by Articles 20 & 21 of the Constitution of India. The role of the police is to be one for protection of life, liberty and property of citizens, that investigation of offences being one of its foremost duties. That the aim of investigation is ultimately to search for truth and to bring the offender to book.

10.1 Apart from ensuring that the offences do not go unpunished, it is the duty of the prosecution to ensure fairness in the proceedings and also to ensure that all relevant facts and circumstances are brought to the notice of the court for just determination of the truth so that due justice prevails. It is the responsibility of the investigating agency to ensure that every investigation is fair and does not erode the freedom of an individual, except in accordance with law. One of the established facets of a just, fair and transparent investigation is the right of an accused to ask for all such documents that he may be entitled to under the scheme contemplated by the Cr.PC.

10.2 Nothing is allowed by the law which is contrary to the truth. In Indian criminal jurisprudence, the accused is placed in a somewhat advantageous position than under different jurisprudences of some of the countries in the world. The criminal justice administration system in India places human rights and dignity for human rights at a much higher pedestal and the accused is presumed to be innocent till proven guilty. The alleged accused is entitled to fair and true investigation and fair trial and the prosecution is expected to play a balanced role in the trial of a crime. The investigation should be judicious, fair, transparent and expeditious to ensure compliance with the basic rule of law. These are the fundamental canons of our criminal jurisprudence and they are quite in conformity with the Constitutional mandate contained in Articles 20 and 21 of the Constitution of India.

10.3 As observed by this Court in the case of V.K. Sasikala v. State represented by Superintendent (2012) 9 SCC 771, though it is only such reports which support the prosecution case that are required to be forwarded to the Court under Section 173(5), in every situation where some of the seized papers and the documents do not support the prosecution case and, on the contrary, support the accused, a duty is cast on the investigating officer to evaluate the two sets of documents and materials collected and, if required, to exonerate the accused at that stage itself.

10.4 Even in a case where the public prosecutor did not examine the witnesses who might have supported the accused, this Court in the case of Darya Singh v. State of Punjab AIR 1965 SC 328 has observed that the prosecution must act fairly and honestly and must never adopt the device of keeping back from the Court only because the evidence is likely to go against the prosecution case. It is further observed that it is the duty of the prosecution to assist the court in reaching to a proper conclusion in regard the case which is brought before it for trial. It is further observed that it is no doubt open to the prosecutor not to examine witnesses who, in his opinion, have not witnessed the incident, but, normally he ought to have examined all the eye-witnesses in support of his case. It is further observed that it may be that if a large number of persons have witnessed the incident, it would be open to the prosecutor to make a selection of those witnesses, but the selection must be made fairly and honestly and not with a view to suppress inconvenient witnesses from the witness box. It is further observed that if at the trial it is shown that the persons who had witnessed the incident have been deliberately kept back, the Court may draw an inference against the accused and may, in a proper case, record the failure of the prosecution to examine the said witnesses as constituting a serious infirmity in the proof of the prosecution case.

10.5 Murder and rape is indeed a reprehensive act and every perpetrator should be punished expeditiously, severely and strictly. However, this is only possible when guilt has been proved beyond reasonable doubt.

10.6 The prosecution/investigating agency is expected to act in an honest and fair manner without hiding anything from the accused as well as the Courts, which may go against the prosecution. Their ultimate aim should not be to get conviction by hook or crook.

The Hon'ble Court, while acquitting the accused, tried in the case as being falsely prosecuted, and directing the Government to pay compensation to the accused for such false prosecution and taking action against erring officials responsible for such false prosecution, further directed the police to conduct further investigation against the real culprits.

Ezajhussain Sabdarhussain VS State of Gujarat, 15 Feb 2019; 2019 0 AIR(SC) 1525; 2019 2 ALT(Cri)(SC) 16; 2019 1 Crimes(SC) 152; 2019 2 JT 317; 2019 2 RCR(Cri) 48; 2019 3 Scale 513; 2019 3 Supreme 292; 2019 0 Supreme(SC) 163; 2020 1 SCC Cri 352; 2019 14 SCC 339;

It is clear from the principles laid down that however similar the facts may seem to be in a cited precedent, the case in hand should be determined on facts and circumstances of that case in hand only and the mere similarity of the facts in one case cannot be used to determine the conclusion of the fact in another.

2019(1) ALD(Crl) 711(SC); 2019 0 AIR(SC) 1136; 2019 2 Supreme 464; 2019 0 Supreme(SC) 197; 2020 1 SCC Cri 370; 2019 14 SCC 401; Raju Vs State of Haryana;

It is by now well-settled, as was held in Hari Ram v. State of Rajasthan, (2009) 13 SCC 211, that in light of Sections 2(k), 2(l), 7A read with Section 20 of the 2000 Act as amended in 2006, a juvenile who had not completed eighteen years on the date of commission of the offence is entitled to the benefit of the 2000 Act (also see Mohan Mali v. State of Madhya Pradesh, (2010) 6 SCC 669; Daya Nand v. State of Haryana, (2011) 2 SCC 224; Dharambir v. State (NCT) of Delhi (supra); Jitendra Singh @ Babboo Singh v. State of Uttar Pradesh, (2013) 11 SCC 193). It is equally well-settled that the claim of juvenility can be raised at any stage before any Court by an accused, including this Court, even after the final disposal of a case, in terms of Section 7A of the 2000 Act (see Dharambir v. State (NCT) of Delhi, (supra), Abuzar Hossain v. State of West Bengal, (2012) 10 SCC 489; Jitendra Singh @ Babboo Singh v. State of UP, (supra); Abdul Razzaq v. State of Uttar Pradesh, (2015) 15 SCC 637).

Sub-rule (3) of Rule 12 of the 2007 Rules states the following regarding the procedure to be followed for age determination:

"In every case concerning a child or juvenile in conflict with law, the age determination inquiry shall be conducted by the court or the Board or, as the case may be, the Committee by seeking evidence by obtaining –

(a) (i) the matriculation or equivalent certificates, if available; and in the absence whereof;

(ii) the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof;

(iii) the birth certificate given by a corporation or a municipal authority or a panchayat;

(b) and only in the absence of either (i), (ii) or (iii) of clause (a) above, the medical opinion will be sought from a duly constituted Medical Board, which will declare the age of the juvenile or child. In case exact assessment of the age cannot be done, the Court or the Board or, as the case may be, the Committee, for the reasons to be recorded by them, may, if considered necessary, give benefit to the child or juvenile by considering his/her age on lower side within the margin of one year, and while passing orders in such case shall, after taking into consideration such evidence as may be available, or the medical opinion, as the case may be, record a finding in respect of his age and either of the evidence specified in any of the clauses (a)(i), (ii), (iii) or in the absence whereof, clause (b) shall be the conclusive proof of the age as regards such child or the juvenile in conflict with law."

V. Ravi Kumar Vs. State; 2020 1 SCC Cri 401; 2019 14 SCC 568;

There is no provision in the Criminal Procedure Code or any other statute which debars a complainant from making a second complaint on the same allegations, when the first complaint did not lead to conviction, acquittal or discharge. The failure to mention the first complaint in the subsequent one is also inconsequential as held, in effect, in Jatinder Singh (supra). Mentioning of reasons for withdrawal of an earlier complaint is also not a condition precedent for maintaining a second complaint.

Minor discrepancies in evidence of eye-witnesses do not make untrustworthy.
The antecedents of the prosecution witnesses cannot be the ground for doubting their version.
Merely because FIR contains inquest number, it cannot be said that the FIR was registered subsequent to the inquest.
Delay in filing FIR not fatal if explained.
Oral evidence prevails in case of inconsistency between oral and medical evidence, and oral and forensic evidence.
Common intention can be inferred from conduct of accused.

2020 1 SCC Cri 448; 2019 15 SCC 599; 2019 (1) ALT (Crl) 247(SC); 2019 1 Crimes(SC) 169; 2019 0 Supreme(SC) 184; BALVIR SINGH Vs. STATE OF MADHYA PRADESH

Kashmira Devi VS State of Uttarakhand, 28 Jan 2020; 2020 0 Supreme(SC) 81;2020 1 ALD Crl 334(SC)

in the case of Nallam Veera Stayanandam & Ors. vs. The Public Prosecutor, High Court of A.P. (2004) 10 SCC 769 wherein it is held that each dying declaration has to be considered independently on its own merit as to its evidentiary value and one cannot be rejected because of the contents of the other. It is held therein that the Court has to consider each of them in its correct perspective and satisfy itself which one of them reflects the true state of affairs. The consideration made herein above would also indicate that on an independent consideration, the dying declaration dated 13.02.2008 is reliable for the reasons stated above. To the same effect the High Court has also relied on another decision of this Court in the case of Ashabai & Anr. vs. State of Maharashtra (2013) 2 SCC 224 wherein it is held that when there are multiple dying declarations, each dying declaration has to be separately assessed and evaluated on its own merits.

Vishandas Kanwarmal Lakhwani VS State of Telangana, 26 Sep 2018; 2019 1 ALT(Cri) 25; 2019 1 HLT(Cri) 178; 2018 0 Supreme(AP) 849; 2020 1 ALD Crl 346

In any view of the matter, in view of the pendency of the appeal before the revenue authorities, which is a quasi judicial authority, the respondents 3 & 4 is permitted to agitate their grievances before the Special Grade Deputy Collector & Revenue Divisional Officer, Rajendranagar Division and if, for any reason, the Special Grade Deputy Collector & Revenue Divisional Officer, Rajendranagar Division concludes that a false affidavit is inserted by petitioner no.9, colluding with the other accused, the complainants/respondents 3 & 4 are at liberty to initiate criminal proceedings before competent court. Initiation of criminal proceedings at this stage is noting but abuse of process of the Court.

BASHEERA BEGAM VS MOHAMMED IBRAHIM, 31 Jan 2020 2020 0 Supreme(SC) 109;

Direct evidence of conspiracy is almost never available. Has necessarily to be inferred from the circumstances of the crime.
Opinion of handwriting expert cannot be relied upon for conviction.

VICKY @ VIKAS VS STATE (GOVT. OF NCT OF DELHI), 31 Jan 2020; 2020 0 Supreme(SC) 99;

If a person already undergoing a sentence of imprisonment is sentenced on a subsequent conviction to imprisonment, such subsequent term of imprisonment would normally commence at expiration of imprisonment to which he was previously sentenced.

Sushil Sethi VS State of Arunachal Pradesh, 31 Jan 2020; 2020 0 Supreme(SC) 100;
It is further observed and held that for the purpose of constituting an offence of cheating, the complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation. It is further observed and held that even in a case where allegations are made in regard to failure on the part of the accused to keep his promise, in the absence of a culpable intention at the time of making initial promise being absent, no offence under Section 420 IPC can be said to have been made out. It is further observed and held that the real test is whether the allegations in the complaint disclose the criminal offence of cheating or not.

Govind Prasad Kejriwal VS State of Bihar, 31 Jan 2020; 2020 0 Supreme(SC) 101;
It cannot be disputed that while holding the inquiry under Section 202 Cr.P.C. the Magistrate is required to take a broad view and a prima facie case. However, even while conducting/holding an inquiry under Section 202 Cr.P.C., the Magistrate is required to consider whether even a prima facie case is made out or not and whether the criminal proceedings initiated are an abuse of process of law or the Court or not and/or whether the dispute is purely of a civil nature or not and/or whether the civil dispute is tried to be given a colour of criminal dispute or not.

AHMAD ALI QURAISHI VS STATE OF UTTAR PRADESH, 30 Jan 2020; 2020 0 Supreme(SC) 90;
It is true that rejection of an application under Section 156(3) Cr.P.C. in no manner preclude a complainant to file a complaint under Section 200 Cr.P.C.

Sushila Aggarwal and others VS State (NCT of Delhi), 29 Jan 2020; 2020 1 KHC 663; 2020 0 Supreme(SC) 87;
In view of the concurring judgments of Justice M.R. Shah and of Justice S. Ravindra Bhat with Justice Arun Mishra, Justice Indira Banerjee and Justice Vineet Saran agreeing with them, the following answers to the reference are set out:
(1) Regarding Question No. 1, this court holds that the protection granted to a person under Section 438 Cr. PC should not invariably be limited to a fixed period; it should inure in favour of the accused without any restriction on time. Normal conditions under Section 437 (3) read with Section 438 (2) should be imposed; if there are specific facts or features in regard to any offence, it is open for the court to impose any appropriate condition (including fixed nature of relief, or its being tied to an event) etc.
(2) As regards the second question referred to this court, it is held that the life or duration of an anticipatory bail order does not end normally at the time and stage when the accused is summoned by the court, or when charges are framed, but can continue till the end of the trial. Again, if there are any special or peculiar features necessitating the court to limit the tenure of anticipatory bail, it is open for it to do so.
1. This court, in the light of the above discussion in the two judgments, and in the light of the answers to the reference, hereby clarifies that the following need to be kept in mind by courts, dealing with applications under Section 438, Cr. PC:
(1) Consistent with the judgment in Shri Gurbaksh Singh Sibbia and others v. State of Punjab, 1980 (2) SCC 565, when a person complains of apprehension of arrest and approaches for order, the application should be based on concrete facts (and not vague or general allegations) relatable to one or other specific offence. The application seeking anticipatory bail should contain bare essential facts relating to the offence, and why the applicant reasonably apprehends arrest, as well as his side of the story. These are essential for the court which should consider his application, to evaluate the threat or apprehension, its gravity or seriousness and the appropriateness of any condition that may have to be imposed. It is not essential that an application should be moved only after an FIR is filed; it can be moved earlier, so long as the facts are clear and there is reasonable basis for apprehending arrest.
(2) It may be advisable for the court, which is approached with an application under Section 438, depending on the seriousness of the threat (of arrest) to issue notice to the public prosecutor and obtain facts, even while granting limited interim anticipatory bail.

(3) Nothing in Section 438 Cr. PC, compels or obliges courts to impose conditions limiting relief in terms of time, or upon filing of FIR, or recording of statement of any witness, by the police, during investigation or inquiry, etc. While considering an application (for grant of anticipatory bail) the court has to consider the nature of the offence, the role of the person, the likelihood of his influencing the course of investigation, or tampering with evidence (including intimidating witnesses), likelihood of fleeing justice (such as leaving the country), etc.
The courts would be justified – and ought to impose conditions spelt out in Section 437 (3), Cr. PC [by virtue of Section 438 (2)]. The need to impose other restrictive conditions, would have to be judged on a case by case basis, and depending upon the materials produced by the state or the investigating agency. Such special or other restrictive conditions may be imposed if the case or cases warrant, but should not be imposed in a routine manner, in all cases. Likewise, conditions which limit the grant of anticipatory bail may be granted, if they are required in the facts of any case or cases; however, such limiting conditions may not be invariably imposed.
(4) Courts ought to be generally guided by considerations such as the nature and gravity of the offences, the role attributed to the applicant, and the facts of the case, while considering whether to grant anticipatory bail, or refuse it. Whether to grant or not is a matter of discretion; equally whether and if so, what kind of special conditions are to be imposed (or not imposed) are dependent on facts of the case, and subject to the discretion of the court.
(5) Anticipatory bail granted can, depending on the conduct and behavior of the accused, continue after filing of the charge sheet till end of trial.
(6) An order of anticipatory bail should not be "blanket" in the sense that it should not enable the accused to commit further offences and claim relief of indefinite protection from arrest. It should be confined to the offence or incident, for which apprehension of arrest is sought, in relation to a specific incident. It cannot operate in respect of a future incident that involves commission of an offence.
(7) An order of anticipatory bail does not in any manner limit or restrict the rights or duties of the police or investigating agency, to investigate into the charges against the person who seeks and is granted prearrest bail.
(8) The observations in Sibbia regarding "limited custody" or "deemed custody" to facilitate the requirements of the investigative authority, would be sufficient for the purpose of fulfilling the provisions of Section 27, in the event of recovery of an article, or discovery of a fact, which is relatable to a statement made during such event (i.e deemed custody). In such event, there is no question (or necessity) of asking the accused to separately surrender and seek regular bail. Sibbia (supra) had observed that "if and when the occasion arises, it may be possible for the prosecution to claim the benefit of Section 27 of the Evidence Act in regard to a discovery of facts made in pursuance of information supplied by a person released on bail by invoking the principle stated by this Court in State of U.P. v Deoman Upadhyaya."
(9) It is open to the police or the investigating agency to move the court concerned, which grants anticipatory bail, for a direction under Section 439 (2) to arrest the accused, in the event of violation of any term, such as absconding, noncooperating during investigation, evasion, intimidation or inducement to witnesses with a view to influence outcome of the investigation or trial, etc.
(10) The court referred to in para (9) above is the court which grants anticipatory bail, in the first instance, according to prevailing authorities.
(11) The correctness of an order granting bail, can be considered by the appellate or superior court at the behest of the state or investigating agency, and set aside on the ground that the court granting it did not consider material facts or crucial circumstances. (See Prakash Kadam & Etc. Etc vs Ramprasad Vishwanath Gupta & Anr, (2011) 6 SCC 189; Jai Prakash Singh (supra) State through C.B.I. vs. Amarmani Tripathi, (2005) 8 SCC 21). This does not amount to "cancellation" in terms of Section 439 (2), Cr. PC.
(12) The observations in Siddharam Satlingappa Mhetre v. State of Maharashtra & Ors, 2011 (1) SCC 694 (and other similar judgments) that no restrictive conditions at all can be imposed, while granting anticipatory bail are hereby overruled. Likewise, the decision in Salauddin Abdulsamad Shaikh v. State of Maharashtra, (1996 (1) SCC 667) and subsequent decisions (including K.L. Verma v. State & Anr, 1998 (9) SCC 348; Sunita Devi v. State of Bihar & Anr, 2005 (1) SCC 608; Adri

Dharan Das v. State of West Bengal, 2005 (4) SCC 303; Nirmal Jeet Kaur v. State of M.P. & Anr, 2004 (7) SCC 558; HDFC Bank Limited v. J.J. Mannan, 2010 (1) SCC 679; Satpal Singh v. the State of Punjab, 2018 SCC Online (SC 415) and Naresh Kumar Yadav v Ravindra Kumar, 2008 (1) SCC 632) which lay down such restrictive conditions, or terms limiting the grant of anticipatory bail, to a period of time are hereby overruled.

STATE OF KERALA ETC. VS RAJESH ETC., 24 Jan 2020; 2020 1 KHC 557; 2020 0 Supreme(SC) 69;

NDPS ACT: The scheme of Section 37 reveals that the exercise of power to grant bail is not only subject to the limitations contained under Section 439 of the CrPC, but is also subject to the limitation placed by Section 37 which commences with non-obstante clause. The operative part of the said section is in the negative form prescribing the enlargement of bail to any person accused of commission of an offence under the Act, unless twin conditions are satisfied. The first condition is that the prosecution must be given an opportunity to oppose the application; and the second, is that the Court must be satisfied that there are reasonable grounds for believing that he is not guilty of such offence. If either of these two conditions is not satisfied, the ban for granting bail operates.

Sardar Ali Khan VS State of Uttar Pradesh through Principal Secretary Home Department, 24 Jan 2020; 2020 1 KHC 592; 2020 0 Supreme(SC) 73;

With regard to the validity of the sale deed, matter is seized up before the competent civil court and it is for the civil court to decide whether any fraud is played or not by the appellant, on the late father of the 2nd respondent for obtaining the sale deed. When the very same issue is seized up before the civil court, the 2nd respondent cannot pursue criminal proceedings against the appellant for alleged offence under Sections 418, 419, 420, 467, 468 and 471 IPC.

NAWAB VS STATE OF UTTARAKHAND, 22 Jan 2020; 2020 1 Supreme 418; 2020 0 Supreme(SC) 60;

The deceased had only one entry and exit wound. The bullet apparently exited her body and thus the likelihood of its recovery from the place of occurrence with the round end damaged after it was fired. The pistol was recovered on the confession of the appellant from under the earth in the courtyard, the earth was freshly dug. The High Court disbelieved the recovery because the independent witness PW- 2 went hostile. But the High Court missed the reasoning by the trial court that PW-2 did not deny his signature on the recovery memo nor did he state that his signature was obtained by threat, duress or coercion. The absence of any FSL report may at best be defective investigation.

DULESHWAR VS STATE OF M. P. (NOW CHHATTISGARH), 21 Jan 2020; 2020 0 Supreme(SC) 54;

once formation of unlawful assembly at the time of committing of offence is established, the question of specific role of an individual member of the assembly is rendered secondary. In other words, the prosecution need not prove any specific overt act on the part of each and every member of that assembly.

Nallapareddy Sridhar Reddy VS State of Andhra Pradesh, 21 Jan 2020; 2020 0 Supreme(SC) 45;

From the above line of precedents, it is clear that Section 216 provides the court an exclusive and wide-ranging power to change or alter any charge. The use of the words “at any time before judgment is pronounced” in Sub-Section (1) empowers the court to exercise its powers of altering or adding charges even after the completion of evidence, arguments and reserving of the judgment. The alteration or addition of a charge may be done if in the opinion of the court there was an omission in the framing of charge or if upon prima facie examination of the material brought on record, it leads the court to form a presumptive opinion as to the existence of the factual ingredients constituting the alleged offence. The test to be adopted by the court while deciding upon an addition or alteration of a charge is that the material brought on record needs to have a direct link or nexus with the ingredients

of the alleged offence. Addition of a charge merely commences the trial for the additional charges, whereupon, based on the evidence, it is to be determined whether the accused may be convicted for the additional charges. The court must exercise its powers under Section 216 judiciously and ensure that no prejudice is caused to the accused and that he is allowed to have a fair trial. The only constraint on the court's power is the prejudice likely to be caused to the accused by the addition or alteration of charges. Sub-Section (4) accordingly prescribes the approach to be adopted by the courts where prejudice may be caused.

RAMESAN (DEAD) THROUGH LR. GIRIJA. A VS STATE OF KERALA, 21 Jan 2020; 2020 0 Supreme(SC) 56;

Both under the Old Code as well as under the present Code of Criminal Procedure, it is provided that the appeal against a sentence of fine shall not abate.

Section 70 of Indian Penal Code provides that any part of fine which remains unpaid may be levied at any time within six years after the passing of the sentence. The provision further provides that the death of offender does not discharge from the liability any property which would, after his death, be legally liable for his debts.

YASHITA SAHU VS STATE OF RAJASTHAN, 20 Jan 2020; 2020 1 Supreme 399; 2020 0 Supreme(SC) 47;

It is too late in the day to urge that a writ of habeas corpus is not maintainable if the child is in the custody of another parent. The law in this regard has developed a lot over a period of time but now it is a settled position that the court can invoke its extraordinary writ jurisdiction for the best interest of the child. This has been done in Elizabeth Dinshaw vs. Arvand M. Dinshaw & Ors., (1987) 1 SCC 42 Nithya Anand Raghavan vs. State (NCT of Delhi) & Anr., (2017) 8 SCC 454 and Lahari Sakhamuri vs. Sobhan Kodali, (2019) 7 SCC 311 among others.

The concept of visitation rights is not fully developed in India. Most courts while granting custody to one spouse do not pass any orders granting visitation rights to the other spouse. As observed earlier, a child has a human right to have the love and affection of both the parents and courts must pass orders ensuring that the child is not totally deprived of the love, affection and company of one of her/his parents.

Wife bringing the child in India in violation of orders of jurisdictional court in USA, therefore, her custody of the child is not strictly legal.

No direction can be issued to adult spouse to go and live with the other strained spouse.

Courts of one jurisdiction should respect the orders of a court of competent jurisdiction even if it is beyond its territories.

STATE OF MADHYA PRADESH VS BABBU RATHORE, 17 Jan 2020; 2020 1 Supreme 356; 2020 0 Supreme(SC) 43;

By virtue of its enabling power, it is the duty and responsibility of the State Government to issue notification conferring power of investigation of cases by notified police officer not below the rank of Deputy Superintendent of Police. Rule 7 of the Rules 1995 provides rank of investigation officer to be not below the rank of Deputy Superintendent of Police. An officer below that rank cannot act as investigating officer in holding investigation in reference to the offences committed under any provisions of the Act, 1989 but the question arose for consideration is that apart from the offences committed under the Act 1989, if the offence complained are both under the IPC and the offence enumerated in Section 3 of the Act, 1989 and the investigation being made by a competent police officer in accordance with the provisions of the Code of Criminal Procedure(hereinafter being referred to as the "Code"), the offences under IPC can be quashed and set aside for non- investigation of the offence under Section 3 of the Act, 1989 by a competent police officer.

STATE OF PUNJAB VS JASBIR SINGH, 26 Feb 2020; 2020 0 Supreme(SC) 192;
Matter referred to larger bench for deciding the following issues:
(i) Whether Section 340 of the Code of Criminal Procedure, 1973 mandates a preliminary inquiry and an opportunity of hearing to the would-be accused before a complaint is made under Section 195 of the Code by a Court?
(ii) What is the scope and ambit of such preliminary inquiry?

Dheeraj Mor VS Hon'ble High Court of Delhi, 19 Feb 2020; 2020 0 Supreme(SC) 179;
under Article 233, a judicial officer, regardless of her or his previous experience as an Advocate with seven years' practice cannot apply, and compete for appointment to any vacancy in the post of District Judge; her or his chance to occupy that post would be through promotion, in accordance with Rules framed under Article 234 and proviso to Article 309 of the Constitution of India.
It is clear that what this court had to consider was whether public prosecutors and government advocates were barred from applying for direct recruitments (i.e. whether they could be considered to have been in practise) and whether- during their course of their employment, as public prosecutors etc, they could be said to have "been for not less than seven years" practising as advocates. The court quite clearly ruled that such public prosecutors/government counsel (as long as they continued to appear as advocates before the court) answered the description and were therefore eligible.

Rajeev Kourav VS Baisahab, 11 Feb 2020; 2020 0 Supreme(SC) 143;
The conclusion of the High Court to quash the criminal proceedings is on the basis of its assessment of the statements recorded under Section 161 CrPC. Statements of witnesses recorded under Section 161 CrPC being wholly inadmissible in evidence cannot be taken into consideration by the Court, while adjudicating a petition filed under Section 482 CrPC [Rajendra Singh v. State of U.P. & Anr. (2007) 7 SCC 378].

Rajeshbhai Muljibhai Patel VS State of Gujarat, 10 Feb 2020; 2020 0 Supreme(SC) 137;
When the issue as to the genuineness of the receipts is pending consideration in the civil suit, in our view, the FIR ought not to have been allowed to continue as it would prejudice the interest of the parties and the stand taken by them in the civil suit.

Prathvi Raj Chauhan VS Union Of India, 10 Feb 2020; 2020 0 Supreme(SC) 139;
As far as the provision of Section 18A and anticipatory bail is concerned, the judgment of Mishra, J, has stated that in cases where no prima facie materials exist warranting arrest in a complaint, the court has the inherent power to direct a pre-arrest bail. I would only add a caveat with the observation and emphasize that while considering any application seeking pre-arrest bail, the High Court has to balance the two interests: i.e. that the power is not so used as to convert the jurisdiction into that under Section 438 of the Criminal Procedure Code, but that it is used sparingly and such orders made in very exceptional cases where no prima facie offence is made out as shown in the FIR, and further also that if such orders are not made in those classes of cases, the result would inevitably be a miscarriage of justice or abuse of process of law. I consider such stringent terms, otherwise contrary to the philosophy of bail, absolutely essential, because a liberal use of the power to grant pre-arrest bail would defeat the intention of Parliament.
Concerning the provisions contained in section 18A, suffice it to observe that with respect to preliminary inquiry for registration of FIR, we have already recalled the general directions (iii) and (iv) issued in Dr. Subhash Kashinath's case (supra). A preliminary inquiry is permissible only in the circumstances as per the law laid down by a Constitution Bench of this Court in Lalita Kumari v. Government of U.P., (2014) 2 SCC 1, shall hold good as explained in the order passed by this Court in the review petitions on 1.10.2019 and the amended provisions of section 18A have to be interpreted accordingly.

Prem Chand Singh VS State Of Uttar Pradesh, 07 Feb 2020; 2020 0 Supreme(SC) 126;
the subject matter of both the FIRs is the same general power of attorney dated 02.05.1985 and the sales made by the appellant in pursuance of the same. If the substratum of the two FIRs are common, the mere addition of Sections 467, 468 and 471 in the subsequent FIR cannot be considered as different ingredients to justify the latter FIR as being based on different materials, allegations and grounds.
As the earlier case ended in acquittal, double Jeopardy applies.

Mukesh Kumar VS State of Uttarakhand, 07 Feb 2020; 2020 0 Supreme(SC) 122;
Article 16 (4) and 16 (4-A) do not confer fundamental right to claim reservations in promotion, Ajit Singh (II) vs. State of Punjab, (1999) 7 SCC 209. By relying upon earlier judgments of this Court, it was held in Ajit Singh (II) (supra) that Article 16 (4) and 16 (4-A) are in the nature of enabling provisions, vesting a discretion on the State Government to consider providing reservations, if the circumstances so warrant. It is settled law that the State Government cannot be directed to provide reservations for appointment in public posts, C.A. Rajendran v. Union of India, (1968) 1 SCR 721. Similarly, the State is not bound to make reservation for Scheduled Castes and Scheduled Tribes in matters of promotions. However, if they wish to exercise their discretion and make such provision, the State has to collect quantifiable data showing inadequacy of representation of that class in public services. If the decision of the State Government to provide reservations in promotion is challenged, the State concerned shall have to place before the Court the requisite quantifiable data and satisfy the Court that such reservations became necessary on account of inadequacy of representation of Scheduled Castes and Scheduled Tribes in a particular class or classes of posts without affecting general efficiency of administration as mandated by Article 335 of the Constitution [M. Nagaraj (supra)].
12. Article 16 (4) and 16 (4-A) empower the State to make reservation in matters of appointment and promotion in favour of the Scheduled Castes and Scheduled Tribes if in the opinion of the State they are not adequately represented in the services of the State. It is for the State Government to decide whether reservations are required in the matter of appointment and promotions to public posts. The language in clauses (4) and (4-A) of Article 16 is clear, according to which, the inadequacy of representation is a matter within the subjective satisfaction of the State. The State can form its own opinion on the basis of the material it has in its possession already or it may gather such material through a Commission/Committee, person or authority. All that is required is that there must be some material on the basis of which the opinion is formed. The Court should show due deference to the opinion of the State which does not, however, mean that the opinion formed is beyond judicial scrutiny altogether. The scope and reach of judicial scrutiny in matters within the subjective satisfaction of the executive are extensively stated in Barium Chemicals vs. Company Law Board, AIR 1967 SC 295, which need not be reiterated, Indra Sawhney vs. Union of India (1992) Supp. (3) SCC 217.

Right of Self Defence- Principles
This Court also examined this question in the case of **Darshan Singh vs. State of Punjab & Anr. (2010) 2 SCC 333** and laid down the following 10 principles after analyzing Sections 96 to 106 IPC which read as under:
" (i) Self-preservation is the basic human instinct and is duly recognised by the criminal jurisprudence of all civilised countries. All free, democratic and civilised countries recognise the right of private defence within certain reasonable limits.
(ii) The right of private defence is available only to one who is suddenly confronted with the necessity of averting an impending danger and not of self-creation.
(iii) A mere reasonable apprehension is enough to put the right of self-defence into operation. In other words, it is not necessary that there should be an actual commission of

the offence in order to give rise to the right of private defence. It is enough if the accused apprehended that such an offence is contemplated and it is likely to be committed if the right of private defence is not exercised.
(iv) The right of private defence commences as soon as a reasonable apprehension arises and it is coterminous with the duration of such apprehension.
(v) It is unrealistic to expect a person under assault to modulate his defence step by step with any arithmetical exactitude.
(vi) In private defence the force used by the accused ought not to be wholly disproportionate or much greater than necessary for protection of the person or property.
(vii) It is well settled that even if the accused does not plead self-defence, it is open to consider such a plea if the same arises from the material on record.
(viii) The accused need not prove the existence of the right of private defence beyond reasonable doubt.
(ix) The Penal Code confers the right of private defence only when that unlawful or wrongful act is an offence.
(x) A person who is in imminent and reasonable danger of losing his life or limb may in exercise of self-defence inflict any harm even extending to death on his assailant either when the assault is attempted or directly threatened."

Inherent jurisdiction
In the case of Inder Mohan Goswami vs. State of Uttaranchal, (2007) 12 SCC 1, it is observed and held by this Court that the Court must ensure that criminal prosecution is not used as an instrument of harassment or for seeking private vendetta or with an ulterior motive to pressurise the accused. It is further observed and held by this Court that it is neither possible nor desirable to law down an inflexible rule that would govern the exercise of inherent jurisdiction.

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NEWS

- GOVERNMENT OF ANDHRA PRADESH- Budget Estimates 2019-20 - Budget Release Order for Rs. 1,65,68,000 /- (Rupees One crore sixty five lakh sixty eight thousand) to Prosecutions Department - Orders – Issued vide- G.O.Rt.No: 301, FINANCE (FMU -Home & Courts) DEPARTMENT dt.06-02-2020.

- GOVERNMENT OF ANDHRA PRADESH- A.P.Prosecution Services – Services of Sri B.Rama Koteswara Rao, Additional Director of Prosecutions and Director of Prosecutions (FAC) placed on deputation basis to work in the Police Training College, Ananthapuramu - Orders – Issued-vide G.O.Rt.No.219; HOME (COURTS.A) DEPARTMENT, Dated. 27.02.2020.

- GOVERNMENT OF ANDHRA PRADESH- Prosecution Services – Smt. K.Jayasree, Senior Assistant Public Prosecutor – Transfer from II-AJFCM Court, Machilipatnam, Krishna District to II Addl. Judicial First Class Magistrate Court, Eluru, West Godavari District in the existing vacancy in relaxation of ban on transfers and native district rules – Orders – Issued- vide G.O.RT.No. 124, HOME (COURTS.A) DEPARTMENT, Dated: 11-02-2020.

- GOVERNMENT OF ANDHRA PRADESH- Public Services – A.P. State Prosecution Services - Promotions – Senior Assistant Public Prosecutors - Promotion to the post of Additional Public Prosecutor Grade-II in the panel year 2019-2020 on temporary basis – Orders – Issued Vide G.O.MS. No. 33, HOME (COURTS.A) DEPARTMENT, Dated: 19-02-2020.

- GOVERNMENT OF ANDHRA PRADESH- Special Rules – Amendment to the Andhra Pradesh State Prosecution Service Rules, 1992 - Notification - Orders – Issued vide G.O.MS. No. 24, HOME (COURT.A) DEPARTMENT, Dated: 04-02-2020

- MINISTRY OF LAW AND JUSTICE (Department of Legal Affairs) ORDER New Delhi, the 21st February, 2020- Constitution of Twenty-second Law Commission of India for a term of three years – reg.- F. No. A- 45012/1/2018-Admn. III (LA).

- MINISTRY OF HOME AFFAIRS- NOTIFICATION- New Delhi, the 18th February, 2020 S.O. 861(E).—In exercise of the powers conferred by clause (g) of sub-section (4) of section 293 of the Code of Criminal Procedure, 1973 (2 of 1974), the Central Government hereby specifies the (i) Associate Professor/ Sr. Faculty of Institute of Forensic Science, Gujarat Forensic Science University (GFSU) – Deputy Director cum Scientist 'D', (ii) Assistant Professor – Institute of Forensic Science, Gujarat Forensic Science University (GFSU) - Assistant Director cum Scientist 'C', and (iii) Scientific Officer of Institute of Forensic Science, Gujarat Forensic Science University (GFSU) – Assistant Chemical Examiner to Government cum Scientist 'B' of the Institute of Forensic Science, Gujarat Forensic Science University (GFSU), Gandhinagar as the Government scientific experts for Narcotic Drug and Psychotropic Substances (NDPS) for the purposes of section 293 of the said Code, with effect from the date of publication of this notification in the Official Gazette.

- MINISTRY OF HOME AFFAIRS- NOTIFICATION- New Delhi, the 12th February, 2020. G.S.R. 108(E).— the Arms (Amendment) Rules, 2020.

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ON A LIGHTER VEIN

When George Bernard Shaw was still a young critic he was invited as a guest to a family party. When he came into the room, the daughter of the host was playing the piano.

"I have heard," she said very sweetly, turning round to the visitor, "that you are fond of music."

"I am," answered Shaw, "but never mind! Go on playing!"

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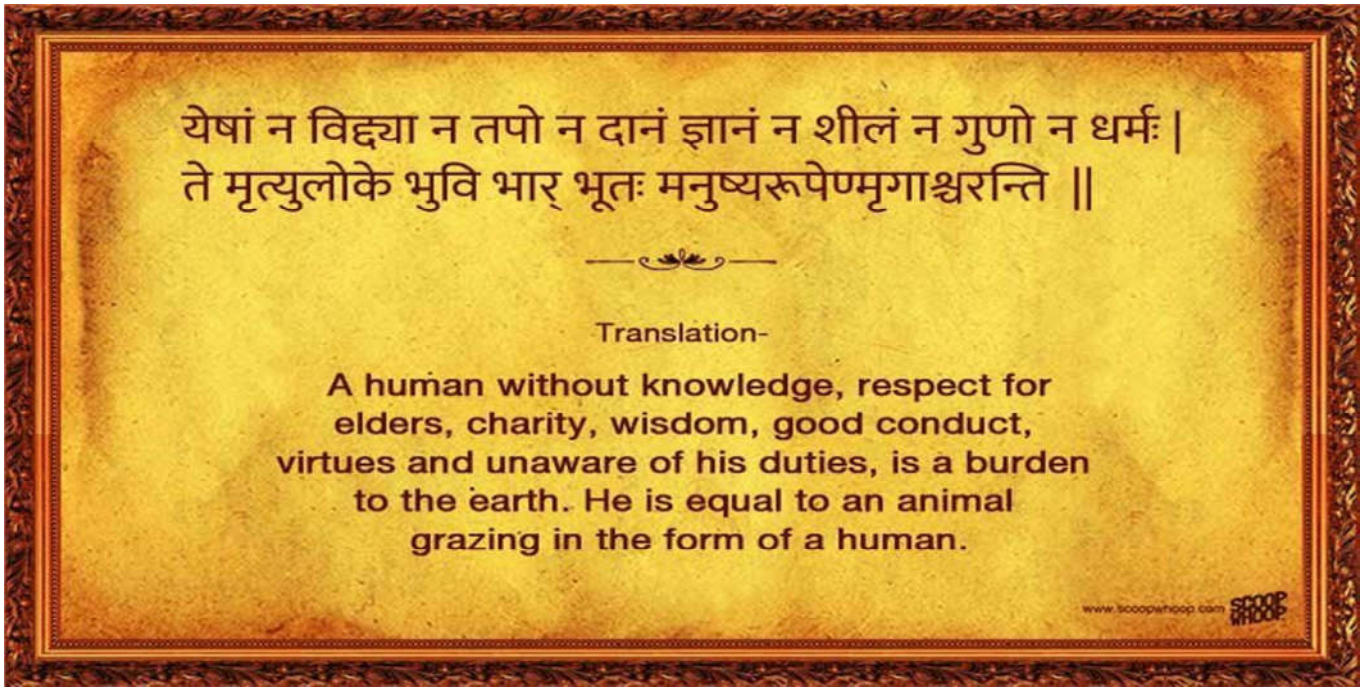
April, 2020

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



CITATIONS

Depot Manager, APSRTC, Yadagirigutta Bus Depot, Nalgonda District VS M. N. Reddy, 30 Jan 2020; 2020 0 Supreme(Telangana) 15;
The learned Standing Counsel for the RTC though read both charges, but argued only on the charge of rash and negligent driving and causing death of a person and concluded his arguments. Since the criminal Court has appreciated the evidence and acquitted the accused/first respondent, a different opinion contradicting to the Court of law on the same set of facts, evidence and charge cannot be appreciated, though departmental enquiry is independent in nature. It becomes immense necessary to appreciate each case on its facts in the light of judicial and departmental proceedings, and in the present facts of the case, this Court has no hesitation to hold that judicial order should prevail over disciplinary order.

Narne Estates Pvt. Ltd. VS Narne Gopal Naidu, 29 Jan 2020; 2020 0 Supreme(Telangana) 35;
A perusal of the Code of Criminal Procedure and the format prescribed thereunder as well as the formats prescribed under the Criminal Rules of Practice, as applicable to the State, do not disclose any specific proforma having been prescribed for filing additional documents, except Format 20 for filing the charge sheet. The word 'prescribed', as defined under Section 2(t) by the Rules made under this Code does not contain any prescribed format for filing the material documents more particularly one in relation to Section 173(8). In other words, in normal parlance, either by way of additional charge sheet or by way of a challan, the documents can be placed before the Court.
the Larger Bench of the Supreme Court in V.C. Shukla's case (cited supra) wherein, in para 100, it was held that "the test formulated by the Court was that any order which substantially affects the rights of the accused or decides certain rights of the parties cannot be said to be an interlocutory order. The fact that the controversy still remains alive was considered irrelevant". Hence, the said ratio will have preferential application.

Ramji Singh VS State Of Uttar Pradesh, 11 Dec 2019; 2019 4 Crimes (SC) 585; 2019 0 Supreme (SC) 1354; 2020 1 SCC Cri 482; 2020 2 SCC 425;
Mere delay in compliance of Section 157 by itself is not fatal to prosecution. All it does is to raise a doubt that the prosecution story may have been concocted at a later stage.

The complaint gives all the necessary facts but obviously it is not drafted by a person having legal acumen. An FIR is not supposed to be an encyclopaedia detailing all the facts in extenso. In our opinion, the complaint (Exh. P.1) is complete and the additions, if any, made during the evidence are not such which cast a doubt on the correctness of the complaint.
The contents of the report obtained under RTI have not been proved in accordance with law and cannot be relied upon.
The High Court was absolutely justified in coming to the conclusion that the Trial Court had totally misdirected itself in holding that the medical evidence did not support the ocular evidence. This was done only on the ground that the injuries were not on the side on which they should have been if the site plan was 100% right. As has already been observed above, a site plan is not a true to scale map and it generally gives the positions of the various eyewitnesses, accused etc., but obviously such site plan cannot give exact positions. Directions cannot be determined from exact position also. The direction of the injury can also vary even if the accused and the deceased are in the same place as mentioned in the map and one of them is sitting or standing at an angle. The view taken by the Trial Court was highly technical and, in our opinion, this was not a sufficient ground to disbelieve both the eye witnesses.
As is often said enmity is a double-edged sword. It can be both the motive for a crime and it can also be a motive to falsely implicate some other people. However, each case has to be decided on its own evidence.
the prosecution story is that six persons who were heavily armed, two of them with guns, killed the deceased in broad day light. This itself shows that these accused persons were not scared of the villagers. While leaving the place of occurrence they threatened all gathered there by saying that anybody who tried to interfere would meet the same fate. In such a situation no other villager who may have been present would turn up to give evidence. This Court cannot lose sight of the harsh reality that witnesses are scared to depose in Court. In this case two of the witnesses have spoken up and their evidence has been corroborated on all counts. It may be true that their relations with the accused may not have been cordial but the evidence does not show that the enmity or dispute between these two witnesses and the accused was of such a nature that these two witnesses would make false statements only to settle scores with the appellants thereby leaving the real culprits to go scot-free. In our opinion merely because these witnesses are interested witnesses their testimony cannot be discarded.
The appellants are right when they urge that when the report of the ballistic experts have not been proved and all the bullets recovered from the spot have not been sent to the ballistic expert, the guns seized cannot be connected with the offence. Even if that be true, we cannot discredit the testimony of the eyewitnesses that two of the accused used guns. The guns seized may or may not be the guns used. However, when the ocular evidence is direct and clear in this regard, and this ocular evidence is fully supported by the medical evidence, the negligence of the investigation team cannot be used by the defence in support of their case.

Union of India VS Dafadar Kartar Singh, 09 Dec 2019; 2020 110 AllCriC 217; 2019 0 Supreme(SC) 1337;
The minor contradictions in the evidence of Smt. Sudesh have been blown out of proportion by the Tribunal. There is a ring of truth in the evidence of Smt. Sudesh and there is no reason for her to falsely implicate the Respondent.

Rekha Murarka VS State of West Bengal, 20 Nov 2019; 2019 0 Supreme(SC) 1286; 2020 1 SCC Cri 496; 2020 2 SCC 474;
In our criminal justice system, the Public Prosecutor occupies a position of great importance. Given that crimes are treated as a wrong against the society as a whole, his role in the administration of justice is crucial, as he is not just a representative of the aggrieved person, but that of the State at large. Though he is appointed by the Government, he is not a servant of the Government or the investigating agency. He is an officer of the Court and his primary duty is to assist the Court in arriving at the truth by putting forth all the relevant material on behalf of the prosecution. While

discharging these duties, he must act in a manner that is fair to the Court, to the investigating agencies, as well to the accused. This means that in instances where he finds material indicating that the accused legitimately deserves a benefit during the trial, he must not conceal it. The space carved out for the Public Prosecutor is clearly that of an independent officer who secures the cause of justice and fair play in a criminal trial.

It is further clear from a joint reading of Section 301 and the proviso to Section 24(8) that the two provisions are mutually complementary. There is no bar on the victim engaging a private counsel to assist the prosecution, subject to the permission of the Court.

The use of the term "assist" in the proviso to Section 24(8) is crucial, and implies that the victim's counsel is only intended to have a secondary role qua the Public Prosecutor.

we find that a victim's counsel should ordinarily not be given the right to make oral arguments or examine and cross-examine witnesses. As stated in Section 301(2), the private party's pleader is subject to the directions of the Public Prosecutor. In our considered opinion, the same principle should apply to the victim's counsel under the proviso to Section 24(8), as it adequately ensures that the interests of the victim are represented. If the victim's counsel feels that a certain aspect has gone unaddressed in the examination of the witnesses or the arguments advanced by the Public Prosecutor, he may route any questions or points through the Public Prosecutor himself. This would not only preserve the paramount position of the Public Prosecutor under the scheme of the CrPC, but also ensure that there is no inconsistency between the case advanced by the Public Prosecutor and the victim's counsel.

However, even if there is a situation where the Public Prosecutor fails to highlight some issue of importance despite it having been suggested by the victim's counsel, the victim's counsel may still not be given the unbridled mantle of making oral arguments or examining witnesses. This is because in such cases, he still has a recourse by channelling his questions or arguments through the Judge first. For instance, if the victim's counsel finds that the Public Prosecutor has not examined a witness properly and not incorporated his suggestions either, he may bring certain questions to the notice of the Court. If the Judge finds merit in them, he may take action accordingly by invoking his powers under Section 311 of the CrPC or Section 165 of the Indian Evidence Act, 1872. In this regard, we agree with the observations made by the Tripura High Court in Smt. Uma Saha v. State of Tripura (2014 SCC OnLine Tri 859) that the victim's counsel has a limited right of assisting the prosecution, which may extend to suggesting questions to the Court or the prosecution, but not putting them by himself.

Surinder Singh Deswal@ Col. S. S. Deswal VS Virender Gandhi, 08 Jan 2020; 2020 1 KHC 309; 2020 1 Supreme 158; 2020 0 Supreme(SC) 14; 2020 1 SCC Cri 506; 2020 2 SCC 514; 2020 1 ALT Crl 17(SC);

When suspension of sentence by the trial court is granted on a condition, non compliance of the condition has adverse effect on the continuance of suspension of sentence. The Court which has suspended the sentence on a condition, after noticing non-compliance of the condition can very well hold that the suspension of sentence stands vacated due to non-compliance.

ABCD VS Union of India, 10 Dec 2019; 2019 0 Supreme(SC) 1346;2020 1 SCC Cri 526; 2020 2 SCC 52

Suppression or concealment of material facts is not an advocacy. It is a jugglery, manipulation, manoeuvring or misrepresentation, which has no place in equitable and prerogative jurisdiction. If the applicant does not disclose all the material facts fairly and truly but states them in a distorted manner and misleads the court, the court has inherent power in order to protect itself and to prevent an abuse of its process to discharge the rule nisi and refuse to proceed further with the examination of the case on merits. If the court does not reject the petition on that ground, the court would be failing in its duty. In fact, such an applicant requires to be dealt with for contempt of court for abusing the process of the court.

DARSHAN SINGH VS STATE OF PUNJAB, 06 Dec 2019; 2020 110 AllCriC 228; 2019 0 Supreme(SC) 1333; 2020 1 SCC Cri 537; 2020 2 SCC 78

Although the witness (PW-14) of last seen could not identify the appellants, but the fact remains that he identified that a jute bag was thrown by a man and a woman who came on a TVS Motorcycle. Therefore, even though the witness could not identify the appellants in court as the persons who had thrown the jute bag, the fact that the jute bag was thrown by a man and a woman on a TVS motorcycle is relevant in chain of events in support of the prosecution case.

Vinod Kumar Garg VS State (Government of National Capital Territory of Delhi), 27 Nov 2019 2019 0 Supreme(SC) 1305; 2020 1 SCC Cri 545; 2020 2 SCC 88;

The witnesses are not required to recollect and narrate the entire version with photographic memory notwithstanding the hiatus and passage of time. Picayune variations do not in any way negate and contradict the main and core incriminatory evidence of the demand of bribe, reason why the bribe was demanded and the actual taking of the bribe that was paid, which are the ingredients of the offence under Sections 7 and 13 of the Act, that as noticed above and hereinafter, have been proved and established beyond reasonable doubt. Documents prepared contemporaneously noticed above affirm the primary and ocular evidence. We, therefore, find no good ground and reason to upset and set aside the findings recorded by the trial court that have been upheld by the High Court.

The last contention of the appellant is predicated on Section 17 of the Act and the fact that the investigation in the present case was not conducted by the police officer by the rank and status of the Deputy Superintendent of Police or equal, but by Inspector Rohtash Singh (PW-5) and Inspector Shobhan Singh (PW-7). The contention has to be rejected for the reason that while this lapse would be an irregularity and unless the irregularity has resulted in causing prejudice, the conviction will not be vitiated and bad in law. The appellant has not alleged or even argued that any prejudice was caused and suffered because the investigation was conducted by the police officer of the rank of Inspector, namely Rohtash Singh (PW-5) and Shobhan Singh (PW-7).

This Court in Ashok Tshering Bhutia v. State of Sikkim referring to the earlier precedents has observed that a defect or irregularity in investigation however serious, would have no direct bearing on the competence or procedure relating to cognizance or trial. Where the cognizance of the case has already been taken and the case has proceeded to termination, the invalidity of the precedent investigation does not vitiate the result, unless a miscarriage of justice has been caused thereby. Similar is the position with regard to the validity of the sanction. A mere error, omission or irregularity in sanction is not considered to be fatal unless it has resulted in a failure of justice or has been occasioned thereby. Section 19(1) of the Act is matter of procedure and does not go to the root of the jurisdiction and once the cognizance has been taken by the court under the Code, it cannot be said that an invalid police report is the foundation of jurisdiction of the court to take cognizance and for that matter the trial.

Mahipal VS Rajesh Kumar @ Polia, 05 Dec 2019; 2020 110 AllCriC 221; 2019 4 Crimes(SC) 321; 2019 8 Supreme 732; 2019 0 Supreme(SC) 1323; 2020 1 SCC Cri 558; 2020 2 SCC 118

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

Station House Officer, CBI/ACB/Bangalore VS B. A. Srinivasan, 05 Dec 2019; 2019 4 Crimes(SC) 313; 2019 8 Supreme 723; 2019 0 Supreme(SC) 1324; 2020 1 SCC Cri 569; 2020 2 SCC 153 (THREE JUDGE BENCH)

Protection under Section 197 of Cr.P.C. is available to public servants when an offence is said to have been committed while acting or purporting to act in discharge of their official duty.

Protection available to a public servant while in service, is not available after his retirement.

Bhawna Bai VS Ghanshyam, 03 Dec 2019; 2020 110 AllCriC 243; 2020 1 ALT(Cri) 59; 2019 8 Supreme 475; 2019 0 Supreme(SC) 1315; 2020 1 SCC Cri 581; 2020 2 SCC 217; 2020 1 ALT Crl 59(SC);

at the stage of framing the charge, the court is not required to hold an elaborate enquiry; only prima facie case is to be seen. As held in Knati Bhadra Shah and another v. State of West Bengal (2000) 1 SCC 722, while exercising power under Section 228 Crl.P.C., the judge is not required record his reasons for framing the charges against the accused. Upon hearing the parties and based upon the allegations and taking note of the allegations in the charge sheet, the learned Second Additional Sessions Judge was satisfied that there is sufficient ground for proceeding against the accused and framed the charges against the accused-respondent Nos.1 and 2.

NAGARAJA VS STATE OF KARNATAKA, 06 Dec 2019; 2019 0 Supreme(SC) 1328;2020 1 SCC Cri 587; 2020 2 SCC 257

the other circumstance, namely, matching the fingerprints of the appellant with the chance fingerprints, which were found on certain utensils. PW-14, in his deposition admitted that he has not obtained permission from the Magistrate for taking the fingerprints of the accused. The Magistrate, in fact, has referred to the judgment of this Court reported in Mohd. Aman's case (supra). In the said case, it was held as follows inter alia:-

"Even though the specimen fingerprints of Mohd. A man had to be taken on a number of occasions at the behest of the Bureau, they were never taken before or under the order of a Magistrate in accordance with Section 5 of the Identification of Prisoners Act. It is true that under Section 4 thereof police is competent to take finger-prints of the accused but to dispel any suspicion as to its bona fides or to eliminate the possibility of fabrication of evidence it was eminently desirable that they were taken before or under the order of a Magistrate. The other related infirmity from which the prosecution case suffers is that the brass, jug, production of which would have been the best evidence in proof of the claim of its seizure and subsequent examination by the Bureau, was not produced and exhibited during trial - for reasons best known to the prosecution and unknown to the Court. Thus the accused could not be convicted for murder."

State of NCT of Delhi VS Shiv Charan Bansal, 05 Dec 2019; 2019 4 Crimes(SC) 298; 2019 8 Supreme 708; 2019 0 Supreme(SC) 1325; 2020 1 SCC Cri 594; 2020 2 SCC 290;

Court while considering question of framing charges under Section 227 of Cr.P.C has power to sift and weigh evidence for limited purpose of finding out whether or not a prima facie case has been made out against accused.

Conspiracy is mostly proved by circumstantial evidence by taking into account cumulative effect of circumstances indicating guilt of accused.

Appellate court may direct accused to be re-tried not only when it deals with appeal against acquittal, but also when it deals with appeal against conviction.

Saeeda Khatoon Arshi VS State of UP, 10 Dec 2019; 2020 110 AllCriC 234; 2019 4 Crimes(SC) 530; 2019 0 Supreme(SC) 1344; 2020 1 SCC Cri 611; 2020 2 SCC 323

Section 319 empowers the court to proceed against a person appearing to be guilty of an offence where, in the course of any enquiry into or trial of, an offence, it appears from the evidence that any person, not being the accused, has committed any offence for which such person could be tried together with the accused. The exercise of the discretion by the Additional Sessions Judge to summon the second respondent fulfilled the requirements of Section 319 and was consistent with the

parameters laid down in the decisions of this Court noted earlier. The fact that a protest petition had not been filed by the appellant when the report was submitted under Section 173 did not render the court powerless to exercise its powers under Section 319 on the basis of the evidence which had emerged during the course of the trial.

Dhanpat VS Sheo Ram (Deceased) through LRs., 19 Mar 2020;2020 0 Supreme(SC) 286;
In another judgment reported as Aher Rama Gova and Others vs. State of Gujarat, (1979) 4 SCC 500 the secondary evidence of dying declaration recorded by a Magistrate was produced in evidence. This Court found that though the original dying declaration was not produced but from the evidence, it is clear that the original was lost and was not available. The Magistrate himself deposed on oath that he had given the original dying declaration to the Head Constable whereas the Head Constable deposed that he had made a copy of the same and given it back to the Magistrate. Therefore, the Court found that the original dying declaration was not available and the prosecution was entitled to give secondary evidence which consisted of the statement of the Magistrate as also of the Head Constable who had made a copy from the original. Thus, the secondary evidence of dying declaration was admitted in evidence, though no application to lead secondary evidence was filed.

Bhagwan Singh VS State of Uttarakhand, 18 Mar 2020; 2020 0 Supreme(SC) 273;
A gun licensed for self-protection or safety and security of crops and cattle cannot be fired in celebratory events, it being a potential cause of fatal accidents.
Appellant cannot escape consequences of carrying gun with live cartridges with knowledge that firing at a marriage ceremony with people present there was imminently dangerous and was likely to cause death.

Jeetendra VS State of Madhya Pradesh, 18 Mar 2020; 2020 0 Supreme(SC) 275;
a closure report was filed by the Police on 24th May, 2013 in Crime No. 210/2012 but the learned Judicial Magistrate after five years ordered further investigation on 20th June, 2018. Consequently, appellant was arrested on 5th January, 2019 and denied bail by the Additional Sessions Judge. The High Court also vide order dated 22nd January, 2019 declined to release him on bail. Appellant filed a second bail application before the High Court, which was dismissed as withdrawn on 10th April, 2019 with liberty to apply again after examination of certain material witnesses. Meanwhile, the police reinvestigated the case and submitted a second report on 2nd September, 2019 stating that no offence has been committed by the appellant and he deserves to be discharged. After filing of this closure report, appellant approached the High Court for a third time. But he was denied bail yet again vide the impugned order on grounds that the second closure report has not been accepted by the Trial Court and that appellant has failed to point out whether material witnesses have been examined or not.

Bengaluru Development Authority VS Sudhakar Hegde, 17 Mar 2020; 2020 0 Supreme(SC) 262;
Where an amendment is clarificatory in nature, such amendment is deemed to be retrospective in its application.
A similar position is expounded by G P Singh in his seminal work Principles of Statutory Interpretation. He states:

> "…An amending Act may be purely clarificatory to clear a meaning of a provision of the principal Act which was already implicit. A clarificatory amendment of this nature will have retrospective effect and, therefore, in the principal Act was existing law when the amendment came into force, the amending Act also will be part of the existing law."

An amending provision which clarifies the position of law which was considered to be implicit, is construed to have retrospective effect. The position of the retrospective application of clarificatory amendments to notifications is analogous to the position under statutory enactments.

Satishkumar Nyalchand Shah VS State of Gujarat, 02 Mar 2020; 2020 0 Supreme(SC) 205;

as observed by this Court in the case of Union of India v. W. N. Chadha, (1993) Supp. 4 SCC 260; Narender G. Goel v. State of Maharashtra, (2009) 6 SCC 65 and Dinubhai Baghabhai Solanki v. State of Gujarat, (2014) 4 SCC 626. In the case of Dinubhai Baghabhai Solanki (supra) after considering one another decision of this Court in the case of Sri Bhagwan Samardha v.. State of A.P., (1999) 5 SCC 740, it is observed and held that there is nothing in Section 173(8) CrPC to suggest that the court is obliged to hear the accused before any direction for further investigation is made. In Sri Bhagwan Samardha (supra), this Court in paragraph 11 held as under:

> "11. In such a situation the power of the court to direct the police to conduct further investigation cannot have any inhibition. There is nothing in Section 173(8) to suggest that the court is obliged to hear the accused before any such direction is made. Casting of any such obligation on the court would only result in encumbering the court with the burden of searching for all the potential accused to be afforded with the opportunity of being heard. As the law does not require it, we would not burden the Magistrate with such an obligation."

Therefore, when the proposed accused against whom the further investigation is sought, namely Shri Bhaumik is not required to be heard at this stage, there is no question of hearing the appellant-one of the co-accused against whom the charge-sheet is already filed and the trial against whom is in progress and no relief of further investigation is sought against him. Therefore, the High Court is absolutely justified in rejecting the application submitted by the appellant to implead him as a party respondent in the Special Criminal Application.

Samta Naidu VS State of Madhya Pradesh, 02 Mar 2020; 2020 0 Supreme(SC) 217;

The protest petition can always be treated as a complaint and proceeded with in terms of Chapter XV CrPC. Therefore, in case there is no bar to entertain a second complaint on the same facts, in exceptional circumstances, the second protest petition can also similarly be entertained only under exceptional circumstances. In case the first protest petition has been filed without furnishing the full facts/particulars necessary to decide the case, and prior to its entertainment by the court, a fresh protest petition is filed giving full details, we fail to understand as to why it should not be maintainable

In Re : Assessment of The Criminal Justice System In Response To Sexual Offences VS ., 18 Dec 2019: 2019 0 Supreme(SC) 1394; 2020 1 ALT Crl 1(SC) THREE JUDGE BENCH

This Court in the case of State of Kerala v. Rasheed, AIR 2019 SC 721 has held as followings:-

The following practice guidelines should be followed by trial courts in the conduct of a criminal trial, as far as possible:

i. a detailed case-calendar must be prepared at the commencement of the trial after framing of charges;

ii. the case-calendar must specify the dates on which the examination-in-chief and cross-examination (if required) of witnesses is to be conducted;

iii. the case-calendar must keep in view the proposed order of production of witnesses by parties, expected time required for examination of witnesses, availability of witnesses at the relevant time, and convenience of both the prosecution as well as the defence, as far as possible;

iv. testimony of witnesses deposing on the same subject matter must be proximately scheduled;

v. the request for deferral under Section 231(2) of the Cr.P.C. must be preferably made before the preparation of the case calendar;

vi. the grant for request of deferral must be premised on sufficient reasons justifying the deferral of cross- examination of each witness, or set of witnesses;

vii. while granting a request for deferral of cross-examination of any witness, the trial courts must specify a proximate date for the cross-examination of that witness, after the examination- in-chief of such witness(es) as has been prayed for;

viii. the case-calendar, prepared in accordance with the above guidelines, must be followed strictly, unless departure from the same becomes absolutely necessary;

ix. in cases where trial courts have granted a request for deferral, necessary steps must be taken to safeguard witnesses from being subjected to undue influence, harassment or intimidation."

STATUS REPORTS REGARDING INVESTIGATION including medical examination, FSL methods and reports, TRIAL and COMPENSATION in consonance with sec 173(1A) are called for from the State and Central Governments.

Kanwar Pal Singh VS State of Uttar Pradesh, 18 Dec 2019; 2019 0 Supreme(SC) 1396; 2020 1 ALT Crl 9(SC)

we would uphold the order of the High Court refusing to set aside the prosecution and cognizance of the offence taken by the learned Magistrate under Section 379 of the IPC and Sections 3 and 4 of the Prevention of Damage to Public Property Act. We would, however, clarify that prosecution and cognizance under Section 21 read with Section 4 of the Mines Regulation Act will not be valid and justified in the absence of the authorisation.

Ordinarily, any person can set the criminal law into motion but the legislature keeping in view the sensitivity and importance of the subject had provided that the violations under the TOHO Act would be dealt with by the authorities specified therein. Thereafter, reference was made to Section 4 of the Code as cited above, to hold that the TOHO Act being a special Act, the matters relating to offences covered thereunder would be governed by the provisions of said Act, which would prevail over the provisions of the Code. Reference was made to clause (iv) of sub-section (3) to Section 13 of the TOHO Act which states that the appropriate authority shall investigate any complaint of breach of any of the provisions of the said Act or any rules made thereunder and take appropriate action. There is no similar provision under the Mines Regulation Act i.e. the Mines and Minerals (Development and Regulation) Act, 1957.

the investigation of the offences is within the domain of the police and the power of a police officer to investigate into cognizable offences is not ordinarily impinged by any fetters albeit the power must be exercised as per the statutory provisions and for legitimate purposes. The courts would interfere only when while examining the case they find that the police officer in exercise of the investigatory powers has breached the statutory provisions and put the personal liberty and/or the property of a citizen in jeopardy by an illegal and improper use of the powers or when the investigation by the police is not found to be bona fide or when the investigation is tainted with animosity. While examining the issue, this Court in Sanjay (supra) took notice of the decision in H.N. Rishbud v. State of Delhi, AIR 1955 SC 196 wherein this Court has held that a defect or illegality in investigation, however serious, has no direct bearing on the competence or the procedure relating to the taking of the cognizance or trial. The cardinal principle of law as noted by this Court in Directorate of Enforcement v. Deepak Mahajan, (1994) 3 SCC 440 is that every law is designed to further the ends of justice and should not be frustrated on mere technicalities. The public trust doctrine was cited and applied to underscore the principle that certain resources like air, sea, water, forests and minerals are of great importance to the people as a whole and that the government is enjoined to hold such resources in trust for the benefit of the general public and to use them for their benefit than to serve private interests.

Anokhilal VS State Of Madhya Pradesh, 18 Dec 2019; 2020 1 ILR(Ker) 1; 2020 1 KHC 79; 2019 0 Supreme(SC) 1390; 2020 1 ALT Crl 101(SC)

Expeditious disposal is undoubtedly required in criminal matters and that would naturally be part of guarantee of fair trial. However, the attempts to expedite the process should not be at the expense of the basic elements of fairness and the opportunity to the accused, on which postulates, the entire criminal administration of justice is founded. In the pursuit for expeditious disposal, the cause of justice must never be allowed to suffer or be sacrificed. What is paramount is the cause of justice and keeping the basic ingredients which secure that as a core idea and ideal, the process may be expedited, but fast tracking of process must never ever result in burying the cause of justice.

(i) In all cases where there is a possibility of life sentence or death sentence, learned Advocates who have put in minimum of 10 years practice at the Bar alone be considered to be appointed as Amicus Curiae or through legal services to represent an accused.

(ii) In all matters dealt with by the High Court concerning confirmation of death sentence, Senior Advocates of the Court must first be considered to be appointed as Amicus Curiae.

(iii) Whenever any learned counsel is appointed as Amicus Curiae, some reasonable time may be provided to enable the counsel to prepare the matter. There cannot be any hard and fast rule in that behalf. However, a minimum of seven days' time may normally be considered to be appropriate and adequate.
(iv) Any learned counsel, who is appointed as Amicus Curiae on behalf of the accused must normally be granted to have meetings and discussion with the concerned accused. Such interactions may prove to be helpful as was noticed in Imtiyaz Ramzan Khan, (2018) 9 SCC 160.

Ravi S/o Ashok Ghumare VS State of Maharashtra, 03 Oct 2019; 2019 0 AIR(SC) 5170; 2019 4 Crimes(SC) 39; 2019 9 SCC 622; 2019 3 SCC(Cri) 723; 2019 8 Supreme 661; 2019 0 Supreme(SC) 1100; 2020 1 ALT Crl 123(SC) (THREE JUDGE BENCH)
(1) Lack of motive would not be fatal to case of prosecution as sometimes human beings act irrationally and at spur of moment.
(2) Subsistence of capital punishment proves that there are certain acts which society so essentially abhors that they justify taking of most crucial of rights – right to life.
(3) Y-STR techniques of DNA analysis are both regularly used in various jurisdictions for identification of offender in cases of sexual assault and also as a method to identify suspects in unsolved cases.
(4) Court cannot write off capital punishment so long as it is inscribed in statute book.

Karnam Bala Rama Krishna Murthy VS Bandla Suryanarayana Babu, 12 Nov 2019; 2019 0 Supreme(AP) 200; 2020 1 ALT Crl 13(AP)
There is a marked difference between the principle of Double Jeopardy/Autrefois acquit and issue estoppel. The Doctrine of Double Jeopardy is a complete bar to try the accused for the same offence and the parties must be the same. The principle of Double Jeopardy can be said to be identical to the Principle of Res judicata, whereas, the Principle of Issue Estoppel only precludes a party to adduce evidence before the Court on a particular issue which was already decided by the Court in earlier case, hence, the Doctrine of Issue Estoppel, at best, bars the admissibility of evidence of a particular witness who was examined earlier and on the basis of such evidence, the Court recorded a finding of fact while acquitting the petitioner/accused not guilty. But, it will not bar the trial of the accused.
In view of the fine distinction between Doctrine of Double Jeopardy and Issue Estoppel or Collateral Estoppel, trying the petitioner/accused for the same offence is not a clear bar. Moreover, it does not amount to relitigating on the same issue of fact.
Issue Estoppel is defined as the proposal that an argument is moot as it has been previously decided, distinctly put in issue in an earlier proceeding where it was fundamental to the decision. "Issue estoppel is a species of res judicata. It applies where an issue in a cause of action was decided in a previous action. It must be a finding that is fundamental to the outcome of the decision, so fundamental that if a different conclusion had been reached on the issue, the outcome would have been different. If such is the case, then this issue cannot be raised in subsequent litigation."
The principle of Doctrine of Estoppel can also be called as a Collateral Estoppel in criminal cases. Issue Estoppel or Collateral Estoppel can also be applied in criminal cases

Dandu Krupanand Vs State of Telangana; https://indiankanoon.org/doc/8133920/; 2020 1 ALT Crl 42 (TS);
Here, the petitioner/accused No.2 was not the person, who trafficked any person, for any of the purposes referred to above, but he was only a customer. Therefore, he is not liable for prosecution for the offence punishable under Section 370 of I.P.C. however, he is liable to be prosecuted for the offence punishable under Section 370- A (2) of I.P.C.

Dr. Penumala Viswa Shanti vs The Station House Officer on 20 December, 2019; 2020 1 ALT Crl 49(TS); https://indiankanoon.org/doc/22675428/
it is clear that the Court has got the power to order for further investigation even after filing of the charge sheet and the police on their own can also further investigate into the matter.

In the instant case, on the requisition made by the Assistant Commissioner of Police, Huzurabad, the learned Magistrate accorded permission to reopen the case for investigation and the final report was returned directing the Station House Officer, Huzurabad, to proceed with the investigation. Reopening of the case is nothing but re- investigation of the case, but not further investigation. There is a specific bar under Section 173 (8) of Cr.P.C., the police has a right to "further" investigation but not fresh investigation or re- investigation. In view of the judgment of the Apex Court in Rama Chaudhary v. State of Bihar (https://indiankanoon.org/doc/409332/) and having regard to the facts and circumstances of the case, the order passed by the learned Magistrate to reopen the case for investigation is prima facie illegal, improper and incorrect and is liable to be set aside.

D. Suryaprakash Venkata Rao VS State of A. P., 06 Dec 2019; 2019 0 Supreme(AP) 242; 2020 1 ALT Crl 59(AP)

In that view of the matter, irrespective of the fact that whether in the present case the issue relates to the voluntary deposit of the passport or deposit pursuant to an order of the Court, the fact remains that neither case is supported by the law. If the counsel made a wrong concession, the same cannot be enure to the benefit of the prosecution. A party should not suffer for any mistake committed by the counsel. If the same is a part and parcel of the lower Courts order, then it is clearly opposed by the law as interpreted by the Hon'ble Supreme Court of India in Suresh Nanda's case 2008 (2) ALT (Crl.) 344 (SC) : AIR 2008 SC 1414 (supra). Therefore, for both these reasons, this Court holds that the condition about the deposit of the passport cannot be imposed by a Court while granting bail or for any other reason. The only option left in such cases, when the passport is seized is to take steps under the Passports Act for cancellation/impounding.

Purshottam Chopra VS State (Govt. of NCT Delhi), 07 Jan 2020; 2020 1 Supreme 1; 2020 0 Supreme(SC) 11; 2020 1 ALD Crl 377(SC)

For what has been noticed hereinabove, some of the principles relating to recording of dying declaration and its admissibility and reliability could be usefully summed up as under:-

(i) A dying declaration could be the sole basis of conviction even without corroboration, if it inspires confidence of the Court.

(ii) The Court should be satisfied that the declarant was in a fit state of mind at the time of making the statement; and that it was a voluntary statement, which was not the result of tutoring, prompting or imagination.

(iii) Where a dying declaration is suspicious or is suffering from any infirmity such as want of fit state of mind of the declarant or of like nature, it should not be acted upon without corroborative evidence.

(iv) When the eye-witnesses affirm that the deceased was not in a fit and conscious state to make the statement, the medical opinion cannot prevail.

(v) The law does not provide as to who could record dying declaration nor there is any prescribed format or procedure for the same but the person recording dying declaration must be satisfied that the maker is in a fit state of mind and is capable of making the statement

(vi) Although presence of a Magistrate is not absolutely necessary for recording of a dying declaration but to ensure authenticity and credibility, it is expected that a Magistrate be requested to record such dying declaration and/or attestation be obtained from other persons present at the time of recording the dying declaration.

(vii) As regards a burns case, the percentage and degree of burns would not, by itself, be decisive of the credibility of dying declaration; and the decisive factor would be the quality of evidence about the fit and conscious state of the declarant to make the statement.

(viii) If after careful scrutiny, the Court finds the statement placed as dying declaration to be voluntary and also finds it coherent and consistent, there is no legal impediment in recording conviction on its basis even without corroboration.

Chintamaneni Prabhakara Rao VS S. I. of Police, Pedapadu Police Station, 26 Sep 2019; 2019 3 ALT(Cri) 184; 2019 0 Supreme(AP) 147; 2020 1 ALD Crl413 (AP);

To sum up;

(i) If, the offences committed by elected MPs & MLAs disclose only general offences like I.P.C. but not related to any special enactment, then up to the stage of trial, the procedure prescribed under Cr.P.C. is to be followed before concerned Court and then committed to designated Court for conducting trial.

(ii) If, some or all of the offences committed by MPs & MLAs are related to any special enactment and if such enactment prescribes special procedure for taking cognizance and conducting trial, then such procedure shall be followed.

Ramadugu Omkar Varma Vs Ashok Naik, 2020 1 ALD Crl 424 (TS); https://indiankanoon.org/doc/191857134/

The respondent merely states that since the petitioner was in the habit of deceiving people by making them part with their money promising to find hidden treasure in their house, his arrest was 'imminent', and so Section 41-A of Cr.P.C. notice was not issued to him in order to prevent him from committing other similar offences.

In my opinion, this reason assigned in the counter-affidavit cannot be accepted as a valid one for not issuing notice under Section 41-A of Cr.P.C. to the petitioner because admittedly under Section 41(1)(b) he was not liable to be arrested since the offences alleged against him would not be punishable with imprisonment for a term more than seven (7) years and no material.

K. Kishan Reddy S/o Malla Reddy VS State, ACB through Special Public Prosecutor for ACB Cases, High Court, Hyd., 05 Dec 2019; 2019 0 Supreme(Telangana) 349; 2020 1 ALD Crl 446(TS)

It is relevant to note that the Hon'ble Supreme Court in Sudip Kumar Sen alias Biltu v. State of West Bengal with batch, (2016) 3 SCC 26 categorically held that the Court may act on the testimony of single witness though uncorroborated, provided that the testimony of single witness is found reliable. In the facts of the case on hand, the prosecution examined PW.4, mediator, who categorically deposed the entire facts and also PW.10 - DSP, ACB. At the cost of repetition, as discussed supra, the Accused Officer failed to disprove the contents of Ex.P17 and receipt of the same by PW.10. Nothing contra was elicited from PW.4 and PW.10. Therefore, there is no circumstance that warrants disbelieving their depositions.

(vi) It is also relevant to mention the principle held by Apex Court in State of Assam v. Ramen Dowarah, (2016) 3 SCC 19 wherein it is categorically held that "men may lie but the circumstances do not is the cardinal principle of the evaluation of evidence." In the present case, the de facto complainant despite lodging Ex.P17 complaint and giving statement to ACB, he has avoided to appear before the trial Court. Similarly, PWs.1 to 4 and 6 to 9 resiled from their previous statements to help the Accused Officer. Thus, the trial Court did not commit any error, much less manifest error in recording conviction against the Accused Officer on the analysis of entire evidence and consideration of material on record.

Paleti Hanumantha Rao and two others Vs State of Telangana; CRLP 9640 of 2017 on 9th Dec, 2019; 2020 1 ALD Crl 461(AP);

in a given set of facts there may be a civil wrong and also criminal offence.

A person could develop an intention not to pay and to cheat in the course of his dealings. Merely because he paid some amounts initially cannot come to an irresistible conclusion that there is no intention to cheat. It depends on the facts of each case. The argument that intention must be present from the inception does not mean that an offence of cheating cannot be laid if it is proven that the intention developed during the course of the business. This "intention" is a matter of evidence. The mere fact that some payments were made also cannot lead to irresistible conclusion that this is purely a civil wrong. Intention or the required mens rea could be developed in the midst of a number of transactions.

Ganimineni Madhu Vs Sakhamuri Rangaiah Chowdary and another; 2020 1 ALD Crl.471(AP)

There is no provision in the scheme of the Code which enables the Court to dismiss the Criminal Appeal for default owing to absence of the appellant or his pleader.

STATE OF MADHYA PRADESH VS YOGENDRA SINGH JADON, 31 Jan 2020; 2020 0 Supreme(SC) 105; 2020 1 ALD Crl 484(SC)

The manner in which loan was advanced without any proper documents and the fact that the respondents are beneficiary of benevolence of their father prima facie disclose an offence under Sections 420 and 120-B IPC. It may be stated that other officials of the Bank have been charge sheeted for an offence under Sections 13(1)(d) and 13(2) of the Act. The charge under Section 420 IPC is not an isolated offence but it has to be read along with the offences under the Act to which the respondents may be liable with the aid of Section 120-B of IPC.

Somireddy Chandra Mohan Reddy Vs State of A.P; 2020 1 ALD Crl. 499 (AP)

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 authorized by someone else. Therefore, 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 the 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 the Code are attracted.

Kavitha Vs State of A.P.; 2020 1 ALD Crl 505

in Velagapudi Babu Rao Vs. State of A.P1 ; wherein, this Court held that the Sub-Inspector of Police could not be said to be a 'public servant' within the meaning of Section 195(1) of the Criminal Procedure Code. The complainant in this case is also a Sub-Inspector of Police. Hence, the offence under Section 188 of I.P.C. would not attract and the prosecution for the same cannot be sustained. With regard to the offence under Section 341 of I.P.C., the alleged acts of the petitioner cannot be considered for the offence under Section 341 I.P.C. as it is a provision of wrongful restraint, which is not there in this case. The alleged acts of the petitioner with regard to the other offences under Sections 290 and 291 of I.P.C also does not attract to the petitioner. Except the charge sheet, mentioning that there was obstruction of free passage of vehicles, there is no allegation that there was any annoyance caused to the public as required to under Section 268 I.P.C. which defines public nuisance, which is punishable under Section 290 I.P.C. As regards the offence under Section 291 I.P.C., absolutely no allegation is found that there is any continuation of nuisance. When no nuisance as defined under the Code, is not made out, the question of continuation does not arise. 5. The other contention of learned counsel for the petitioner is that the complainant, who is the Police official, has also conducted investigation in this case and, hence, in view of the judgment of the Apex Court in Megha Singh Vs. State of Haryana2 , the prosecution in respect of those offences also cannot be sustained. The Apex Court in Megha Singh2 observed that the Head Constable therein, who arrested the accused, conducted search and filed the complaint, also conducted the investigation and hence, he being the complainant, he should not have proceeded with the investigation of the case. The prosecution, hence, for all the offences gets vitiated.

NAWAB VS STATE OF UTTARAKHAND, 22 Jan 2020; 2020 1 Supreme 418; 2020 0 Supreme(SC) 60; 2020 2 SCC 736

The deceased had only one entry and exit wound. The bullet apparently exited her body and thus the likelihood of its recovery from the place of occurrence with the round end damaged after it was fired. The pistol was recovered on the confession of the appellant from under the earth in the courtyard, the earth was freshly dug. The High Court disbelieved the recovery because the independent witness PW- 2 went hostile. But the High Court missed the reasoning by the trial court that PW-2 did not deny his signature on the recovery memo nor did he state that his signature was obtained by threat, duress or coercion. The absence of any FSL report may at best be defective investigation.

In Trimukh Maroti Kirkan vs. State of Maharashtra, (2006) 10 SCC 681, it was observed as follows :

> "14. If an offence takes place inside the privacy of a house and in such circumstances where the assailants have all the opportunity to plan and commit the offence at the time and in circumstances of their choice, it will be extremely difficult for the prosecution to lead evidence to establish the guilt of the accused if the strict principle of circumstantial evidence, as noticed above, is insisted upon by the courts. A judge does not preside over a criminal trial merely to see that no innocent man is punished. A judge also presides to see that a guilty man does not escape. Both are public duties. The law does not enjoin a duty on the prosecution to lead evidence of such character which is almost impossible to be led or at any rate extremely difficult to be led. The duty on the prosecution is to lead such evidence which it is capable of leading, having regard to the facts and circumstances of the case. Here it is necessary to keep in mind Section 106 of the Evidence Act which says that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him….
>
> 15. Where an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence. The burden would be of a comparatively lighter character. In view of Section 106 of the Evidence Act there will be a corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed. **The inmates of the house cannot get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case lies entirely upon the prosecution and there is no duty at all on an accused to offer any explanation**."

MYAKALA DHARMARAJAM VS STATE OF TELANGANA, 07 Jan 20202020 1 Supreme 44; 2020 0 Supreme(SC) 6; 2020 2 SCC 743

In Raghubir Singh v. State of Bihar, (1986) 4 SCC 481 this Court held that bail can be cancelled where (i) the accused misuses his liberty by indulging in similar criminal activity, (ii) interferes with the course of investigation, (iii) attempts to tamper with evidence or witnesses, (iv) threatens witnesses or indulges in similar activities which would hamper smooth investigation, (v) there is likelihood of his fleeing to another country, (vi) attempts to make himself scarce by going underground or becoming unavailable to the investigating agency, (vii) attempts to place himself beyond the reach of his surety, etc. The above grounds are illustrative and not exhaustive. It must also be remembered that rejection of bail stands on one footing but cancellation of bail is a harsh order because it interferes with the liberty of the individual and hence it must not be lightly resorted to.

M. E. Shivalingamurthy VS Central Bureau of Investigation, Bengaluru, 07 Jan 2020; 2020 1 Supreme 169; 2020 0 Supreme(SC) 12; 2020 2 SCC 768;

The defence of the accused is not to be looked into at the stage when the accused seeks to be discharged under Section 227 of the Cr.PC (See State of J & K v. Sudershan Chakkar and another, AIR 1995 SC 1954). The expression, "the record of the case", used in Section 227 of the Cr.PC, is to be understood as the documents and the articles, if any, produced by the prosecution. The Code does not give any right to the accused to produce any document at the stage of framing of the charge. At the stage of framing of the charge, the submission of the accused is to be confined to the material produced by the Police (See State of Orissa v. Debendra Nath Padhi, AIR 2005 SC 359).

Shilpa Mittal VS State of NCT of Delhi, 09 Jan 2020; 2020 1 KHC 273; 2020 1 Supreme 193; 2020 0 Supreme(SC) 21; 2020 2 SCC 787

From the scheme of Section 14, 15 and 19 referred to above it is clear that the Legislature felt that before the juvenile is tried as an adult a very detailed study must be done and the procedure laid down has to be followed. Even if a child commits a heinous crime, he is not automatically to be tried

as an adult. This also clearly indicates that the meaning of the words 'heinous offence' cannot be expanded by removing the word 'minimum' from the definition.
in exercise of powers conferred under Article142 of the Constitution, we direct that from the date when the Act of 2015 came into force, all children who have committed offences falling in the 4th category shall be dealt with in the same manner as children who have committed 'serious offences'.

Ss. 9 and 3 — Mandatory nature of — Non-compliance with S. 9 r/w R. 7 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995: In this case, Respondents were charged under Ss. 302/34 and 404/34 IPC apart from S. 3(2)(v) of the 1989 Act. Investigation was conducted by Sub-Inspector and not by DSP as required by R. 7 of the 1995 Rules. It was held by the Supreme Court that the proceedings under SC/ST Act, were rightly quashed by courts below, but charge-sheet deserved to proceed in an appropriate competent court of jurisdiction for offences punishable under IPC, as investigation had been made by a competent police officer in accordance with provisions of CrPC, so far as the offences punishable under IPC were concerned. Impugned order was accordingly restricted to offence under S. 3 of the 1989 Act and not in respect of offences punishable under IPC. **[*State of M.P.* v. *Babbu Rathore*, (2020) 2 SCC 577]**

Penal Code, 1860 — S. 34 — Common intention — Vicarious liability — Inference of: In order to invoke principle of joint liability in commission of criminal act as laid down in S. 34, prosecution should show that criminal act in question was done by one of the accused persons in furtherance of common intention of all. Common intention may be through a pre-arranged plan, or it may be generated just prior to the incident. Common intention denotes action in concert, and a prior meeting of minds. The acts may be different, and may vary in their character, but they are all actuated by the same common intention. Question as to whether there is any common intention or not depends upon the inference to be drawn from the proven facts and circumstances of each case. Totality of the circumstances must be taken into consideration in arriving at the conclusion whether accused persons had the common intention to commit the offence. **[*Virender* v. *State of Haryana*, (2020) 2 SCC 700]**

Penal Code, 1860 — S. 85 — Applicability of exception — Defence of intoxication when thing which intoxicated accused was administered to him without his knowledge or against his will: Defence of intoxication/drunkenness can be availed of only when intoxication produces such a condition as accused loses the requisite intention for the offence and onus of proof about reason of intoxication, due to which accused had become incapable of having particular knowledge in forming particular intention, is on the accused. Evidence of drunkenness which renders accused incapable of forming the specific intent essential to constitute the crime should be taken into account with the other facts proved in order to determine whether or not he had the intention. Merely establishing that his mind was affected by drink so that he more readily gave way to some violent passion, does not rebut the presumption that a man intends the natural consequences of his acts. ***[Suraj Jagannath Jadhav* v. *State of Maharashtra*, (2020) 2 SCC 693]**

NOSTALGIA

Sec 41A CrPC- H.C. direction to follows Arnesh Kumar Guidelines- if Arrest of the accused is necessary- Police can arrest despite the said direction. Kandula Bapuji vs Sri Abdul Nabi on 29 October, 2018; https://indiankanoon.org/doc/6653173/ ; CONTRIBUTED BY SRI V.BALABUCHAIAH, LEGAL ADVISOR, CYBERABAD COMMISSIONERATE AND RETD JDOP, TELANGANA.

I am of the considered view that the petitioner failed to establish the contempt said to be committed by the respondent. It must be made clear that this Court in its order dated 01.05.2018 in Crl.P.No.4400/2018 has not given any direction to the Investigating Officer not to arrest the petitioner during the course of investigation. It only directed that during the course of investigation, the I.O shall strictly follow the guidelines rendered by the

Hon'ble Apex Court in Arnesh Kumar's case and also the procedure contemplated under Section 41A Cr.P.C towards the petitioner.

Departmental Proceedings X Criminal Case:

The Apex Court, in Noida Entrepreneurs Assn.'s case (2007) 10 SCC 385) though held that even if there is an acquittal in the criminal proceedings, the same does not bar departmental proceedings, the present set of facts stand on a different footing from that of the above case. In the present case on hand, the criminal case and the disciplinary case are on the same set of facts and same cause of action. In that scenario, when the competent criminal Court, after conducting due trial, acquits the accused, there cannot be any contra finding in the departmental proceedings so as to award punishment to the accused. Therefore, the facts in Noida Entrepreneurs Assn.'s case (supra) are distinguishable and not applicable to the present case. Likewise, the facts in Kadarbhai J. Suthar's case (2007) 10 SCC 561) are also easily distinguishable with the facts of the present case and hence, the said decision also is not of any help to the case of the petitioner.

Extra judicial confession need not in all cases be corroborated

In Ram Lal vs. State of Himachal Pradesh, 2018 SCC OnLine SC 1730 to contend that the evidence of extra judicial confession need not in all cases be corroborated. It was held as under:

"14. It is well settled that conviction can be based on a voluntarily confession but the rule of prudence requires that wherever possible it should be corroborated by independent evidence. Extra-judicial confession of accused need not in all cases be corroborated. In Madan Gopal Kakkad vs. Naval Dubey, (1992) 3 SCC 204, this court after referring to Piara Singh vs. State of Punjab, (1977) 4 SCC 452 held that the law does not require that the evidence of an extra-judicial confession should in all cases be corroborated. The rule of prudence does not require that each and every circumstance mentioned in the confession must be separately and independently corroborated."

mere failure on part of the concerned employees to perform their duties- not enough to attract penal provisions.

In Anil Kumar Bose vs. State of Bihar, (1974) 4 SCC 616 pertained to a case which had arisen after a full fledged trial, where, as regards offence punishable under Section 420/34 IPC, it was observed that the essential ingredient being mens rea, mere failure on part of the concerned employees to perform their duties or to observe the rules/procedure may be administrative lapses but could not be said to be enough to attract the penal provisions under Section 420 IPC. The matter was considered after the facts had crystalized in the form of evidence before the court and as such, this decision is of no relevance for the present purposes.

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NEWS

- The Protection of Children from Sexual Offences Rules, 2020, are notified and effective from 09.03.2020.

- Corrigendum to POCSO Rules,2020 hindi version published on 17.03.2020.

- GOVERNMENT OF ANDHRA PRADESH- ESTABLISHMENT - LAW DEPARTMENT – Sri Dontireddy Vishnu Vardhana Reddy, Assistant Public Prosecutor, Department of Prosecutions – Posted as O.S.D against the post of Draftsman to Government, Law Department temporarily for a period of one (1) year only on deputation basis - Orders – Issued. G.O.Rt.No.94 LAW (E) DEPARTMENT Dated: 11-03-2020

- GOVERNMENT OF ANDHRA PRADESH- Home Department — A.P. Prosecution Services — Retirement of certain Prosecuting Officers on attaining the age of Superannuation during the year 2020 — Notification — Orders — Issued. G.O.RT.No. 324 HOME (COURTS.A) DEPARTMENT Dated: 23-03-2020

Sl. No	Name and Designation	Date of Birth	Date of Retirement
(1)	S/Sri. (2)	(3)	(4)
1.	Smt.Rafat, Public Prosecutor on OD as Legal Advisor, Intelligence Department, Vijayawada.	07.05.1960	31.05.2020
2.	Smt. T.Jayalakshmi, Additional Public Prosecutor Grade-I, I Additional District and Sessions Judge Court, Kadapa, YSR Kadapa District.	18.08.1960	31.08.2020
3.	Sri. S.Tarakeswarlu, Additional Public Prosecutor Grade-I/ Special Public Prosecutor, Special Court for trail of offences under SCs/STs (POA) Act, 1989, Ananthapuramu.	21.10.1960	31.10.2020

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ON A LIGHTER VEIN

On Tuesday, the Bench heard a review petition filed by a group of 12 flower merchants against Madurai Agricultural Marketing Committee's decision to construct a few buildings at a site originally earmarked for dumping garbage inside the paddy-cum-flower market complex near Mattuthavani bus stand here.

Additional Advocate General (AAG) K. Chellapandian was arguing the case vociferously in favour of the marketing committee, when the judge wanted to know the stand of the Madurai Municipal Corporation. The Corporation counsel stood up and said: "My Lord, we are only bothered about collection."

Reacting to it, the judge, in a lighter vein, asked: "Collection? Collection of what?" Hearing the witty remark, lawyers and litigants in the court hall burst into laughter. Immediately, the counsel, who was also all smiles, stressed: "I mean garbage collection, My Lord. Nothing else."

As the arguments proceeded further, the AAG produced photographs to show that the construction, under challenge in the present review petition, had already been completed and, therefore, the case had become infructuous.

To this, the judge said: "So, the marriage is already over and the conception has also taken place. What we are expected to deliver now is the problem." Later, he reserved the judgement in the case.

Source: https://www.thehindu.com/news/cities/Madurai/all-in-a-lighter-vein/article5900025.ece

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Protect yourself and others!

Follow these Do's and Don'ts

Do's

- Practice frequent hand washing. Wash hands with soap and water or use alcohol based hand rub. Wash hands even if they are visibly clean
- Cover your nose and mouth with handkerchief/tissue while sneezing and coughing
- Throw used tissues into closed bins immediately after use
- See a doctor if you feel unwell (fever, difficult breathing and cough). While visiting doctor wear a mask/cloth to cover your mouth and nose
- If you have these signs/symptoms please call State helpline number or Ministry of Health & Family Welfare's 24*7 helpline at 011-23978046
- Avoid participating in large gatherings

We Care for you, as you are a family to us- Stay Home, Stay Safe
—Prosecution Replenish

Don'ts

- Have a close contact with anyone, if you're experiencing cough and fever
- Touch your eyes, nose and mouth
- Spit in public

Together we can fight Coronavirus

For further information :
Call at Ministry of Health, Govt. of India's 24*7 control room number
+91-11-2397 8046
Email at ncov2019@gmail.com

mohfw.gov.in @MoHFWIndia @MoHFW_INDIA mohfwindia

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Part-5

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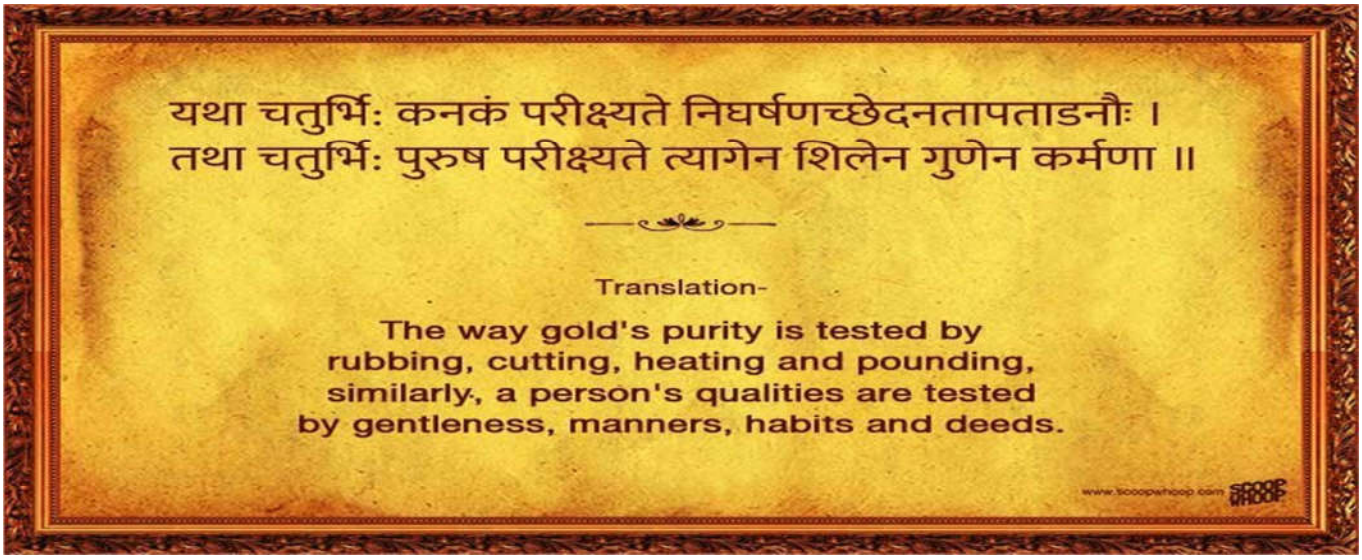
May, 2020

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



CITATIONS

IN RE CONTAGION OF COVID 19 VIRUS IN CHILDREN PROTECTION HOMES VS ., 03 Apr 2020 2020 0 Supreme(SC) 295;

4. MEASURES TO BE TAKEN BY CHILD WELFARE COMMITTEES

CWCs are directed to proactively consider steps that are to be taken in the light of COVID - 19, while conducting their inquiries/inspections and also whether a child or children should be kept in the CCI considering the best interest, health and safety concerns

Special online sittings or video sessions may be called to consider measures that may be taken to prevent children residing in the Children's Homes, SAAs, and Open Shelters from risk of harm arising out of COVID- 19

Gatekeeping or preventive measures need to be considered and families counselled to ensure that institutionalization is the last resort. Focus should be on prevention of separation when possible.

CWCs to monitor cases telephonically for children who have been sent back to their families and coordinate through the District Child Protection Committees and Foster care and Adoption Committees (SFCACs) for children in foster care.

As far as possible, online help desks and support systems for queries to be established at the state level for children and staff in CCIs.

It is important to consider that violence, including sexual and gender-based violence may be exacerbated in contexts of anxiety and stress produced by lockdown and fear of the disease, CWCs can monitor regularly through video conferencing, WhatsApp and telephonically to ensure prevention of all forms of violence.

5. MEASURES TO BE TAKEN BY JUVENILE JUSTICE BOARDS AND CHILDREN COURTS

Juvenile Justice Boards (JJB) and Children's Courts are directed to proactively consider steps that are to be taken in the light of COVID - 19, while conducting their inquiries/inspections. Online or video sessions can be organized.

The Juvenile Justice Boards/Children's Courts may consider measures to prevent children residing in Observation Homes, Special Homes and Places of Safety from risk of harm arising out of COVID- 19.

In this regard, JJBs and Children's Courts are directed to proactively consider whether a child or children should be kept in the CCI considering the best interest, health and safety concerns. These may include:

- Children alleged to be in conflict with law, residing in Observation Homes, JJB shall consider taking steps to release all children on bail, unless there are clear and valid reasons for the application of the proviso to Section 12, JJ Act, 2015.21
- Video conferencing or online sittings can be held to prevent contact for speedy disposal of cases.

- Ensure that counselling services are provided for all children in Observation homes.

It is important to consider that violence, including sexual violence may be exacerbated in contexts of anxiety and stress produced by lockdown and fear of the disease. JJBs would need to monitor the situation in the Observation Homes on a regular basis.

6. MEASURES TO BE TAKEN BY GOVERNMENTS

All states need to recognize that COVID-19 has been declared a pandemic, which warrants urgent attention and action to pre-empt emergency and disaster situation from arising with regard to children in State care. It is directed that all State Governments shall:

1. Circulate information to all CCIs about how to deal with COVID -19 immediately, with instructions that awareness about COVID-19 is spread in a timely and effective manner.
2. Begin preparing for a disaster/emergency situation that may arise. Work with Persons in Charge of CCIs and District Child Protection Units to plan staffing rotations or schedules to reduce in-person interaction by CCI staff, where feasible. Begin developing a system for how to organise trained volunteers who could step in to care for children, when the need arises.
3. Ensure that all government functionaries perform their duties diligently, and that strict action would be taken should there be any dereliction of duty. As per Rule 66 (1), Juvenile Justice Model Rules, 2016, any dereliction of duty, violation of rules and orders, shall be viewed seriously and strict disciplinary action shall be taken or recommended by the Person-in-charge against the erring officials.
4. Make provisions to ensure that counselling is made available, and that there are monitoring systems in place to prevent violence, abuse, and neglect, including gender-based violence, which may be exacerbated in contexts of stress produced by lockdown.
5. Ensure adequate budgetary allocation is made to meet the costs that are likely to arise for the effective management of the pandemic, and that all bottlenecks and procedural delays are effectively curbed.
6. Ensure adequate availability of good quality face masks, soap, disinfectants such as bleach, or alcohol-based disinfectants, etc.
7. Ensure availability of adequate food, drinking water, and other necessities such as clean clothes, menstrual hygiene products, etc.

7. DIRECTIONS TO CCIs

The Person in Charge of the CCI and all other staff working in the CCI shall proactively and diligently take all necessary steps to keep the children safe from the risk of harm arising out of COVID-19, in furtherance of the fundamental principle of safety enshrined in the Juvenile Justice (Care and Protection of Children) Act, 2015 (JJ Act, 2015).

1. The Health Ministry has set up new National Helpline on COVID-19, which are 1075 and 1800-112-545. In case of any queries or clarifications related to Coronavirus pandemic, call on this number. In addition, Childline 1098 continues to be operational.
2. In the case of staff or children with symptoms, call the helplines above mention and or a local doctor. Go to the hospital only if you receive such advise by doctor/helpline, or if symptoms are severe.
3. Staff or any other individual found to be exhibiting symptoms of COVID-19 should not be permitted to enter the CCI.
4. CCIs should promote social distancing. The Ministry of Health and Family Welfare, Government of India (MOHFW), has issued Guidelines on Social Distancing.
5. CCIs should enforce regular hand washing with safe water and soap, alcohol rub/hand sanitizer or chlorine solution and, at a minimum, daily disinfection and cleaning of various surfaces including the kitchen and bathrooms. Where adequate water is not available, immediate steps should be taken to ensure it is made available through necessary action, including enhancing budget allocation for the said purpose.
6. CCIs should provide appropriate water, sanitation, disinfection, and waste management facilities and follow environmental cleaning and decontamination procedures.

This information should be made available to families fostering children under foster or kindship care schemes.

8. PREVENTIVE MEASURES FOR CCIs

In order to prevent children and staff members in CCIs from getting infected by COVID - 19, Persons in Charge of CCIs shall:

1. Know and make known how COVID -19 spreads

The best way to prevent illness is to avoid being exposed to this virus. Current understanding on the virus is that it spreads mainly from person-to-person.

Between a person who is infected with the virus and other people who are in close contact with that person;

Having face-to-face contact with a COVID-19 patient within 2 meters and for >15 minutes;

Through respiratory droplets produced when an infected person coughs or sneezes. These droplets can land in the mouths or noses of people who are nearby or possibly be inhaled into the lungs;

There is currently no vaccine to prevent COVID-19.

2. Take necessary steps to practice, promote and demonstrate positive hygiene behaviours and monitor their uptake

Frequent usage of hand sanitizer by guard, gardener, driver, etc. present in the residential premises/compound. Ensure that hands are cleaned and disinfected often - Clean hands at the main door and schedule regular hand washing reminders;

If possible, make arrangements hand sanitizers that contain at least 70% alcohol. Ensure that all surfaces of hands are covered, and they are rubbed together until they feel dry. ThePerson in Charge of the CCI should make necessary arrangements to utilize emergency/contingency funds for this purpose, and submit requisition for additional budgetary allocation where required, at the earliest.

3. Practice social distancing

Physical distancing must be maintained. Shaking hands and hugging as a matter of greeting to be avoided. Instruct children and staff to maintain social distance by putting distance (at least 2 metres (6 feet) distance between yourself and anyone who is coughing or sneezing) between themselves and other people if COVID-19 is spreading in the community. This is especially important for people who are at higher risk of getting very sick, such as older;

Reduce number of people entering into CCIs;

Meetings shall be done through video conferences and/or rescheduled;

Distancing should be applying in the CCIs where children and staff members congregate such as the reading, dining and television rooms. For example, use of these spaces can be scheduled at 25% participation and the schedule developed to ensure more social distancing.

4. Cleaning and disinfecting rigorously

Current evidence suggests that COVID-19 may remain viable for hours to days on surfaces made from a variety of materials. Cleaning refers to the removal of dirt and impurities, including germs, from surfaces. Cleaning alone does not kill germs. But by removing the germs, it decreases their number and therefore any risk of spreading infection. Disinfecting works by using chemicals to kill germs on surfaces. This process does not necessarily clean dirty surfaces or remove germs. But killing germs remaining on a surface after cleaning further reduces any risk of spreading infection.

Clean and disinfect the CCI building, especially water and sanitation facilities at least once a day, and particularly surfaces that are touched by many people (railings, door and window handles, toys, teaching and learning aids etc.) Clean and disinfect frequently touched surfaces daily. This includes gates/doors, doorbells, tables, doorknobs, light switches, handles, desks, phones, toilets, water taps, wash basins, etc.;

Do not shake dirty laundry; this can minimize the possibility of dispersing virus through the air;

Wash items using the hot water and dry items completely. Dirty laundry that has been in contact with an ill person can however be washed with other people's items if washed in hot water and with adequate amounts of soap/detergent;

Ensure adequate, clean toilets;

Maintain clean and hygienic kitchen conditions;

Cleaning/disinfecting all couriers packages, parcels, grocery packets before bringing inside the house and sanitizing hands right after the process. Preferably wear disposable gloves;

For disinfection, diluted household bleach solutions, alcohol solutions with at least 70% alcohol, and most common household disinfectants should be used when possible.

9. RESPONSIVE MEASURES FOR CCIs

1. Conduct regular screening: Symptoms can include fever, cough and shortness of breath. In more severe cases, infection cancause pneumonia or breathing difficulties. These symptoms are similar to the flu (influenza) or the common cold, which are a lot more common than COVID-19. This is why testing is required to confirm if someone has COVID-19.

2. Health referral system to be followed: The CCI should immediately follow procedures established by the Ministry/Department of Health and Family Welfare, if children or staff or other service providers working in the CCI become unwell. First step is to inform the nurse/doctor attached to the CCI at the earliest, when there is a suspicion of COVID-19 infection in any staff/child. CCIs can call the helplines referred above or a local doctor. Children or people affected should go only if such advise is given by doctor/helpline, or if symptoms are severe.

3. Quarantine: In case of symptoms, the children the CCI should have a quarantine/segregated section (where possible) & make alternate arrangements where a quarantine facility is not possible.

4. Planning in advance for emergency situations. The Person in Charge of the CCI shall, in coordination with the health staff attached to the CCI, - plan ahead with the local health authorities to plan for any emergency that may arise due to the COVID-19. This shall include:

- updating the emergency contact lists
- separating sick children and staff from those who are well, without creating stigma;
- for informing parents/caregivers, and consulting with health care providers/health authorities wherever possible; and
- whether or not children/staff need to be referred directly to a health facility, depending on the situation/context, or sent home, after obtaining the necessary orders from the concerned Child Welfare Committee or Juvenile Justice Board, or Children's Court.
- Information about such procedures shall be shared with staff, parents and children ahead of time.

10. MEASURES FOR CHILDREN UNDER FOSTER AND KINDSHIP CARE

Families that are fostering children should receive information about how to prevent COVID-19 as indicated above.

Follow up should be made on their health and psychosocial well-being status, and they should be informed of how to do in case of symptoms

11. GUIDANCE ON MEASURES TO ENSURE WELLBEING OF CHILDREN (CNCP and CiCWL)

It is important to acknowledge that for children, it is natural to feel stress, anxiety, grief, and worry during an ongoing pandemic like COVID-19 disease. They may express psychological distress (anxiety, sadness) by acting out in a different way- each child behaves differently. Some may become silent while other may feel and express anger and hyperactivity.

Reassure the children that they are safe. Let them know it is okay if they feel upset. Share with them how you deal with your own stress so that they can learn how to cope from you. Caregivers need to validate these emotions and talk to children calmly about what is happening in a way that they can understand. Keep it simple and appropriate for each child's age. Give children opportunities to talk about what they are feeling. Anxiety and stress is also borne out of lack of knowledge, rumors and misinformation. Provide right kind of information from trusted sources an honest, age-appropriate manner. Take time to talk with the children and to share the facts about COVID-19, - enabling them to understand the actual risk can make an outbreak less stressful.

Encourage children to connect with each other and to talk with people they trust, about their concerns and how they are feeling.

Avoid watching, reading, listening or discussing too much news about the COVID-19 and persuade children to divert their attention to other topics as well. Children may misinterpret what they hear and can be frightened about something they do not understand. Hearing about the pandemic repeatedly can be upsetting.

Disruption of routine and closure of schools may be stressful for children. Try to continue with the regular routine maintained in the home, with minimal disruptions, so as to maintain a sense of security and wellbeing, while taking all measures to ensure the safety of the children and the staff.
Spend time with children and help them to unwind, preferably doing activities they enjoy. Make it a point to have interactive activities, games etc. with children to keep them engaged in a positive way. Make sure children have enough opportunity to move around, run and do physical activities, even if they are not going to school or playing with friends outside. If schools are going to be closed for a period of time, talk to teachers to put up a list of interactive child-centric activities to keep children engaged.
It is important to consider that violence, including sexual and gender-based violence may be exacerbated in contexts of anxiety and stress produced by lockdown and fear of the disease. Do not use corporal punishment/violence to discipline children. This will add to their anxiety and stress and may have serious mental health implication. All CCI staff need to be cognizant of the fact that there is an increased risk of violence (by peers, other staff members) including sexual abuse. Ensure prevention of all forms of violence.
Guide students on how to support their peers and prevent exclusion and bullying.
Work with the health staff/social workers/counsellors to identify and support children and staff who exhibit signs of distress in the CCI. In CCIs, there may be some children who are undergoing some kind of counselling or treatment for pre-existing mental health issues. Ensure continuance of the treatment/therapy in consultation with the therapist/psychiatrist.
Ensure that no staff or child is subject to any form of stigmatizing words or behaviour arising due to coughing, sneezing, etc., as this violates the principles of 'equality and non-discrimination,' 'dignity and worth'.
Encourage and support children to take care of their bodies - taking deep breaths, stretching, doing yoga/meditation, eating healthy, well-balanced meals, exercising regularly, getting plenty of sleep, etc.
Work with social service systems to ensure continuity of critical services that may take place in CCIs, such as health screenings, or therapies for children with special needs. Consider the specific needs of children with disabilities, and how marginalized populations may be more acutely impacted by the illness or its secondary effects.
12. The Registry of this Court is directed to immediately send a copy of this order by e-mail to the Chief Secretary of every State/Union Territory who shall ensure that a copy of this order with a translated version in the local language is sent to all the CWCs and CCIs. A copy of this order shall also be sent by e-mail to the Registrar Generals of all the High Courts who shall in turn ensure that a copy of the same is forwarded forthwith to the Principal Magistrates presiding over the JJBs and presiding officers of the Children Courts.
13. We further direct the Registrar Generals of every High Court to place this order before the Chairperson of JJC of every High Court. We request the JJC of all the High Courts to not only ensure due compliance of this order but they shall also regularly monitor the implementation of the directions issued hereinabove as frequently as possible and at least once a week.

IN RE: GUIDELINES FOR COURT FUNCTIONING THROUGH VIDEO CONFERENCING DURING COVID-19 PANDEMIC VS ., 06 Apr 2020; 2020 0 Supreme(SC) 296;
in exercise of the powers conferred on the Supreme Court of India by Article 142 of the Constitution of India to make such orders as are necessary for doing complete justice, we direct that:
i. All measures that have been and shall be taken by this Court and by the High Courts, to reduce the need for the physical presence of all stakeholders within court premises and to secure the functioning of courts in consonance with social distancing guidelines and best public health practices shall be deemed to be lawful;.
ii. The Supreme Court of India and all High Courts are authorized to adopt measures required to ensure the robust functioning of the judicial system through the use of video conferencing technologies; and

iii. Consistent with the peculiarities of the judicial system in every state and the dynamically developing public health situation, every High Court is authorised to determine the modalities which are suitable to the temporary transition to the use of video conferencing technologies;
iv. The concerned courts shall maintain a helpline to ensure that any complaint in regard to the quality or audibility of feed shall be communicated during the proceeding or immediately after its conclusion failing which no grievance in regard to it shall be entertained thereafter.
v. The District Courts in each State shall adopt the mode of Video Conferencing prescribed by the concerned High Court.
vi. The Court shall duly notify and make available the facilities for video conferencing for such litigants who do not have the means or access to video conferencing facilities. If necessary, in appropriate cases courts may appoint an amicus-curiae and make video conferencing facilities available to such an advocate.
vii. Until appropriate rules are framed by the High Courts, video conferencing shall be mainly employed for hearing arguments whether at the trial stage or at the appellate stage. In no case shall evidence be recorded without the mutual consent of both the parties by video conferencing. If it is necessary to record evidence in a Court room the presiding officer shall ensure that appropriate distance is maintained between any two individuals in the Court.
viii. The presiding officer shall have the power to restrict entry of persons into the court room or the points from which the arguments are addressed by the advocates. No presiding officer shall prevent the entry of a party to the case unless such party is suffering from any infectious illness. However, where the number of litigants are many the presiding officer shall have the power to restrict the numbers. The presiding officer shall in his discretion adjourn the proceedings where it is not possible to restrict the number.

IN RE : CONTAGION OF COVID 19 VIRUS IN PRISONS VS ., 13 Apr 2020; 2020 0 Supreme(SC) 303;
By order dated 23.03.2020, we directed the States/Union Territories to constitute High Powered Committees which could decide which prisoners may be released on interim bail or parole during the pandemic (COVID 19). The purpose was to prevent the overcrowding of prisons so that in case of an outbreak of coronavirus in the prisons, the spread of the disease is manageable. The operative part of our order reads as follows:
"We direct that each State/Union Territory shall constitute a High Powered Committee comprising of (i) Chairman of the State Legal Services Committee, (ii) the Principal Secretary(Home/Prison) by whatever designation is known as, (ii) Director General of Prison(s), to determine which class of prisoners can be released on parole or an interim bail for such period as may bethought appropriate. For instance, the State/Union Territory could consider the release of prisoners who have been convicted or are under trial for offences for which prescribed punishment is up to 7 years or less, with or without fine and the prisoner has been convicted for a lesser number of years than the maximum.
It is made clear that we leave it open for the High Powered Committee to determine the category of prisoners who should be released as aforesaid, depending upon the nature of offence, the number of years to which he or she has been sentenced or the severity of the offence with which he/she is charged with and is facing trial or any other relevant factor, which the Committee may consider appropriate."
3. We are informed that the State of Bihar has not found it appropriate to release the prisoners for complete absence of any patient suffering from coronavirus within the prisons and also for the reason that the prisons are not overcrowded. Moreover, even in one case the murder of a prisoner who was "accused" of suffering from coronavirus has been reported.
4. We make it clear that we have not directed the States/ Union Territories to compulsorily release the prisoners from their respective prisons. The purpose of our aforesaid order was to ensure the States/Union Territories to assess the situation in their prisons having regard to the outbreak of the present pandemic in the country and release certain prisoners and for that purpose to determine the category of prisoners to be released.

Having regard to the present circumstances prevailing in the country and having regard to the fact that we have already permitted the release of prisoners and people under detention in general, and such detenues who have completed three years upon their declaration as foreigners, we see no reason why the period should not be reduced from three years to two years, that is to say, the prisoners or detenues who have been under detention for two years shall be entitled to be released on the same terms and conditions as those laid down in the aforesaid order dated 10.05.2019, except that they shall not be required to furnish a bond in the sum of Rs. 1,00,000/- (Rupees one lakh only). Instead they shall be required to furnish a bond in the sum of Rs. 5,000/- (Rupees five thousand only) with two sureties of the like sum of Indian citizens. Rest of the conditions in the said order dated 10.05.2019 reproduced above shall apply.

HIRA SINGH VS UNION OF INDIA, 22 Apr 2020; 2020 0 Supreme(SC) 320;

(I). The decision of this Court in the case of E. Micheal Raj (supra) taking the view that in the mixture of narcotic drugs or psychotropic substance with one or more neutral substance(s), the quantity of the neutral substance(s) is not to be taken into consideration while determining the small quantity or commercial quantity of a narcotic drug or psychotropic substance and only the actual content by weight of the offending narcotic drug which is relevant for the purpose of determining whether it would constitute small quantity or commercial quantity, is not a good law;

(II). In case of seizure of mixture of Narcotic Drugs or Psychotropic Substances with one or more neutral substance(s), the quantity of neutral substance(s) is not to be excluded and to be taken into consideration along with actual content by weight of the offending drug, while determining the "small or commercial quantity" of the Narcotic Drugs or Psychotropic Substances;

(III). Section 21 of the NDPS Act is not stand-alone provision and must be construed along with other provisions in the statute including provisions in the NDPS Act including Notification No.S.O.2942(E) dated 18.11.2009 and Notification S.O 1055(E) dated 19.10.2001;

(IV). Challenge to Notification dated 18.11.2009 adding "Note 4" to the Notification dated 19.10.2001, fails and it is observed and held that the same is not ultra vires to the Scheme and the relevant provisions of the NDPS Act. Consequently, writ petitions and Civil Appeal No. 5218/2017 challenging the aforesaid notification stand dismissed.

Jampani Gopichand VS State of Telangana, 05 Feb 2020; 2020 0 Supreme(Telangana) 11;

the writ petition is disposed of directing the petitioner to appear before respondent No.3 with RC book relating to vehicle in question and also produce the proof of his identity and thereupon, respondent No.3 or other official, who has the custody of the vehicle in question, shall release the said vehicle to the petitioner forthwith. (**It is the case of the petitioner that the aforesaid vehicle has been illegally detained by respondent No.3 on the ground that he was in an intoxicated condition.**)

Narne Estates Pvt. Ltd. VS Narne Gopal Naidu, 29 Jan 2020; 2020 0 Supreme(Telangana) 35;

in the case on hand, though the Application is made invoking Section 242(2) read with Section 311 of the Cr.P.C., the right conferred on the prosecution under Section 173(8) cannot be whittled down by mere reference to a wrong provision of law. So far as the judgment of the Supreme Court in Sethuraman's case, the same has no application to the facts of the present case, as, admittedly, the Application made by the Public Prosecutor was not under Section 91 Cr.P.C., which empowers the Court to summon a witness / document. Even otherwise, without getting into the controversy, it may be noted, what all required to invoke Section 173(8) is - leave of the Court to be obtained for filing additional documents that too in the prescribed format. A perusal of the Code of Criminal Procedure and the format prescribed thereunder as well as the formats prescribed under the Criminal Rules of Practice, as applicable to the State, do not disclose any specific proforma having been prescribed for filing additional documents, except Format 20 for filing the charge sheet. The word 'prescribed', as defined under Section 2(t) by the Rules made under this Code does not contain any prescribed format for filing the material documents more particularly one in relation to Section 173(8). In other words, in normal parlance, either by way of additional charge sheet or by way of a challan, the documents can be placed before the Court.

Further, it may be noted the reasons for rejection as quoted supra in earlier paragraphs are hardly sustainable particularly with respect to para 7 of the order wherein the learned Magistrate came to the conclusion as to the relevancy or otherwise of the documents, ignoring the fact that the documents are yet to be taken on record, and their admissibility, relevancy or otherwise are the matters which are to be considered during the examination and marking of the documents and not at the stage of receiving the documents itself.

Sec 30 IEA

In Ananta Dixit vs. The State, (1984) CrLJ 1126, the Orissa High Court was considering a similar case under Section 30 of the Evidence Act. The appellant, in this case, was absconding. The question for consideration was whether a confession of one of the accused persons who was tried earlier, is admissible in evidence against the appellant. The Court held that the confession of the co-accused was not admissible in evidence against the present appellant. The Court held:

> "7. As recorded by the learned trial Judge, the accused Narendra Bahera, whose confessional statement had been relied upon, had been tried earlier and not jointly with the appellant and the co-accused person Baina Das. A confession of the accused may be admissible and used not only against him but also against a co-accused person tried jointly with him for the same offence. Section 30 applies to a case in which the confession is made by accused tried at the same time with the accused person against whom the confession is used. The confession of an accused tried previously would be rendered inadmissible. Therefore, apart from the evidentiary value of the confession of a co-accused person, the confession of Narendra Behera was not to be admitted under Section 30 of the Evidence Act against the present appellant and the co-accused Baina Das."

SLEEP

the Hon'ble Supreme Court in the case of Ramleela Maidan Incident, In re. (2012) 5 SCC 1 observed that "an individual is entitled to sleep as comfortably and as freely as he breathes. Sleep is essential for a human being to maintain the delicate balance of health necessary for its very existence and survival Sleep is, therefore, a fundamental and basic requirement without which the existence of life itself would be in peril To disturb sleep, therefore, would amount to torture which is now accepted as a violation of human right."

- GOVERNMENT OF ANDHRA PRADESH- Public Services – Prosecutions Department - Additional Public Prosecutors Grade-I/ Deputy Directors of Prosecutions fit for promotion to the category of Public Prosecutors/Joint Directors of Prosecutions for the panel year 2019-20 - Inclusion of the names of eligible Additional Public Prosecutors Grade-I - Orders – Issued- G.O.MS.No. 52 HOME (COURTS.A) DEPARTMENT Dated 09-04-2020.

Sl. No	Name of the Officer S/Sri/Smt.	Roster Point No.	Remarks
1.	V. Rajendra Prasad	RP-66 (SC.W)	Included and promotion be deferred until termination of the disciplinary proceedings pending against him in terms of G.O.Rt. No. 424, GAD, dated: 25.05.1976 read with G.O.Rt.No.257, GAD, dt: 10.06.1999.
2.	K. Vittal Kumari	RP-67	Included
3.	T. Jayalakshmi	RP-68	Included

- GOVERNMENT OF ANDHRA PRADESH- Public Services — A.P. Prosecution Department — Assigning notional seniority in respect of Sri K. Rama Naik, in the cadre of Senior Assistant Public Prosecutor w.e.f. 04.12.2007 on par with his immediate junior — Orders — Issued- G.O.RT.No. 334 HOME (COURTS.A) DEPARTMENT dated 01-04-2020.

- The Epidemic Diseases amendment ordinance providing for penal provisions against attacks on Medical professionals and medical establishments is notified to take effect from 22.04.2020.

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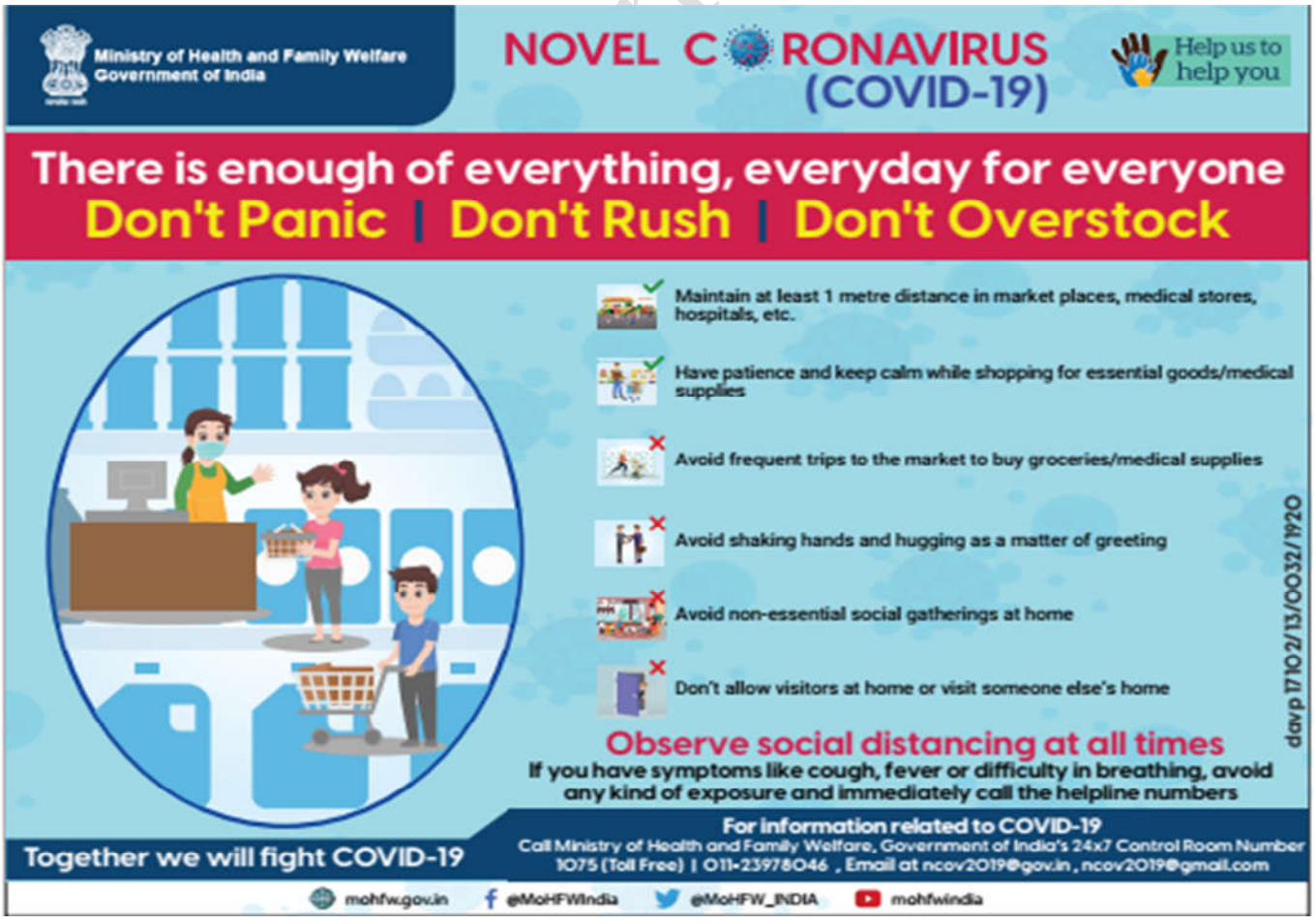

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Part-6

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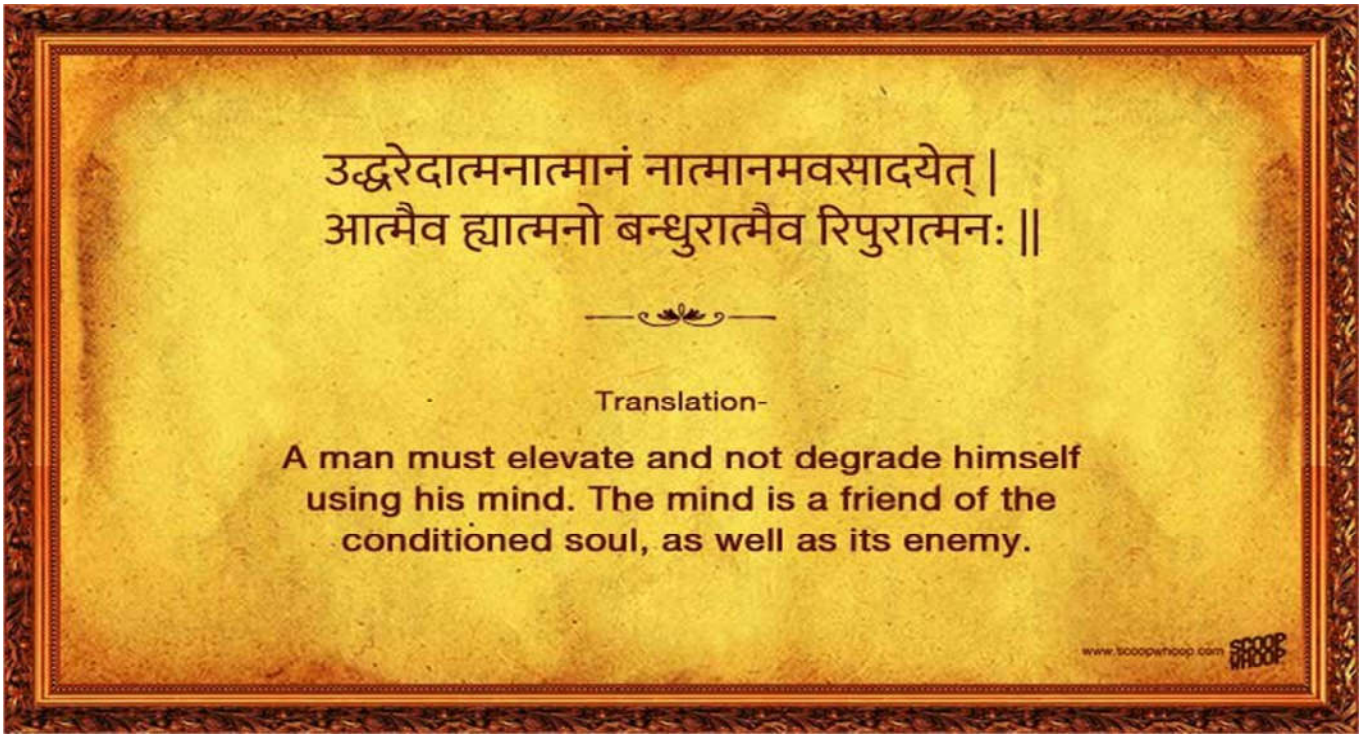
An Endeavour for Learning and Excellence

June, 2020

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



Season's Greetings. How are you Officer, Hope you & your family members are doing well. Please note that now we all are in Danger Zone. No one is monitoring us. The State & Central Governments and other Agencies have discharged their duties properly and controlled and monitored us from going out during lockdown period. We were enlightened and habituated to lead a Normal Life during lockdown period and how to take care of ourselves and our family. Now there is every chance of Community Spread of Covid in the coming months. So far we were not coming out, hence were safe. Now in-view of relaxations and no direct monitoring by any of the Agency, we have to be very careful while going out for discharging our duties or even in case of any emergency. No one will protect us. We have to take our care and protect ourselves and our beloved ones. Self-Containment is very important. State & Central Govt has done their best and shown the path of self-containment for taking our care. Hence I request you to take care of yourself and family. Avoid coming out except only if, only if, it is inevitable. We can lead normal life by taking all precautions during this period. Dear Friend you are well aware that the Lock Down has taught us how to lead normal without unnecessary shopping, avoiding outside food, avoiding unnecessary touring and being happy even without visiting the places of amusement etc. So please Stay Home except while discharging your official duties and emergencies. Please enlighten your loved ones in this regard and make them safe. Take Care. Stay Safe and Stay Blessed.

Regards.

Rajeshwer Rao,

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CITATIONS

Arnab Ranjan Goswami VS Union of India, 19 May 2020; 2020 0 Supreme(SC) 372; JT 2020 (5) SC 1
The filing of multiple FIRs arising out of the same telecast of the show hosted by the petitioner is an abuse of the process and impermissible.

JAGMAIL SINGH VS KARAMJIT SINGH, 13 May 2020; 2020 0 Supreme(SC) 371; JT 2020 (5) SC 157
merely the admission in evidence and making exhibit of a document does not prove it automatically unless the same has been proved in accordance with the law.
In the matter of Rakesh Mohindra vs. Anita Beri and Ors., (2016) 16 SCC 483 this Court has observed as under:-
"15. The preconditions for leading secondary evidence are that such original documents could not be produced by the party relying upon such documents in spite of best efforts, unable to produce the same which is beyond their control. The party sought to produce secondary evidence must establish for the non-production of primary evidence. Unless, it is established that the original documents is lost or destroyed or is being deliberately withheld by the party in respect of that document sought to be used, secondary evidence in respect of that document cannot accepted."

State of Rajasthan VS Mehram, 06 May 2020; 2020 0 Supreme(SC) 359;
The two theories (of being aggressors as opposed to exercise of right of private defence) are antithesis to each other.

OMBIR SINGH VS STATE OF UTTAR PRADESH, 26 May 2020 ; 2020 0 Supreme(SC) 379;
The obligation is on the IO to communicate the report to the Magistrate. The obligation cast on the IO is an obligation of a public duty. But it has been held by this Court that in the event the report is submitted with delay or due to any lapse, the trial shall not be affected. The delay in submitting the report is always taken as a ground to challenge the veracity of the FIR and the day and time of the lodging of the FIR.
In cases where the date and time of the lodging of the FIR is questioned, the report becomes more relevant. But mere delay in sending the report itself cannot lead to a conclusion that the trial is vitiated or the accused is entitled to be acquitted on this ground.

Canara Bank VS Leatheroid Plastics Pvt. Ltd., 20 May 2020; 2020 0 Supreme(SC) 376;
the Commission was right in holding that the complainant had suffered loss because of inaction and negligence on the part of the Bank. (The Bank failed to insure the hypothecated machinery).

Dinesh Kumar Gupta VS High Court of Judicature of Rajasthan, 29 Apr 2020; 2020 0 Supreme(SC) 351; 2020 SCC OnLine SC 420 ,

the reckonable date has to be the date when substantive appointment is made and not from the date of the initial ad-hoc appointment or promotion.

Jahn Anand Ran vs The State Of Telangana And 2 Others on 28 May, 2020; https://indiankanoon.org/doc/11903068/
Vehicle involved in contravention of provisions of Excise act, directed to be released on

i. the petitioner furnishing a Fixed Deposit Receipt (FDR) for the value of the vehicle, to be assessed by the Motor Vehicle Inspector, to the 2nd respondent.
ii. the petitioner furnishing an undertaking that he will not alienate or change the physical features of the vehicle.
iii. The 2nd respondent shall write to the RTA authority not to transfer the vehicle in favour of any third party without clearance from the Excise Department.
iv. Needless to say, release of the vehicle is subject to the orders that shall be passed by the respondent authorities pursuant to the enquiry to be conducted under the provisions of the Excise Act.

Smt. Erravelli Prameela And ... vs The State Of Telangana And Another on 28 May, 2020; https://indiankanoon.org/doc/16257247/;
Chintakayala Satish And 4 Others vs The Station House Officer on 28 May, 2020; https://indiankanoon.org/doc/25693938/;
Police were directed to follow the mandatory provisions as contemplated under Section 41-A Cr.P.C. as well as the guidelines issued by the Hon'ble Apex Court in Arnesh Kumar vs. State of Bihar in a case registered for the offences under Sections 323 and 290 read with 34 IPC and Section 3(i)(r)(s) and 3(2)(v)(a) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 2015.

Shaik Jahangir Baba vs The State Of Telangana And 2 Others on 28 May, 2020; https://indiankanoon.org/doc/144972132/;
Vehicle involved in contravention of provisions of Excise act, directed to be released to the TRANSPORTER unconcerned with the goods being carried; on

i. the petitioner furnishing a Fixed Deposit Receipt (FDR) for Rs.75,000/-, to the 2nd respondent.
ii. the petitioner furnishing an undertaking that he will not alienate or change the physical features of the vehicle.
iii. The 2nd respondent shall write to the RTA authority not to transfer the vehicle in favour of any third party without clearance from the Excise Department.

Needless to say, release of the vehicle is subject to the orders that shall be passed by the respondent authorities pursuant to the enquiry to be conducted under the provisions of the Excise Act.

V. Chandra Naik And Another vs The State Of Telangana And 2 Others on 27 May, 2020; https://indiankanoon.org/doc/74358090/;
The petitioners are at liberty to approach either the learned Jurisdictional Magistrate before whom the vehicles may have been produced and file application as per the

procedure established by law and seek release of the vehicles by bringing to the notice of the Court the policy decision taken by the Government and the terms of G.O.Ms.No.15, Industries and Commerce (Mines-I) Department, dated 19-02-2015, if the petitioners so desire; or in the alternative they may make a request to the 2nd respondent by filing appropriate application for release of the vehicles, if not already filed and not received by the 2nd respondent; and if any such application is filed before the 2nd respondent, the 2nd respondent is at liberty to pass appropriate orders as per terms of G.O.Ms.No.15, dated 19-02-2015, after examining the competence and jurisdiction to release the vehicles, if the same were produced before the Court concerned.

Defamation:

In Subramanian Swamy vs. Union of India, Ministry of Law, (2016) 7 SCC 221 ("Subramanian Swamy") held that neither can an FIR be filed nor can a direction be issued under Section 156 (3) of the CrPC and it is only a complaint which can be instituted by a person aggrieved. This Court held:

"207. Another aspect required to be addressed pertains to issue of summons. Section 199 CrPC envisages filing of a complaint in court. In case of criminal defamation neither can any FIR be filed nor can any direction be issued under Section 156(3) CrPC. The offence has its own gravity and hence, the responsibility of the Magistrate is more. In a way, it is immense at the time of issue of process. Issue of process, as has been held in Rajindra Nath Mahato v. T. Ganguly [Rajindra Nath Mahato vs. T. Ganguly, (1972) 1 SCC 450 : 1972 SCC (Cri) 206] , is a matter of judicial determination and before issuing a process, the Magistrate has to examine the complainant. In Punjab National Bank v. Surendra Prasad Sinha [Punjab National Bank vs. Surendra Prasad Sinha, 1993 Supp (1) SCC 499 : 1993 SCC (Cri) 149] it has been held that judicial process should not be an instrument of oppression or needless harassment. The Court, though in a different context, has observed that there lies responsibility and duty on the Magistracy to find whether the accused concerned should be legally responsible for the offence charged for. Only on satisfying that the law casts liability or creates offence against the juristic person or the persons impleaded, then only process would be issued. At that stage the court would be circumspect and judicious in exercising discretion and should take all the relevant facts and circumstances into consideration before issuing process lest it would be an instrument in the hands of the private complaint as vendetta to harass the persons needlessly. Vindication of majesty of justice and maintenance of law and order in the society are the prime objects of criminal justice but it would not be the means to wreak personal vengeance. In Pepsi Foods Ltd. v. Special Judicial Magistrate [Pepsi Foods Ltd. vs. Special Judicial Magistrate, (1998) 5 SCC 749 : 1998 SCC (Cri) 1400] , a two-Judge Bench has held that summoning of an accused in a criminal case is a serious matter and criminal law cannot be set into motion as a matter of course."

Interference with investigation:

An accused person does not have a choice in regard to the mode or manner in which the investigation should be carried out or in regard to the investigating agency. The line of interrogation either of the petitioner or of the CFO cannot be controlled or dictated by the persons under investigation/interrogation. In P Chidambaram vs. Directorate of Enforcement, (2019) 9 SCC 24 Justice R Banumathi speaking for a two judge Bench of this Court held that:

"66...there is a well-defined and demarcated function in the field of investigation and its subsequent adjudication. It is not the function of the court to monitor the investigation process so long as the investigation does not violate any provision of law. It must be left to the discretion of the investigating agency to decide the course of investigation. If the court is to interfere in each and every stage of the investigation and the interrogation of the accused, it would affect the normal course of investigation. It must be left to the investigating agency to proceed in its own manner in interrogation of the accused, nature of questions put to him and the manner of interrogation of the accused." (Emphasis supplied)

This Court held that so long as the investigation does not violate any provision of law, the investigation agency is vested with the discretion in directing the course of investigation, which includes determining the nature of the questions and the manner of interrogation. In adopting this view, this Court relied upon its earlier decisions in State of Bihar vs. PP Sharma, 1992 Supp. (1) SCC 222 and Dukhishyam Benupani, Asst. Director, Enforcement Directorate (FERA) vs. Arun Kumar Bajoria (1998)1 SCC 52 in which it was held that the investigating agency is entitled to decide "the venue, the timings and the questions and the manner of putting such questions" during the course of the investigation.

NEWS

- Prosecution Replenish Wishes Smt Rafat, Addl. PP, a very happy healthy and wealthy retired life.
- HYNNIEWTREP NATIONAL LIBERATION COUNCIL OF MEGHALAYA declared as unlawful association under UAPA, 1967, vide MINISTRY OF HOME AFFAIRS NOTIFICATION S.O.1684(E) dated 29th May, 2020 and published in official gazette CG-DL-E-29052020-219661 extraordinary Part-II no. 1514 dated 29th May,2020.
- GOVERNMENT OF ANDHRA PRADESH - Budget Estimates 2020-21[Vote on Account] - Budget Release Order for Rs. 7,78,00,000 /- (Rupees Seven crore seventy eight lakh) as ADDITIONAL FUNDS to Prosecutions Department - Orders – Issued vide- G.O.Rt.No: 1500 FINANCE (FMU-Home&Courts) DEPARTMENT Dated:30-05-2020.
- GOVERNMENT OF ANDHRA PRADESH- Public Services - Prosecution Department – Sri.K.Srinivasa Rao, Additional Public Prosecutor Grade- II, Assistant Sessions Judge Court, Yelamanchili – Transfer to the Anti Corruption Bureau to work as Legal advisor-cum-Special Public Prosecutor – on deputation basis - Orders – Issued- vide GORT no. 385 HOME (COURTS.A) DEPARTMENTdated 04-05-2020.

- GOVERNMENT OF ANDHRA PRADESH- Prosecution Services – Transfer of Ms. P.Padmaja, Additional Public Prosecutor Grade-II, Principal Assistant Sessions Judge Court, Kurnool to the Court of Assistant Sessions Judge, Chirala, Prakasam District in the existing vacancy in relaxation of ban on transfers – Orders – Issued- GORT No. 491 HOME (COURTS.A) DEPARTMENT dated 28.05.2020
- GOVERNMENT OF ANDHRA PRADESH- Public Services - Prosecution Department – Sri. K.V.Satyanarayana, Additional Public Prosecutor Grade-II, working as Legal Advisor-II, CID, A.P., Mangalagiri – Repatriation – Posting as Additional Public Prosecutor Grade- II, Assistant Sessions Judge Court, Kavali, SPSR Nellore District - Orders – Issued- vide GORT 406 HOME (COURTS.A) DEPARTMENT dated 11.05.2020.

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ON A LIGHTER VEIN

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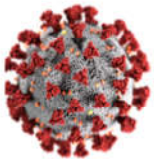
What you should know about COVID-19 to protect yourself and others



Know about COVID-19

- Coronavirus (COVID-19) is an illness caused by a virus that can spread from person to person.
- The virus that causes COVID-19 is a new coronavirus that has spread throughout the world.
- COVID-19 symptoms can range from mild (or no symptoms) to severe illness.

Know how COVID-19 is spread

- You can become infected by coming into close contact (about 6 feet or two arm lengths) with a person who has COVID-19. COVID-19 is primarily spread from person to person.
- You can become infected from respiratory droplets when an infected person coughs, sneezes, or talks.
- You may also be able to get it by touching a surface or object that has the virus on it, and then by touching your mouth, nose, or eyes.

Protect yourself and others from COVID-19

- There is currently no vaccine to protect against COVID-19. The best way to protect yourself is to avoid being exposed to the virus that causes COVID-19.
- Stay home as much as possible and avoid close contact with others.
- Wear a cloth face covering that covers your nose and mouth in public settings.
- Clean and disinfect frequently touched surfaces.
- Wash your hands often with soap and water for at least 20 seconds, or use an alcohol-based hand sanitizer that contains at least 60% alcohol.

Practice social distancing

- Buy groceries and medicine, go to the doctor, and complete banking activities online when possible.
- If you must go in person, stay at least 6 feet away from others and disinfect items you must touch.
- Get deliveries and takeout, and limit in-person contact as much as possible.

Prevent the spread of COVID-19 if you are sick

- Stay home if you are sick, except to get medical care.
- Avoid public transportation, ride-sharing, or taxis.
- Separate yourself from other people and pets in your home.
- There is no specific treatment for COVID-19, but you can seek medical care to help relieve your symptoms.
- If you need medical attention, call ahead.

Know your risk for severe illness

- Everyone is at risk of getting COVID-19.
- Older adults and people of any age who have serious underlying medical conditions may be at higher risk for more severe illness.

CDC

CS 314937A 04/15/2020

cdc.gov/coronavirus

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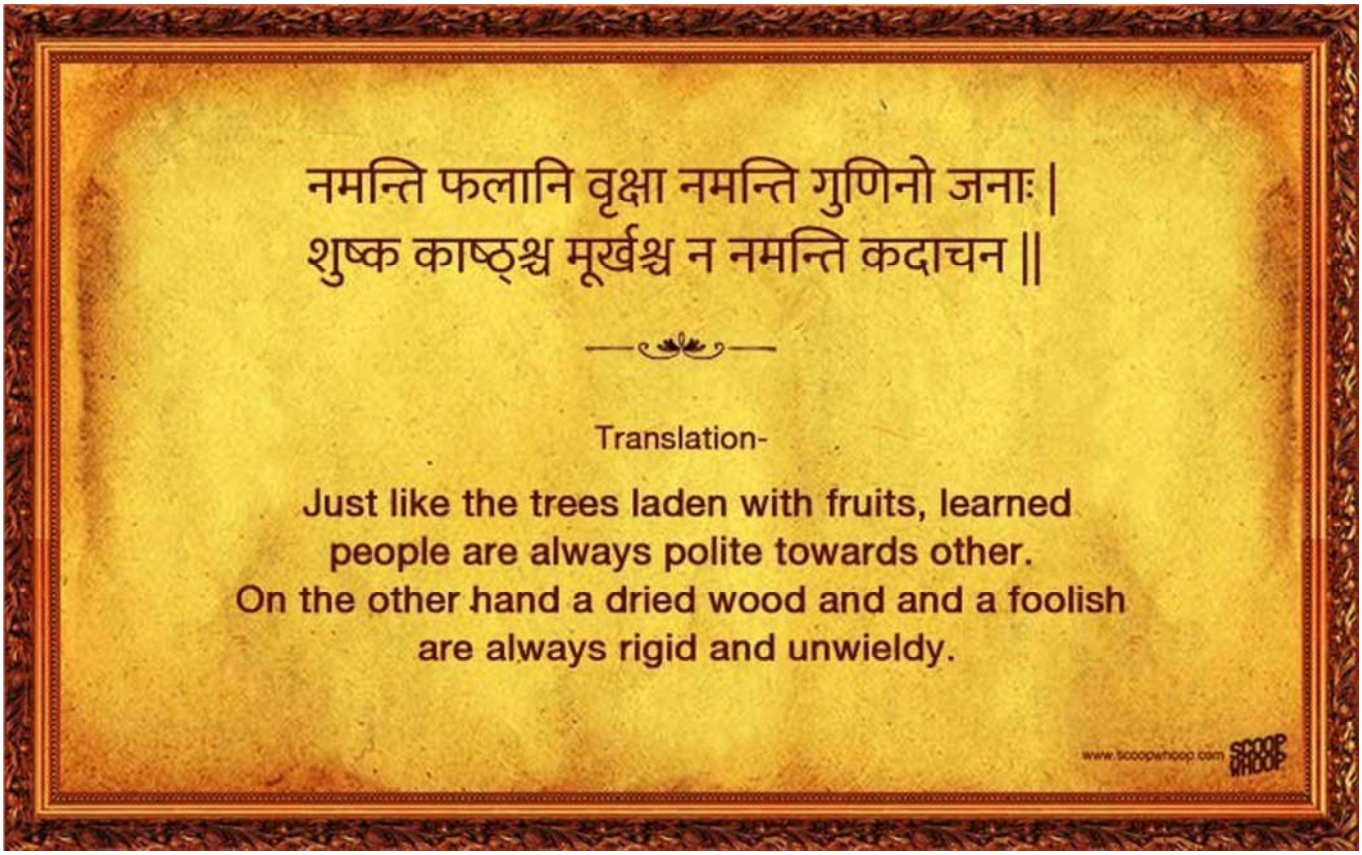
July, 2020

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



CITATIONS

SOMASUNDARAM @ SOMU VS STATE REP. BY THE DEPUTY COMMISSIONER OF POLICE, 03 Jun 2020- 2020 0 Supreme(SC) 388; (THREE JUDGE BENCH)

Abetment of an offence being an offence, the abetment of such abetment is also an offence under Explanation IV. Explanation V makes it clear that it is not necessary to the commission of offence of abetment by conspiracy that the abettor should concert the offence with the person who commits and it is sufficient if he engages in the conspiracy in pursuance of which the offence is committed.

As far as the last part of the Explanation to Section 109 of the IPC is concerned, which speaks about an act or offence being committed in consequence of abetment being committed with the aid which constitutes abetment, it is relatable to thirdly under Section 107 of the IPC.

In order to attract Section 109 of the IPC, the act abetted must be committed in consequence of the abetment. Sections 115 and 116 of the IPC deal with punishments for abetment of offences when the offence is not committed in consequence of the abetment and where no express provision is made in the IPC for the punishment of such abetment.

As laid down by this Court, every material circumstance against the accused need not be independently confirmed. Corroboration must be such that it renders the testimony of the approver believable in the facts and circumstances of each case. The testimony of one accomplice cannot be, ordinarily, be supported by the testimony of another approver. We have used the word 'ordinarily' inspired by the statement of the law in paragraph-4 in K. Hashim (supra) wherein in this Court, did contemplate special and extraordinary cases where the principle embedded in Section 133 would literally apply. In other words, in the common run of cases, the rule of prudence which has evolved into a principle of law is that an accomplice, to be believed, he must be corroborated in material particulars of his testimony. The evidence which is used to corroborate an accomplice need not be a direct evidence and can be in the form of circumstantial evidence.

ACCOMPLICE AND APPROVER

An accomplice is in many cases, pardoned and he becomes what is known as an approver. An elaborate procedure for making a person an approver, has been set out in Section 306 of the CrPC. Briefly, the person is proposed as an approver. The exercise is undertaken before the competent Magistrate. His evidence is recorded. He receives pardon in exchange for the undertaking that he will give an unvarnished version of the events in which he is a participant in the crime. He would expose himself to proceedings under Section
308 of the CrPC. Section 308 contemplates that if such person has not complied with the condition on which the tender of pardon was given either by wilfully concealing anything essential or by giving false evidence, he can be put on trial for the offence in respect to which the pardon was so tendered or for any other offence of which he appears to be a guilty in connection with the same matters. This is besides the liability to be proceeded against for the offence of perjury. Sub-section (2) of Section 308 declares that any statement which is given by the person accepting the tender of pardon and recorded under Section 164 and Section 306 can be used against him as evidence in the trial under Section 308(1) of the CrPC. An accomplice or an approver are competent witnesses. An approver is an accomplice, who has received pardon within the meaning of Section 306. We would hold, that as between an accomplice and an approver, the latter would be more beholden to the version he has given having regard to the adverse consequences which await him as spelt out in Section 308 of the CrPC. as explained by us. It is also settled principle that the competency of an accomplice is not impaired, though, he could have been tried jointly with the accused and instead of so being tried, he has been made a witness for the prosecution.
As the defence had no opportunity to cross-examine the witnesses whose statements are recorded under Section 164 Cr.P.C., such statements cannot be treated as substantive evidence.
Section 364 of the IPC, more graver than Section 365 of the IPC, occurs when abduction, inter alia, is done with the intention to commit murder or that he is so disposed of so as to put the abducted person in danger of being murdered. Section 365 of the IPC is attracted when the abduction takes place to cause the abducted person to be secretly and wrongfully confined.
It is true that in a given case, a person may be abducted to be secretly and wrongfully confined and also to commit murder. Such a situation may attract both Sections 364 and 365 of the IPC.

Mustak @ Kanio Ahmed Shaikh VS State of Gujarat, 18 Jun 2020; 2020 0 Supreme(SC) 414;
minor discrepancies in evidence and inability to recall details of the description of houses, roads and streets after several years, do not vitiate the evidence of recovery itself.
We do not find any such error in the findings of the Session Court to warrant interference. When there is a time gap between an occurrence and the trial it is impossible for police/Investigating Officer to recall minute details. Nor is it possible for a surgeon performing an operation to remove a bullet from the body of a patient to throw light on the chain of custody of the bullet, after it was made over to the attending Nurse. There was sufficient incriminating evidence for conviction of the Appellant.

RANA NAHID @ RESHMA @ SANA VS SAHIDUL HAQ CHISTI, 18 Jun 2020; 2020 0 Supreme(SC) 415;
Muslim Women (Protection of Rights on Divorce) Act, 1986 does not deviate itself from the purpose, object and scope of the provisions of maintenance under Criminal Procedure Code. The provisions of the Act are not inconsistent with the provisions of Chapter IX of the Code. The provision of this enactment provides remedies beneficial to the Muslim women divorcee by making the former husband liable to provide the divorced woman with reasonable and fair provision in addition to providing maintenance and where the husband fails to comply with the order without sufficient cause, the Magistrate may issue warrant for levying the amount of maintenance and may sentence him to imprisonment for a term which may extend to one year. The near relatives of the woman are also made liable under Section 4 of the Act. In case, the relatives are not in a position to pay her, the State Wakf Board is also made liable to provide maintenance. While the Criminal Procedure Code provides the relief of maintenance only, the Act of 1986 furnishes to divorced woman, additionally, a reasonable and fair provision, the relief of recovery of dower and return of marital gifts.
Though divorced Muslim women are excluded from the purview of Section 125 of the Cr.PC by reason of the 1986 Act for Muslim Women, Parliament has in its wisdom considered it necessary to make provisions for expeditious orders in applications for maintenance filed by divorced Muslim

women. It is with this object in mind that Muslim women have been given the liberty of approaching the Magistrate and the Magistrate is required to make an order within one month from the date of filing of the application and the order of the Magistrate is executable in the same manner for levying fines under the Cr.PC. Violation of an order of the Magistrate entails sentence of imprisonment for a term which might extend to one year or until payment if sooner made, subject to such person being heard in defence and the sentence being imposed according to the provisions of the Cr.PC.

S. KASI VS STATE THROUGH THE INSPECTOR OF POLICE SAMAYNALLUR POLICE STATION MADURAI DISTRICT, 19 Jun 2020 ; 2020 0 Supreme(SC) 417;

We may further notice that learned Single Judge in the impugned judgment had not only breached the judicial discipline but has also referred to an observation made by learned Single Judge in Settu versus The State as uncharitable. All Courts including the High Courts and the Supreme Court have to follow a principle of Comity of Courts. A Bench whether coordinate or Larger, has to refrain from making any uncharitable observation on a decision even though delivered by a Bench of a lesser coram. A Bench sitting in a Larger coram may be right in overturning a judgment on a question of law, which jurisdiction a Judge sitting in a coordinate Bench does not have. In any case, a Judge sitting in a coordinate Bench or a Larger Bench has no business to make any adverse comment or uncharitable remark on any other judgment. We strongly disapprove the course adopted by the learned Single Judge in the impugned judgment.

Rajasthan High Court had occasion to consider Section 167 as well as the order of this Court dated 23.03.2020 passed in Suo Moto W.P(C)No.3 of 2020 and Rajasthan High Court has also come to the same conclusion that the order of this Court dated 23.03.2020 has no consequence on the right, which accrues to an accused on non-filing of charge sheet within time as prescribed under Section 167 Cr.P.C. Rajasthan High Court in S.B. Criminal Revision Petition No. 355 of 2020 Pankaj Vs. State decided on 22.05.2020 has also followed the judgment of learned Single Judge of the Madras High Court in Settu versus The State (supra) and has held that accused was entitled for grant of the default bail. Uttarakhand High Court in First Bail Application No.511 of 2020 Vivek Sharma Vs. State of Uttarakhand in its judgment dated 12.05.2020 has after considering the judgment of this Court dated 23.03.2020 passed in Suo Moto W.P(C)No.3 of 2020 has taken the view that the order of this Court does not cover police investigation. We approve the above view taken by learned Single Judge of Madras High court in Settu versus The State (supra) as well as the by the Kerala High Court, Rajasthan High Court and Uttarakhand High Court noticed above.

Jinofer Kawasji Bhujwala VS State of Gujarat, 19 Jun 2020; 2020 0 Supreme(SC) 418;

Obviously, the period of six months within which the High Court hoped the trial to commence, has expired as on date. The appellant, who is admittedly 62 years of age has already spent nearly a year in judicial custody. A period of nine months has passed from the date of filing of the charge sheet. Though the learned Solicitor General contended that the sanction to prosecute has already been issued as against Government Officials, the fact remains that charges have not been framed and the trial has not commenced as yet.

Though much is said about the tempering of witnesses, it is seen from the material on record that the prosecution rests mainly on documents. In any case, the prosecution is not remedyless, if a person enlarged on bail, indulges in certain activities.

IN RE : THE PROPER TREATMENT OF COVID 19 PATIENTS AND DIGNIFIED HANDLING OF DEAD BODIES IN THE HOSPITALS ETC. VS ., 19 Jun 2020' 2020 0 Supreme(SC) 420;

We with the object of continuous supervision and monitoring of government hospitals, Covid dedicated hospitals and other hospitals taking care of covid management issue following directions Nos.(I) to (IV):-

(I) The Ministry of Health and Family Welfare, Union of India, shall constitute Expert Committees consisting of:

(a) Senior Doctors from Central Government hospitals in Delhi,

(b) Doctors from GNCTD hospitals or other hospitals of Delhi Government,

(c) Doctors from All India Institute of Medical Sciences,

(d) Responsible officer from Ministry of Health and Family Welfare.

(II) The Expert Committee shall inspect, supervise and issue necessary directions to all Government hospitals, Covid hospitals and other hospitals in NCT of Delhi taking care of Covid patients; The Expert Committees shall ensure that at least one visit in each hospital be done weekly.

(III) The above team may in addition to normal inspection shall also conduct surprise visits to assess he preparedness of the hospitals. The expert team as indicated above after visiting may issue necessary instructions for improvement to the hospital concerned and also forward its report to the Government of NCT of Delhi and the Union of India, Ministry of Health and Family Welfare.

(IV) We further direct that all States shall also constitute an expert team of Doctors and other experts for inspection, supervision and guidance of Government hospitals and other hospitals dedicated to Covid-19 in each State who may inspect, supervise the hospitals in the State and issue necessary directions for the improvement to the concerned hospital and report to the Government. Chief Secretary of each State shall ensure that such Committees are immediately constituted and start their works within a period of seven days.

(V) Footage from the CCTV Cameras shall be made available by the hospitals in NCT of Delhi to the inspecting/supervising expert team or to any other authority or body as per directions of the Union of India, Ministry of Health and Family Welfare for screening the footage and issuing necessary directions thereon.

(VI) In Government hospitals of GNCT, Delhi which are Covid dedicated hospitals, where CCTV cameras have not been installed, steps shall be taken to install CCTV Cameras in the wards.

(VII) The Chief Secretaries of other States shall also take steps regarding installation of CCTV Cameras in Covid dedicated hospitals where Covid patients are taking treatment to facilitate the management of such patients and for the screening of the footage by designated authorities or bodies so that remedial action may be suggested and ensured.

(VIII) All Covid-dedicated hospitals shall permit one willing attendant of the patient in the hospital premise, who can remain in an area earmarked by the hospital.

(IX) All Covid dedicated hospitals shall create a helpdesk accessible physically as well as by telephone from where well being of patients admitted in the hospitals can be enquired.

(X) The Union of India, Ministry of Home Affairs may issue appropriate directions in exercise of power under Disaster Management Act, 2005 to all States/Union Territories to uniformly follow the revised discharge policy dated 08.05.2020 with regard to discharge of different categories of patients as categorised in the revised discharge policy.

(XI) The Union of India may issue appropriate guidelines/directions to all the States/Union Territories with regard to prescribing reasonable rates of various Covid related facilities/test etc., which need to be uniformly followed by all concerned. In case, with regard to any particular State/Union Territory, there is any difference, the same may be specifically noticed and directed accordingly.

the States and all concerned shall supply a copy of the report of the patient to him or his relatives and the hospital.

Insisting for independent evidence and not relying on Circumstantial Evidence sufficient in case of Kidnap would be counter productive.

In Sucha Singh v. State of Punjab, AIR 2001 SC 1436 turned down the request of the appellant to reconsider the ratio laid down in State of W.B. V. Mir Mohd. Omar (supra). In the said case, the conviction appears to have been only under Section 302 though read with Section 34 of the IPC. It is pertinent to note what this Court held speaking through Justice K.T. Thomas:

> *"21. We are mindful of what is frequently happening during these days. Persons are kidnapped in the sight of others and are forcibly taken out of the sight of all others and later the kidnapped are killed. If a legal principle is to be laid down that for the murder of such kidnapped there should necessarily be independent*

evidence apart from the circumstances enumerated above, we would be providing a safe jurisprudence for protecting such criminal activities. India cannot now afford to lay down any such legal principle insulating the marauders of their activities of killing kidnapped innocents outside the ken of others."

THE PROTEST PETITION HAS TO SATISFY THE INGREDIENTS OF COMPLAINT

SUBHASH SAHEBRAO DESHMUKH VS SATISH ATMARAM TALEKAR, 18 Jun 2020; 2020 0 Supreme(SC) 410;

In B. Chandrika vs. Santhosh, (2014) 13 SCC 699, this Court observed as follows:

"5. The power of the Magistrate to take cognizance of an offence on a complaint or a protest petition on the same or similar allegations even after accepting the final report, cannot be disputed. It is settled law that when a complaint is filed and sent to police under Section 156(3) for investigation and then a protest petition is filed, the Magistrate after accepting the final report of the police under Section 173 and discharging the accused persons has the power to deal with the protest petition. However, the protest petition has to satisfy the ingredients of complaint before the Magistrate takes cognizance under Section 190(1)(a) CrPC."

Art 14 applies to Substantial as well as procedural laws

In Meenakshi Mills vs. Vishvanatha Sastri reported in AIR 1955 SC 13, a Constitution Bench of this Court held:

6. . Article 14 of this Part guarantees to all persons the right of equality before the law and equal protection of the laws within the territory of India. This article not only guarantees equal protection as regards substantive laws but procedural laws also come within its ambit. The implication of the article is that all litigants similarly situated are entitled to avail themselves of the same procedural rights for relief, and for defence with like protection and without discrimination. The procedural provisions of Act 30 of 1947 had therefore to stand the challenge of Article 14 and could only be upheld provided they withstood that challenge.

Seniority list should be prepared on merit and not on roster points:

L.Rani Vs State of Telangana; on 09.09.2019;
https://indiankanoon.org/doc/108925790/;

However, official respondents are directed to prepare seniority list of Junior Stenographers basing on the merit but not on the roster points and by following Rule 33 (b) of the Rules and the ratio laid down by the Apex Court and this Court in the judgments cited supra, and the allocation shall be made in the said order of seniority as available on 01.06.2014.

NEWS

- GOVERNMENT OF ANDHRA PRADESH- Public Services – Prosecutions Department – Promotion of Additional Public Prosecutors Grade-I/ Deputy Directors of Prosecutions to the category of Public Prosecutors/Joint Directors of Prosecutions who are included in the panel year 2019-20 – Postings - Orders – Issued- G.O.MS.No. 71 HOME (COURTS.A) DEPARTMENT Dated: 24-06-2020

- GOVERNMENT OF ANDHRA PRADESH- HOME DEPARTMENT – BE 2020-21 (Vote on Account) – Prosecutions - Sanction of Rs.7,78,00,000/- as additional funds - Administrative Sanction –Accorded- G.O.RT.No. 516 HOME (BUDGET) DEPARTMENT Dated: 03-06-2020

- GOVERNMENT OF ANDHRA PRADESH- Public Services - Prosecutions Department – Sri BVA.Narasimha Murthy, Additional Public Prosecutor Grade-II, working as Legal Advisor-cum-Special Public Prosecutor O/o. the Director General, Anti-Corruption Bureau, Andhra Pradesh – Repatriation – and posted as Additional Public Prosecutor Grade-II, Assistant Sessions Judge Court, Yelamanchili, Visakhapatnam District - Orders – Issued- G.O.RT.No. 623 HOME (COURTS.A) DEPARTMENT, Dated: 24-06-2020

- GOVERNMENT OF ANDHRA PRADESH- Public Services - Prosecution Department – Smt.K.E.Swarnalatha Bhanu, Additional Public Prosecutor Grade-II, working as Legal Advisor-cum-Special Public Prosecutor, O/o. the Commissioner of Prohibition & Excise, Andhra Pradesh, Vijayawada – Repatriation – Posted as Additional Public Prosecutor Grade-II in the Court of Principal Assistant Sessions Judge, Narasaraopet, Guntur District - Orders – Issued- G.O.RT.No. 630 HOME (COURTS.A) DEPARTMENT Dated: 24-06-2020

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ON A LIGHTER VEIN

The Perfect Son.

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

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Ministry of Health and Family Welfare
Government of India

NOVEL CORONAVIRUS (COVID-19)

Help us to help you

There is enough of everything, everyday for everyone

Don't Panic | Don't Rush | Don't Overstock

- Maintain at least 1 metre distance in market places, medical stores, hospitals, etc.
- Have patience and keep calm while shopping for essential goods/medical supplies
- Avoid frequent trips to the market to buy groceries/medical supplies
- Avoid shaking hands and hugging as a matter of greeting
- Avoid non-essential social gatherings at home
- Don't allow visitors at home or visit someone else's home

davp 17102/13/0032/1920

Observe social distancing at all times

If you have symptoms like cough, fever or difficulty in breathing, avoid any kind of exposure and immediately call the helpline numbers

Together we will fight COVID-19

For information related to COVID-19

Call Ministry of Health and Family Welfare, Government of India's 24x7 Control Room Number 1075 (Toll Free) | 011-23978046 , Email at ncov2019@gov.in , ncov2019@gmail.com

mohfw.gov.in @MoHFWIndia @MoHFW_INDIA mohfwindia

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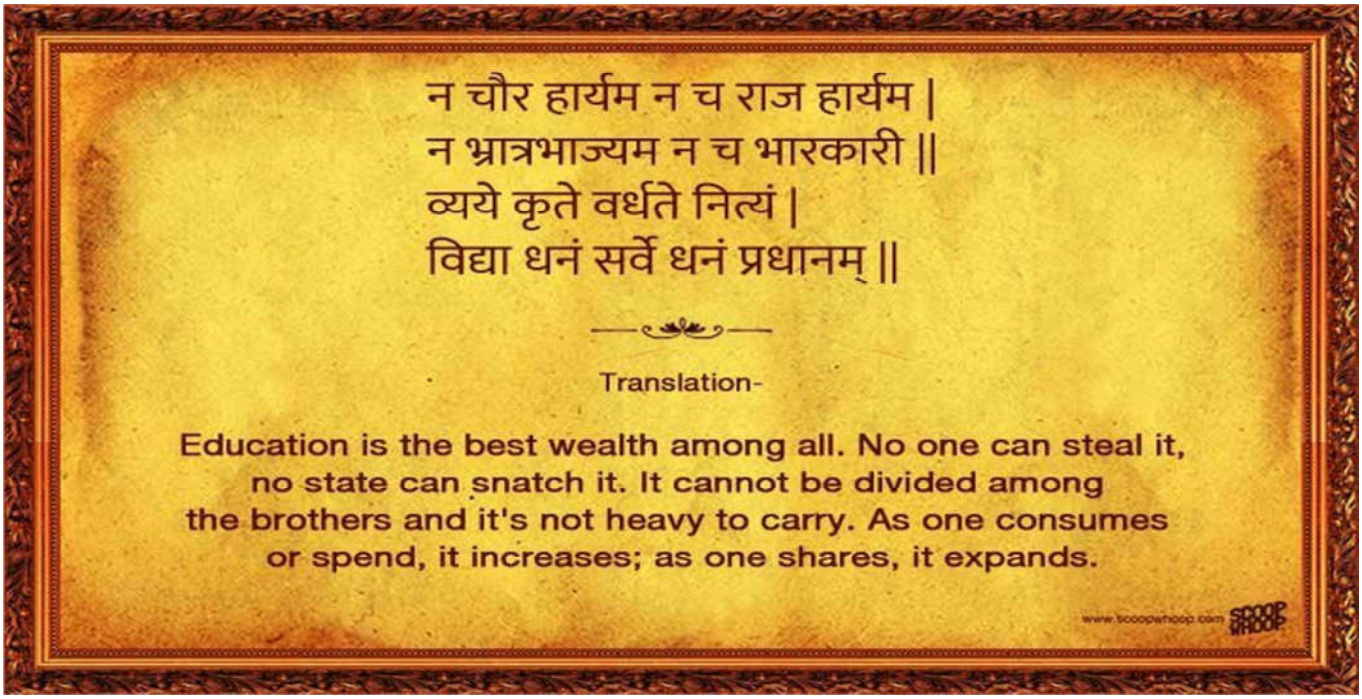
August, 2020

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



CITATIONS

RAMESAN (DEAD) THROUGH LR. GIRIJA. A VS STATE OF KERALA, 21 Jan 2020; 2020 0 AIR(SC) 559; 2020 1 Crimes(SC) 163; 2020 1 RCR(Cri) 782; 2020 3 SCC 45; 2020 0 Supreme(SC) 56;

a leave was obtained under the proviso to Section 394(2) by legal heirs to continue the appeal. This Court had overruled the primary objection that appeal should abate although relying on the proviso to Section 394(2). The principle regarding non-abatement of the appeal from a sentence of fine as contained in Section 431 of Cr.P.C, 1898 as well as Section 394 of present Cr.P.C. is the same. A similar legislative scheme has been contained, which was occurring in Section 431 Cr.P.C, 1898, hence, judgment of this Court regarding interpretation of Section 431, Cr.P.C. as has been done by this Court in Bondada Gajapathi Rao (AIR 1964 SC 1645) and Harnam Singh ((1975) 3 SCC 343.) shall squarely apply to the interpretation of Section 394 Cr.P.C.

Rekha Murarka VS State of West Bengal, 20 Nov 2019; 2020 0 AIR(SC) 100; 2019 3 ALT(Cri)(SC) 428; 2020 1 JLJR(SC) 64; 2020 1 PLJR(SC) 147; 2020 2 SCC 474; 2020 1 SCC(Cri) 496; 2019 0 Supreme(SC) 1286; 2020(1) ALD(Crl) 532(SC);

The use of the term “assist” in the proviso to Section 24(8) is crucial, and implies that the victim’s counsel is only intended to have a secondary role qua the Public Prosecutor. This is supported by the fact that the original Amendment Bill to the CrPC had used the words “coordinate with the prosecution”. However, a change was later proposed and in the finally adopted version, the words “coordinate with” were substituted by “assist”. This change is reflective of an intention to only assign a supportive role to the victim’s counsel, which would also be in consonance with the limited role envisaged for pleaders instructed by private persons under Section 301(2). In our considered opinion, a mandate that allows the victim’s counsel to make oral arguments and cross examine witnesses goes beyond a mere assistive role, and constitutes a parallel prosecution proceeding by itself. Given the primacy accorded to the Public Prosecutor in conducting a trial, as evident from Section 225 and Section 301(2), permitting such a free hand would go against the scheme envisaged under the CrPC.

Imrat Singh VS State of Madhya Pradesh, 24 Oct 2019; 2020 0 AIR(SC) 536; 2019 16 Scale 794; 2019 0 Supreme(SC) 1449; 2020 (1) ALD (Crl) 542(SC)

The Head Constable who is alleged to have not recorded the FIR and said that he would wait for the SDOP has not been examined. The SDOP/Deputy Superintendent of Police has not been examined.

possibility that the story could have been concocted after seeing the site and conferring with all the villagers.

Rajeev Kourav VS Baisahab, 11 Feb 2020; 2020 0 AIR(SC) 909; 2020 1 KLD 461; 2020 2 KLJ 463; 2020 0 Supreme(SC) 143; 2020 (1) ALD(Crl) 547(SC)
Statements of witnesses recorded under Section 161 CrPC being wholly inadmissible in evidence cannot be taken into consideration by the Court, while adjudicating a petition filed under Section 482 CrPC.

Ramji Singh VS State Of Uttar Pradesh, 11 Dec 2019; 2020 0 AIR(SC) 169; 2019 4 Crimes(SC) 585; 2020 2 SCC 425; 2020 1 SCC(Cri) 482; 2019 0 Supreme(SC) 1354; 2020(1) ALD (Crl) 585(SC);
We may also take into consideration the fact that the complainant is an illiterate villager. He dictated the complaint to PW-4 who, no doubt, is literate but is not well versed with law. The complaint gives all the necessary facts but obviously it is not drafted by a person having legal acumen. An FIR is not supposed to be an encyclopaedia detailing all the facts in extenso. In our opinion, the complaint (Exh. P.1) is complete and the additions, if any, made during the evidence are not such which cast a doubt on the correctness of the complaint.
Heavy reliance was placed by the Trial Court as well as by the appellants before us on the fact that if the site map prepared by the appellants is correct then most of the injuries should have been caused on the left side of the body. We do not understand as to how the Trial court could have come to this conclusion. A site plan is prepared on the basis of information given by witnesses. A site plan only gives a general idea and is not a true to scale map.
The High Court was absolutely justified in coming to the conclusion that the Trial Court had totally misdirected itself in holding that the medical evidence did not support the ocular evidence. This was done only on the ground that the injuries were not on the side on which they should have been if the site plan was 100% right. As has already been observed above, a site plan is not a true to scale map and it generally gives the positions of the various eyewitnesses, accused etc., but obviously such site plan cannot give exact positions. Directions cannot be determined from exact position also. The direction of the injury can also vary even if the accused and the deceased are in the same place as mentioned in the map and one of them is sitting or standing at an angle. The view taken by the Trial Court was highly technical and, in our opinion, this was not a sufficient ground to disbelieve both the eye witnesses.
The appellants are right when they urge that when the report of the ballistic experts have not been proved and all the bullets recovered from the spot have not been sent to the ballistic expert, the guns seized cannot be connected with the offence. Even if that be true, we cannot discredit the testimony of the eyewitnesses that two of the accused used guns. The guns seized may or may not be the guns used. However, when the ocular evidence is direct and clear in this regard, and this ocular evidence is fully supported by the medical evidence, the negligence of the investigation team cannot be used by the defence in support of their case.

U.Ramanjaneyulu Vs State of A.P.; 2020 (1) ALD (Crl) 640(AP); http://tshcstatus.nic.in/hcaporders/2019/206300186102019_1.pdf;
The power conferred under Section 145 Cr.P.C. on executive Magistracy is one of preventive but not decisive in respect of the title concerning to any land or water or the boundaries of a property which is the bone of contention between two rival groups. The objective of Section 145 Cr.P.C. is to create and confer preventive jurisdiction on the executive Magistrate in respect of disputes regarding possession or right of use of land or water or its boundaries, which result in breach of peace. When such dual between two conflicting interests came to the knowledge of an executive Magistrate either through the report of the police officer or upon other information, he has to initiate the preventive action as laid down under Section 145 Cr.P.C. He shall make an order in writing stating the grounds of his being so satisfied and require the parties concerned in such dispute to attend his Court on a specified date and submit the written statements of their respective clients on the factum of actual possession of the subject of dispute. Then the Magistrate, without reference to the merits or claims of any of the parties to a right to possession the subject of dispute, peruse the statements put up before

him and receive all such evidence as may be produced by them and decide whether any and which of the parties was, at the date of the order, was in possession of the subject of dispute. He shall also take note of the fact whether if any of the parties has been forcibly and wrongfully dispossessed within two months next before the date on which the report of a police officer or other information was received by him. In such an event he may treat such dispossessed party as had been in possession on the date of his first information. Upon such determination, the Magistrate shall issue an order declaring such party to be entitled to possession until evicted there from in due course of law and forbidding all disturbance of such possession until such eviction. In that course, he can also restore to the possession of the party who was forcibly and wrongly dispossessed. This is the procedure to be followed by the executive Magistrate under Section 145 Cr.P.C.

A situation may arise that sometimes the dispute relating to title and possession over a land, water or boundaries may be pending in a Civil Court for adjudication and still the parties would be on logger heads causing breach of public peace and tranquillity which comes to the knowledge of an executive Magistrate either by police report or otherwise. In such an event, whether he can follow the procedure prescribed under Section 145 Cr.P.C. and conduct an enquiry as to which party was in possession is the question that would engage one's mind.

when the dispute touching the same subject property was either pending or already disposed of by a Civil Court, the proceedings under Section 145 Cr.P.C are not maintainable. In such an event, if the civil proceedings are pending, the Executive Magistrate shall direct the parties to obtain suitable orders from the concerned Civil Court. Similarly, if the Civil Court has already adjudicated upon the dispute relating to the same property, then the Sub-Divisional Magistrate shall direct the parties to scrupulously follow the decree passed by the Civil Court.

Dr Vallabhaneni Vamsi Mohan Vs State of A.P; 2020 (1) ALD (Crl) 646(AP); http://tshcstatus.nic.in/hcaporders/2019/206300176352019_1.pdf;

The specific words lascivious, prurient and deprave have their meaning. The meaning of "Lascivious" is "feeling or revealing an overt sexual interest or desire". Similarly, prurient means "having or encouraging an excessive interest in sexual matters, especially the sexual activity of others". The other word deprave means "morally corrupt; wicked". If the allegations satisfies any of these acts, including obscenity, the Court can issue a direction to register a complaint against Byreddy Siddarth Reddy and others for the offence punishable under Section 67 of the I.T.Act.

When the gist of the postings posted in Facebook, Twitter etc. do not fall within the meaning of the "obscenity", nonregistration of crime against Byreddy Siddarth Reddy and others (referred above) for the offence punishable under Section 67 of the I.T.Act by respondent Nos.2 to 4 cannot be described as disowning their responsibility to discharge public duty being public officers to issue a Writ of Mandamus. Therefore, non-registration of crime based on the allegations made in the complaint for the offence punishable under Section 67 of the I.T.Act cannot be a ground to issue a direction while exercising power of judicial review under Article 226 of the Constitution of India. As discussed above, the postings by Byreddy Siddarth Reddy and others may constitute an offence punishable under Section 500 and 506 of I.P.C., but not an offence punishable under Section 67 of the I.T.Act. Since the offences punishable under Section 500 and 506 of I.P.C. are not cognizable, non-registration of crime against Byreddy Siddarth Reddy and others is not an illegality to issue a direction to the respondents to register a crime and investigate into by applying the principles laid down in "Lalita Kumari v. Government of Uttar Pradesh" (referred supra).

P. Gopalkrishnan @ Dileep VS State of Kerala, 29 Nov 2019; 2020 0 AIR(SC) 1; 2019 3 ALT(Cri)(SC) 496; 2020 1 Crimes(SC) 21; 2019 4 ILR(Ker) 805; 2020 1 JLJR(SC) 30; 2020 1 KLJ(SC) 92; 2019 4 KLT 853; 2020 1 PLJR(SC) 67; 2020 1 Supreme 82; 2019 0 Supreme(SC) 1306; 2020 (1) ALD (Crl) 657 (AP);

As aforesaid, the respondents and intervenor would contend that the memory card is a material object and not a "document" as such. If the prosecution was to rely only on recovery of memory card and not upon its contents, there would be no difficulty in acceding to the argument of the respondent/intervenor that the memory card/pen-drive is a material object.

It is crystal clear that all documents including "electronic record" produced for the inspection of the Court alongwith the police report and which prosecution proposes to use against the accused must

be furnished to the accused as per the mandate of Section 207 of the 1973 Code. The concomitant is that the contents of the memory card/pen-drive must be furnished to the accused, which can be done in the form of cloned copy of the memory card/pen-drive. It is cardinal that a person tried for such a serious offence should be furnished with all the material and evidence in advance, on which the prosecution proposes to rely against him during the trial. Any other view would not only impinge upon the statutory mandate contained in the 1973 Code, but also the right of an accused to a fair trial enshrined in Article 21 of the Constitution of India.

Needless to mention that the appellant before us or the other accused cannot and are not claiming any expertise, much less, capability of undertaking forensic analysis of the cloned copy of the contents of the memory card/pen-drive. They may have to eventually depend on some expert agency. In our opinion, the accused, who are interested in reassuring themselves about the genuineness and credibility of the contents of the memory card in question or that of the pen-drive produced before the trial Court by the prosecution on which the prosecution would rely during the trial, are free to take opinion of an independent expert agency, such as the CFSL on such matters as they may be advised, which information can be used by them to confront the prosecution witnesses including the forensic report of the State FSL relied upon by the prosecution forming part of the police report.

Considering that this is a peculiar case of intra-conflict of fundamental rights flowing from Article 21, that is right to a fair trial of the accused and right to privacy of the victim, it is imperative to adopt an approach which would balance both the rights.

If the accused or his lawyer himself, additionally, intends to inspect the contents of the memory card/pen-drive in question, he can request the Magistrate to provide him inspection in Court, if necessary, even for more than once alongwith his lawyer and I.T. expert to enable him to effectively defend himself during the trial. If such an application is filed, the Magistrate must consider the same appropriately and exercise judicious discretion with objectivity while ensuring that it is not an attempt by the accused to protract the trial. While allowing the accused and his lawyer or authorized I.T. expert, all care must be taken that they do not carry any devices much less electronic devices, including mobile phone which may have the capability of copying or transferring the electronic record thereof or mutating the contents of the memory card/pen-drive in any manner. Such multipronged approach may subserve the ends of justice and also effectuate the right of accused to a fair trial guaranteed under Article 21 of the Constitution.

44. In conclusion, we hold that the contents of the memory card/pen drive being electronic record must be regarded as a document. If the prosecution is relying on the same, ordinarily, the accused must be given a cloned copy thereof to enable him/her to present an effective defence during the trial. However, in cases involving issues such as of privacy of the complainant/witness or his/her identity, the Court may be justified in providing only inspection thereof to the accused and his/her lawyer or expert for presenting effective defence during the trial. The court may issue suitable directions to balance the interests of both sides.

Prathvi Raj Chauhan VS Union Of India, 10 Feb 2020; 2020 0 AIR(SC) 1036; 2020 2 KHC 423; 2020 1 KLJ 718; 2020 1 KLT 810; 2020 0 Supreme(SC) 139; 2020 (1) ALD (Crl) 693(SC); (3 JUDGES BENCH)

Concerning the provisions contained in section 18A, suffice it to observe that with respect to preliminary inquiry for registration of FIR, we have already recalled the general directions (iii) and (iv) issued in Dr. Subhash Kashinath's case (supra). A preliminary inquiry is permissible only in the circumstances as per the law laid down by a Constitution Bench of this Court in Lalita Kumari v. Government of U.P., (2014) 2 SCC 1, shall hold good as explained in the order passed by this Court in the review petitions on 1.10.2019 and the amended provisions of section 18A have to be interpreted accordingly.

9. The section 18A(i) was inserted owing to the decision of this Court in Dr. Subhash Kashinath (supra), which made it necessary to obtain the approval of the appointing authority concerning a public servant and the SSP in the case of arrest of accused persons. This Court has also recalled that direction on Review Petition (Crl.) No.228 of 2018 decided on 1.10.2019. Thus, the provisions which have been made in section 18A are rendered of academic use as they were enacted to take

care of mandate issued in Dr. Subhash Kashinath (supra) which no more prevails. The provisions were already in section 18 of the Act with respect to anticipatory bail.
10. Concerning the applicability of provisions of section 438 Cr.PC, it shall not apply to the cases under Act of 1989. However, if the complaint does not make out a prima facie case for applicability of the provisions of the Act of 1989, the bar created by section 18 and 18A (i) shall not apply. We have clarified this aspect while deciding the review petitions.

PAUL VS STATE OF KERALA, 21 Jan 2020; 2020 0 AIR(SC) 966; 2020 1 Crimes(SC) 186; 2020 3 SCC 115; 2020 0 Supreme(SC) 52; 2020 (1) ALD (Crl) 715(SC)
Principles of law however cannot be appreciated or applied irrespective of the facts obtaining in a particular case. There can be no doubt that the burden to prove that the case is made out in a particular case is on the prosecution unless the law declares otherwise.
There can be no doubt that the burden of proving that the case fall within the four corners of any of the exceptions under Section 300 of the IPC is on the accused. It is equally true that even without adducing any defence evidence it may be possible for the accused to discharge the said burden with reference to material appearing by virtue of the prosecution evidence which includes the cross examination of prosecution witnesses. The test is one of preponderance of probability.

AHMAD ALI QURAISHI VS STATE OF UTTAR PRADESH, 30 Jan 2020; 2020 0 AIR(SC) 788; 2020 1 Crimes(SC) 134; 2020 1 JLJ 620; 2020 0 Supreme(SC) 90; 2020 1 ALD Crl 768(SC)
It is true that rejection of an application under Section 156(3) Cr.P.C. in no manner preclude a complainant to file a complaint under Section 200 Cr.P.C.

STATE OF KERALA ETC. VS RAJESH ETC., 24 Jan 2020; 2020 0 AIR(SC) 721; 2020 1 Crimes(SC) 158; 2020 0 CrLJ 1671; 2020 1 KHC 557; 2020 1 KLJ 664; 2020 0 Supreme(SC) 69; 2020 1 ALD Crl 776 (SC); NDPS ACT- BAIL Rejected- Charge Sheet also filed.
The scheme of Section 37 reveals that the exercise of power to grant bail is not only subject to the limitations contained under Section 439 of the CrPC, but is also subject to the limitation placed by Section 37 which commences with non-obstante clause. The operative part of the said section is in the negative form prescribing the enlargement of bail to any person accused of commission of an offence under the Act, unless twin conditions are satisfied. The first condition is that the prosecution must be given an opportunity to oppose the application; and the second, is that the Court must be satisfied that there are reasonable grounds for believing that he is not guilty of such offence. If either of these two conditions is not satisfied, the ban for granting bail operates.
The expression “reasonable grounds” means something more than prima facie grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence. The reasonable belief contemplated in the provision requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence. In the case on hand, the High Court seems to have completely overlooked the underlying object of Section 37 that in addition to the limitations provided under the CrPC, or any other law for the time being in force, regulating the grant of bail, its liberal approach in the matter of bail under the NDPS Act is indeed uncalled for.

Padum Kumar VS State Of Uttar Pradesh, 14 Jan 2020; 2020 0 AIR(SC) 447; 2020 1 Crimes(SC) 219; 2020 1 JLJR(SC) 301; 2020 1 PLJR(SC) 345; 2020 1 RCR(Cri) 699; 2020 3 SCC 35; 2020 1 Supreme 329; 2020 0 Supreme(SC) 28; 2020 1 ALD Crl 787(SC)
It is fairly well settled that before acting upon the opinion of the hand-writing expert, prudence requires that the court must see that such evidence is corroborated by other evidence either direct or circumstantial evidence.

Shilpa Mittal VS State of NCT of Delhi, 09 Jan 2020; 2020 0 AIR(SC) 405; 2020 1 Crimes(SC) 109; 2020 0 CrLJ 2121; 2020 1 KHC 273; 2020 1 KLD 201; 2020 2 KLJ 345; 2020 1 KLT 335; 2020 2 SCC 787; 2020 1 Supreme 193; 2020 0 Supreme(SC) 21; 2020 1 ALD Crl 794(SC)
JJ ACT - an offence which does not provide a minimum sentence of 7 years cannot be treated to be an heinous offence. However, in view of what we have held above, the Act does not deal with the 4th

category of offences viz., offence where the maximum sentence is more than 7 years imprisonment, but no minimum sentence or minimum sentence of less than 7 years is provided, shall be treated as 'serious offences' within the meaning of the Act and dealt with accordingly till the Parliament takes the call on the matter.

Narne Estates Pvt. Ltd. VS Narne Gopal Naidu, 29 Jan 2020; 2020 0 Supreme(Telangana) 35; 2020 1 ALD Crl 805(TS)

the Application is made invoking Section 242(2) read with Section 311 of the Cr.P.C., the right conferred on the prosecution under Section 173(8) cannot be whittled down by mere reference to a wrong provision of law. So far as the judgment of the Supreme Court in Sethuraman's case, the same has no application to the facts of the present case, as, admittedly, the Application made by the Public Prosecutor was not under Section 91 Cr.P.C., which empowers the Court to summon a witness / document. Even otherwise, without getting into the controversy, it may be noted, what all required to invoke Section 173(8) is - leave of the Court to be obtained for filing additional documents that too in the prescribed format. A perusal of the Code of Criminal Procedure and the format prescribed thereunder as well as the formats prescribed under the Criminal Rules of Practice, as applicable to the State, do not disclose any specific proforma having been prescribed for filing additional documents, except Format 20 for filing the charge sheet. The word 'prescribed', as defined under Section 2(t) by the Rules made under this Code does not contain any prescribed format for filing the material documents more particularly one in relation to Section 173(8). In other words, in normal parlance, either by way of additional charge sheet or by way of a challan, the documents can be placed before the Court.

Goli Satyanarayana Reddy Vs. G.Mahesh & Anr.; 2020 1 ALD Crl 860 (AP); http://tshcstatus.nic.in/hcaporders/2018/202200001752018_1.pdf

an order passed under Section 45 of the Evidence Act is purely an interlocutory order and revision against the said order is not maintainable under Section 397(1) Cr.P.C.

order summoning witnesses, adjourning cases, passing orders for bail, calling for reports, and such other steps in the aid of the pending proceeding may no doubt amount to interlocutory orders against which no revision would lie under Section 397(2) Cr.P.C.

those orders which have the effect of terminating the proceedings of the main case once for all though passed at interlocutory stage are alone to be construed as an intermediate or quasi final order. That is the only feasible test to decide whether a particular order is an interlocutory order or an intermediate or quasi final order for the purpose of maintaining revision under Section 397(1) Cr.P.C. Therefore, in the considered opinion of this Court, the said concept of intermediate order cannot be stretched to that extent so as to take within its fold all other interlocutory orders which are passed during the trial of the case relating to summoning of witnesses and sending the document to experts for examination etc. on the ground that it touches the rights and liabilities of the party in relation to trial of the case. They are only the orders passed as step in aid of the trial of the pending cases. If the contention of the petitioners is accepted and every order passed during the trial of the case is construed as an intermediate order on the ground that it touches the right or liability of the party in relation to trial of the case, it amounts to defeating the object of Section 397(2) Cr.P.C. and diluting the legislative intent.

an order summoning a witness or calling for a document is an interlocutory order against which revision is barred, the order passed under Section 45 of the Evidence Act is also a pure and simple interlocutory order against which revision is barred under Section 397(2) Cr.P.C.

B. Parvathi Vs State of A.P. and another; 2020 1 ALD Crl 876 (AP); http://tshcstatus.nic.in/hcaporders/2019/202200011162019_1.pdf

Mere producing some evidence to prove or show that the accused is in cohabitation or in live-in relationship with another woman during the subsistence of his first marriage without proving that he has in fact contracted the second marriage and thereby living with her, by itself do not constitute any offence of bigamy under Section 494 IPC.

as there was no complaint filed before the court by the aggrieved person, who is no more or even by any of the persons on her behalf as contemplated under clause (c) of the proviso to Section 198

Cr.P.C. before the Court, cognizance of the case for the offence punishable under Section 494 IPC cannot be taken by the Court in view of the express bar engrafted in Section 198(1) Cr.P.C. to take cognizance of the said case. Therefore, taking cognizance of the case in the instant case for the offence punishable under Section 494 IPC is also legally unsustainable.

Surinder Kumar VS State of Punjab, 06 Jan 2020; 2020 0 AIR(SC) 303; 2020 2 SCC 563; 2020 1 Supreme 30; 2020 0 Supreme(SC) 1; 2020 (2) ALD Crl 14(SC); 3 Judge Bench

In view of such reasoning assigned by the Trial Court as well as the High Court, that the summons on the ASP could not be served as he was on leave, merely because S.K. Asthana, ASP was not examined, it cannot be said that prosecution has failed to prove its case. It is clear from the evidence on record that he was summoned at the time of search and seizure and only in his presence search was conducted, as such, there is no violation of Section 50 of the NDPS Act.

The mere fact that the case of the prosecution is based on the evidence of official witnesses, does not mean that same should not be believed.

merely because prosecution did not examine any independent witness, would not necessarily lead to conclusion that accused was falsely implicated. The evidence of official witnesses cannot be distrusted and disbelieved, merely on account of their official status

Learned counsel also placed reliance on the judgment of this Court in the case of Mohan Lal to support his argument that informant and investigator cannot be the same person. But in the subsequent judgment, in the case of Varinder kumar this Court held that all pending criminal prosecutions, trials and appeals prior to law laid down in Mohan Lal, shall continue to be governed by individual facts of the case.

NAGARAJA VS STATE OF KARNATAKA, 06 Dec 2019; 2020 0 AIR(SC) 288; 2020 1 Crimes(SC) 329; 2020 2 SCC 257; 2020 1 SCC(Cri) 587; 2019 0 Supreme(SC) 1328; 2020 (2) ALD Crl 18(SC)

We may also refer to the other circumstance, namely, matching the fingerprints of the appellant with the chance fingerprints, which were found on certain utensils. PW-14, in his deposition admitted that he has not obtained permission from the Magistrate for taking the fingerprints of the accused. The Magistrate, in fact, has referred to the judgment of this Court reported in Mohd. Aman's case (1997)10 SCC 44) In the said case, it was held as follows inter alia:-

> *"Even though the specimen fingerprints of Mohd. Aman had to be taken on a number of occasions at the behest of the Bureau, they were never taken before or under the order of a Magistrate in accordance with Section 5 of the Identification of Prisoners Act. It is true that under Section 4 thereof police is competent to take finger-prints of the accused but to dispel any suspicion as to its bona fides or to eliminate the possibility of fabrication of evidence it was eminently desirable that they were taken before or under the order of a Magistrate. The other related infirmity from which the prosecution case suffers is that the brass, jug, production of which would have been the best evidence in proof of the claim of its seizure and subsequent examination by the Bureau, was not produced and exhibited during trial - for reasons best known to the prosecution and unknown to the Court. Thus the accused could not be convicted for murder."*

Rohtas VS State of Haryana, 05 Nov 2019 ;2019 0 AIR(SC) 5684; 2020 1 Crimes(SC) 352; 2019 10 SCC 554; 2020 1 SCC(Cri) 47; 2019 0 Supreme(SC) 1226; 2020 2 ALD Crl 36(SC)

Indubitably, just because the witnesses are related cannot be the basis to discard their evidence, if it is otherwise natural and truthful.

minor discrepancies in the statement of witnesses of trivial nature cannot be a ground to reject evidence as a whole.

The fact that the blood group of the human blood stained soil cannot be ascertained, can be no basis to discard that piece of evidence.

while analysing the evidence of eye witnesses, it must be borne in mind that there is bound to be variations and difference in the behaviour of the witnesses or their reactions from situation to situation and individual to individual. There cannot be uniformity in the reaction of witnesses. The Court must not decipher the evidence on unrealistic basis. There can be no hard and fast rule about the uniformity in human reaction.

there has been no delay as is evident from the contemporaneous record. Mohar Pal was admitted in hospital immediately after the incident and was examined by Dr. Ramesh. Mohar Pal was declared dead at 11.00 p.m. The City Police Station was informed by the doctor at 11.30 p.m.
Even the fact that the accused have been acquitted in the cross-cases filed with regard to the first incident which took place at 6.30 p.m. on the same evening will not take the matter any further for the appellants. That was an independent incident whereas the finding of guilt recorded against the appellants is concerning the incident which had taken place at 8.30 p.m. near the Government Hospital, Palwal as proved by the prosecution witnesses.

Dayaram VS State of Madhya Pradesh, 07 Nov 2019; 2019 0 AIR(SC) 5739; 2019 0 Supreme(SC) 1240; 2020 2 ALD Crl 50(SC)
the evidence of a prosecution witness cannot be rejected in toto, merely because the prosecution witnesses turned hostile. The evidence of such witnesses cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent that their version is found to be dependable on careful scrutiny.
The F.I.R was lodged with promptness and the appellants were named in the F.I.R along with details of their weapons. As per Section 32(1) of the Evidence Act, the F.I.R should be treated as a Dying Declaration.
there is no reason why a dying declaration which is otherwise found to be true, voluntary and correct should be rejected only because the person who recorded the dying declaration could not affix his signatures or thumb impressions on the dying declaration.

STATE OF TELANGANA VS MANAGIPET @ MANGIPET SARVESHWAR REDDY, 06 Dec 2019 2020 1 Crimes(SC) 81; 2019 0 Supreme(SC) 1336; 2020 2 ALD Crl 57(SC);
The judgment of this court in Lalita Kumari does not state that proceedings cannot be initiated against an accused without conducting a preliminary inquiry.
in a recent judgment in Vinod Kumar Garg v. State (Government of National Capital Territory of Delhi), Criminal Appeal No. 1781 of 2009 decided on 27th November, 2019 this Court has held that if an investigation was not conducted by a police officer of the requisite rank and status required under Section 17 of the Act, such lapse would be an irregularity, however unless such irregularity results in causing prejudice, conviction will not be vitiated or be bad in law. Therefore, the lack of sanction was rightly found not to be a ground for quashing of the proceedings.
Article 310 of the Constitution contemplates that except as expressly provided, every person who is a member of a defence service or of a civil service of the Union or of an all-India service or holds any post connected with defence or any civil post under the Union, holds office at the pleasure of the President. In respect of the State Services, however, he or she holds office at the pleasure of the Governor. In the present case, Sri K. Sampath Kumar was reemployed for a period of one year by the State Government in exercise of powers conferred under Article 162 of the Constitution of India. There is no prohibition in any of the service rules that there cannot be any re-employment of a person who was once in a civil service of either the Center or the State.
Entry 2 of List II of the State List is the Police (including railway and village police) subject to the provisions of Entry 2A of List I. Therefore, various facets of Policing in the State fall within the legislative competence of the State and the re-employment of a retired personnel who was a member of Indian Police Service, falls within the executive power of the State. As a re-employed officer, he was holding a civil post as his salary was being paid from the State Exchequer. He was discharging duties and responsibilities in the Anti-Corruption Bureau.
Sri K. Sampath Kumar was re-employed initially for a period of one year after his retirement. He was not being recruited for holding a civil post for the first time which may warrant compliance of rigour of Article 16 of the Constitution. He had crossed all bridges, when he was appointed and discharged duties before attaining the age of superannuation. Such re-employment by the State is in exercise of the powers conferred under Article 162 of the Constitution of India. Such executive powers of the State do not contravene any other statutory provisions; therefore, re-employment in this regard is supplementing the statutory rules and regulations and not supplanting them. Therefore, Sri K. Sampath Kumar has discharged the duties of Joint Director in the Anti-Corruption Bureau in exercise of the powers conferred by the State Government.

We further find that Sri K. Sampath Kumar's acts whilst discharging the duties of Joint Director in the Anti-Corruption Bureau were within the scope of the assumed official authority in public interest and not for his own benefit. Therefore, acts undertaken in this regard by the officer will be taken to be valid.
Sri K. Sampath Kumar has authorised Ch. Sudhakar and the final report had been filed after the investigation conducted by the latter, in terms of clause (c) of Section 17 of the Act. In this regard, it cannot be said that the investigation was not conducted in a manner contemplated under law. Thus, Ch. Sudhakar was an authorized Officer, competent to investigate and file a report for the offences under the Act including of an offence under Section 13(1)(e) of the Act.

Vinubhai Haribhai Malaviya VS State of Gujarat, 16 Oct 2019; 2019 0 AIR(SC) 5233; 2019 4 Crimes(SC) 267; 2019 5 KHC 352; 2019 8 Supreme 523; 2019 0 Supreme(SC) 1148; 2020 1 ALD Crl 79(SC) THREE JUDGE BENCH
we have grounded the power of the Magistrate to order further investigation until charges are framed under Section 156(3) read with Section 173(8) of the CrPC

Kandakatla Krishna Reddy vs The State Of Tetangana on 28 July, 2020; https://indiankanoon.org/doc/55695151/;
taking note of the judgment rendered by this court in W.P. No. 38397 of 2018, whereby this court having regard to the scheme of Cr.P.C., held that no FIR can be directed to be registered by the High Court under Article 226 of Constitution Of India

Proddaturi Shobha Rani @ Shobha Rani and another Vs State of A.P.; 2020 2 ALD Crl 111 (AP) ; http://tshcstatus.nic.in/hcaporders/2014/202100118182014_1.pdf;
The juridical or juristic persons like companies, corporations and partnership firms can be imputed with criminal liability even in respect of the offences involving mens rea, if their alter ego i.e., the employees or other persons in charge of the conduct and business of such juristic person commit such offences during the course of discharging their function and for the benefit of the company. Except where the punishment is mandatory imprisonment, in other cases where the punishment is imprisonment and fine/imprisonment or fine/with fine only, the juristic person can be imposed fine by following the lex non cogit ad impossibilia.
the criminal case is not maintainable against the accused without adding the firm as one of the accused.
In the instant case, the allegation being non repayment of the value of sarees taken on credit basis by the accused, the question of dishonest misappropriation does not arise.
Mere non-payment or under payment of price of the goods by itself does not amount to commission of an offence of cheating or criminal breach of trust.

Polepaka Praveen @ Pawan VS State of Telangana, rep. by its Public Prosecutor, 12 Nov 2019 2019 0 Supreme(Telangana) 352; 2020 1 ALD Crl 141(TS)(DB)
certain discrepancies, both with regard to the time when the electronic data was transferred from DVR to the DVD, and with regard to whether such transfer was made directly from DVR to DVD, or was made by using a Pen drive or not? But, such minor discrepancies do not cast a shadow of doubt on the veracity of the prosecution case.
merely because according to the potency certificate (Ex. P. 29), the circumference of the flaccid penis of the accused is more than the circumference of the erect penis, it is a minor discrepancy, which does not destabilize the case of the prosecution.

Lingam Anil Kumar Vs Sowmya Lingam; 2020 2 ALD Crl 164(AP); http://tshcstatus.nic.in/hcaporders/2019/202100063762019_1.pdf;
Whether the allegations mentioned in the F.I.R. against the accused are true or not is purely a disputed question of fact which cannot be adjudicated or decided by this Court in exercise of its inherent powers under Section 482 Cr.P.C. It is for the Investigating Officer to investigate the case and ascertain whether the allegations set out in the F.I.R. are true or not. If it is prima facie found during the course of investigation that the allegations mentioned in the F.I.R. are true and if he could

collect evidence to substantiate the same during the course of investigation, he has to file the final report in the concerned Court and it is for the said Court to decide whether the said allegations made against the accused are true or not, after recording evidence to that effect to be adduced by the prosecution and on proper appreciation of the said evidence in the final adjudication of the case. 9 CMR, J. Crl. P.Nos.6376 & 6976 of 2019 Therefore, it is entirely the task of the Investigating Officer and if at all the charge-sheet is filed, it is the task of the trial Court to find out whether the allegations set out in the F.I.R. which are ascribed against the accused are true or not. At this stage, in a petition filed under Section 482 Cr.P.C, this Court cannot go into the said disputed question of fact to find out the truth or otherwise of the said allegations.

the law is well-settled that a criminal case and for that matter even a civil case cannot be rejected or dismissed on the ground of want of territorial jurisdiction.

a perusal of Section 322 Cr.P.C. makes it manifest that it does not contemplate acquittal of the accused or rejection of the prosecution case for want of territorial jurisdiction and it only mandates that when the Court finds at any stage of the case that it has no jurisdiction to try the same, that it has to take steps as envisaged therein to transfer the case to the competent Court having jurisdiction.

As the offence under Section 494 of IPC is a cognizable offence in the State of Andhra Pradesh, in view of the State Amendment effected in the year 1992, Police got ample power to register the case under Section 494 of IPC and investigate the case and file its final report in the Court. The bar under Section 198 Cr.P.C. to take cognizance of the case except on a complaint by the aggrieved person is on the Court. The said bar is not on the police to register the case and investigate the same. Ultimately, if the police files final report/charge-sheet even for the offence under Section 494 of IPC along with Section 498-A of IPC, it is for the concerned Court to decide whether cognizance of the said case can be taken or not in view of the bar engrafted under Section 198 Cr.P.C. Police has to first ascertain whether there is in fact a second marriage or not and whether it was performed in due form as per the ceremonies prevailing in the community of either of the parties to the marriage or not and if they file charge-sheet to that effect, then it is for the concerned Court to decide on the aspect whether to take cognizance of the case or not in view of the bar contained under Section 198 Cr.P.C.

Sec 376 R/W 511 IPC

This Court in the case of Aman Kumar and Anr. v. State of Haryana, (2004) 4 SCC 379 held that

“11. In order to find an accused guilty of an attempt with intent to commit a rape, court has to be satisfied that the accused, when he laid hold of the prosecutrix, not only desired to gratify his passions upon her person, but that he intended to do so at all events, and notwithstanding any resistance on her part…”

Value of 313 CrPC Statement

In State of U.P. vs. Lakhmi, (1998) 4 SCC 336 the case involved death of the respondent's wife. Respondent and the deceased had two children. The prosecution case was that there were intermittent skirmishes between the couple. The wife accused the appellant of dissipating his money on account of having drinks. During the early hours of the fateful day, it is further alleged that the respondent inflicted blows on the head of the deceased, smashed her skull leading to instant death. The trial Court convicted the respondent but High Court acquitted him. We may notice paragraph 8. It reads as under:

> "8. As a legal proposition we cannot agree with the High Court that statement of an accused recorded under Section 313 of the Code does not deserve any value or utility if it contains inculpatory admissions. The need of law for examining the accused with reference to incriminating circumstances appearing against him in prosecution evidence is not for observance of a ritual in a trial, nor is it a mere formality. It has a salutary purpose. It enables the court to be apprised of what the indicted person has to say about the circumstances pitted against him by the prosecution. Answers to the questions may sometimes be flat denial or outright repudiation of those circumstances. In certain cases the accused would offer some explanations to in criminative circumstances. In very rare instances the accused may even admit or own incriminating circumstances adduced against him, perhaps for the purpose of

adopting legally recognised defences. In all such cases the court gets the advantage of knowing his version about those aspects and it helps the court to effectively appreciate and evaluate the evidence in the case. If an accused admits any incriminating circumstance appearing in evidence against him there is no warrant that those admissions should altogether be ignored merely on the ground that such admissions were advanced as a defence strategy." (emphasis supplied)

When an offence is Murder and when it is culpable homicide not amounting to murder

In the judgment in State of Andhra Pradesh vs. Rayavarapu Punnayya and Another, (1976) 4 SCC 382 inter alia held as follows:

21. From the above conspectus, it emerges that whenever a court is confronted with the question whether the offence is murder' or culpable homicide not amounting to murder' , on the facts of a case, it will be convenient for it to approach the problem in three stages. The question to be considered at the first stage would be, whether the accused has done an act by doing which he has caused the death of another. Proof of such causal connection between the act of the accused and the death, leads to the second stage for considering whether that act of the accused amounts to "culpable homicide" as defined in Section 299. If the answer to this question is prima facie found in the affirmative, the stage for considering the operation of Section 300 of the Penal Code, is reached. This is the stage at which the court should determine whether the facts proved by the prosecution bring the case within the ambit of any of the four clauses of the definition of "murder" contained in Section 300. If the answer to this question is in the negative the offence would be "culpable homicide not amounting to murder", punishable under the first or the second part of Section 304, depending, respectively, on whether the second or the third clause of Section 299 is applicable. If this question is found in the positive, but the case comes within any of the exceptions enumerated in Section 300, the offence would still be "culpable homicide not amounting to murder", punishable under the first part of Section 304, of the Penal Code. (emphasis supplied)

ACCUSED HAS NO RIGHT TO BE HEARD AT THE STAGE OF INVESTIGATION

Union of India and Anr. v. W.N Chadha (1993) Supp. 4 SCC 260, is a judgment which states that the accused has no right to participate in the investigation till process is issued to him, provided there is strict compliance of the requirements of fair investigation Likewise, the judgments in Smt. Nagawwa v. Veeranna Shivalongappa Konjalgi & Ors. (1976) 3 SCC 736, Prabha Mathur and Anr. v. Pramod Aggarwal & Ors., (2008) 9 SCC 469, Narender G. Goel v. State of Maharashtra (2009) 6 SCC 65 and Dinubhai Bhogabhai Solanki v. State of Gujarat & Ors. (2014) 4 SCC 626, which state that the accused has no right to be heard at the stage of investigation, has very little to do with the precise question before us. All these judgments are, therefore, distinguishable. Further, Babubhai v. State of Gujarat & Ors. (2010) 12 SCC 254, is a judgment which distinguishes between further investigation and re-investigation, and holds that a superior court may, in order to prevent miscarriage of criminal justice if it considers necessary, direct investigation de novo, whereas a Magistrate's power is limited to ordering further investigation. Since the present case is not concerned with re-investigation, this judgment also cannot take us much further. Likewise, Romila Thapar v. Union of India, (2018) 10 SCC 753, held that an accused cannot ask to change an investigating agency, or to require that an investigation be done in a particular manner, including asking for a court-monitored investigation. This judgment also is far removed from the question that has been decided by us in the facts of this case.

NEWS

- GOVERNMENT OF ANDHRA PRADESH- Budget Estimates 2020-21 - Comprehensive Budget Release Order for Rupees Seven crore ninety lakh forty thousand only (Rs.7,90,40,000/-) - Quarterly Distribution of Budget for the Prosecutions Department - Orders – Issued- G.O.Rt.No.:1862 FINANCE (FMU-Home&Courts) DEPARTMENT, Dated:21-07-2020

- GOVERNMENT OF ANDHRA PRADESH- Home Department - Withdrawal of prosecutions pertains to the cases registered in connection with the agitations against Contributory Pension Scheme by the Teachers and other employees - Orders – Issued- G.O.RT.No. 731 HOME (LEGAL.II) DEPARTMENT Dated: 30-07-2020
- GOVERNMENT OF ANDHRA PRADESH- Prosecution Services – Transfer of Smt.J.V.Padmavathi, Assistant Public Prosecutor, from Judicial Magistrate of First Class Court, Amadalavalasa, Srikakulam District to the Court of Judicial First Class Magistrate Court, Chintapalli, Visakhapatnam District on administrative grounds, in relaxation of ban on transfers –Orders – Issued- G.O.RT.No. 703 , HOME (COURTS.A) DEPARTMENT, Dated: 21-07-2020
- GOVERNMENT OF ANDHRA PRADESH- Public Services - Prosecutions Department – Additional Public Prosecutors GradeI/Additional Public Prosecutors in the Special Court for trial of offences against women filed under sections 354 and 376 of the IPC, 1860 for six (06) Districts designated as exclusive Special Public Prosecutors to the Special Courts – Notification - Orders – Issued- G.O.RT.No. 693, HOME (COURTS.A) DEPARTMENT, Dated: 17-07-2020
- GOVERNMENT OF ANDHRA PRADESH- Public Services - Prosecutions Department – Special Court for trial of offences under the Protection of Children from Sexual Offences Act, 2012, for nine (9) Districts – Special Public Prosecutors designated as exclusive Special Public Prosecutors to the Special Courts – Notification - Orders – Issued- G.O.RT.No. 692, HOME (COURTS.A) DEPARTMENT, Dated: 17-07-2020.
- GOVERNMENT OF ANDHRA PRADESH- Public Services - Prosecutions Department – Sri Bandela Abraham, Assistant Public Prosecutor, 1st Class Judicial Magistrate Court, Vinukonda, Guntur District – Transfer to Special Judicial First Class Magistrate (Excise) Court, Guntur onadministrative grounds in relaxation of ban on transfers - Orders – Issued- G.O.RT.No. 691 HOME (COURTS.A) DEPARTMENT, Dated: 17-07-2020
- GOVERNMENT OF ANDHRA PRADESH- Public Services – Prosecutions Department – Sanction of additional charge allowance to certain Prosecuting Officers and others for having held full additional charge – under the Provision of FR 49 – Errata - Orders – Issued- G.O.RT.No. 690, HOME (COURTS.A) DEPARTMENT, Dated: 17-07-2020
- GOVERNMENT OF ANDHRA PRADESH- Public Services – Prosecutions Department – Sanction of additional charge allowance to certain Prosecuting Officers for having held full additional charge - under the proviso of FR 49 – Orders – Issued- G.O.RT.No. 682, HOME (COURTS.A) DEPARTMENT, Dated: 15-07-2020
- The help videos on e-filing was prepared and circulated for the advocates as part of awareness raising programme and the said videos are available in the e filing portal help desk and also in the social media through the e-committee YouTube channel.
    - Video Tutorial.1. How to register for efiling by an advocate (English)
        - YouTube link: https://youtu.be/y2orUGsoIqc
    - Video Tutorial 2. How to register for efiling by an advocate (Hindi)
        - YouTube link: https://youtu.be/WDPYmXoWzpo
    - Video Tutorial 3.How to efile a case in High courts /District court /Taluk courts? (English)
        - YouTube link: https://youtu.be/y2orUGsoIqc
    - Video Tutorial 4 How to efile a case in High courts /Districtcourt /Taluk courts? (Hindi)
        - YouTube link: https://youtu.be/Tl0FBK9EZA0

- Vacancies in the category of District Judge(Entry Level) by direct recruitment (under 25% quota) for the year, 2020.
- Vacancies in the category of District Judge(Entry Level) under Recruitment by Transfer(Accelerated Recruitment)(under 10% quota) for the year, 2020
- Physical verification of pending cases to identify covered and infructuous matters - Assignment of the work to four Junior Civil Judges – Ordered
- District and Sessions Judges - Transfer and Posting of District and Session Judge - Orders – Issued dt. 21.7.2020
- High Court of Andhra Pradesh-Gazetted- Appointment to the post of Registrar (I.T,-cum-C.P.C.), High Court of Andhra Pradesh - Orders - Issued. 17.7.2020
- Transfer and Posting of Junior Civil Judge. - ORDERS - ISSUED.9.7.2020
- Transfer and posting of Junior Civil Judges - Orders – Issued 8.7.2020
- Establishment - High Court of Andhra Pradesh - Full additional charge of the post of Registrar (Vigilance), High Court of Andhra Pradesh - Order – Issued- 6.7.2020
- Establishment - High Court of Andhra Pradesh - Transfer and appointment of Sri B.V.L.N Chakravarthy, II Additional District Judge-cum-Metropolitan Sessions Judge, Vijayawada as Officer on Special Duty against the vacant post of Registrar in the High Court of Andhra Pradesh - Order – Issued- 6.7.2020
- The Andhra Pradesh Capital Region Development Authority Repeal Act, 2020.
- The Andhra Pradesh Decentralisation and Inclusive Development of All Regions Act, 2020.- KURNOOL TO BE THE JUDICIAL CAPITAL.

THE COPIES OF THESE CIRCULARS, GAZETTES MENTIONED IN NEWS SECTION OF THIS LEAFLET ARE AVAILABLE IN OUR "PROSECUTION REPLENISH" CHANNEL IN TELEGRAM APP. *http://t.me/prosecutionreplenish*

ON A LIGHTER VEIN

A lorry driver is driving 200 penguins to London Zoo when his lorry breaks down on the motorway. The driver gets out of the cab and is looking at the engine when a second lorry driver stops in front of him and asks if he needs help. The penguins' driver explains that he is taking the penguins to the zoo and asks if the other man would take the penguins there. He agrees.

Some hours later, the 2nd lorry driver drives past the first one, who is still waiting on the motorway. The penguins are still on the lorry, and look happy.

"I thought I asked you to take those penguins to the zoo," shouted the first driver.

The second replied, "I did, but I had some money left, so we're going to the cinema now."

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मेरी सरकार

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NATIONAL DIRECTIVES FOR WORKPLACES

- As far as possible the practice of Work from Home (WfH) should be followed
- Staggering of work/business hours to be followed in offices, workplaces, shops, markets, industrial & commercial establishments
- Provision for thermal scanning, hand wash or sanitizer will be made at all entry points
- Provision of hand wash or sanitizer at exit points and common areas
- Frequent sanitization of entire workplace
- All persons in charge of workplaces to ensure adequate distance between workers, adequate gaps between shifts, etc.

Dated: 30 July, 2020

Vol- IX
Part-9

Prosecution Replenish

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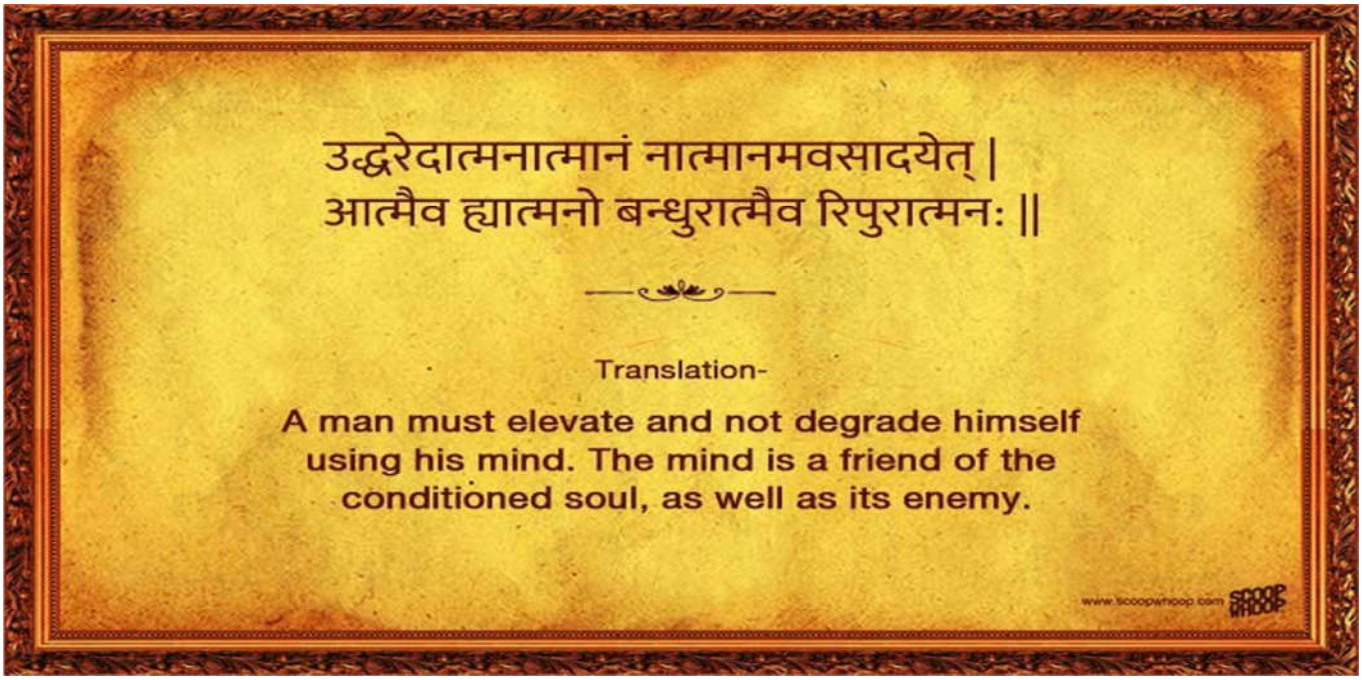
September, 2020

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



CITATIONS

Padum Kumar VS State Of Uttar Pradesh, 14 Jan 2020; 2020 0 AIR(SC) 447; 2020 1 Crimes(SC) 219; 2020 1 JLJR(SC) 301; 2020 1 PLJR(SC) 345; 2020 1 RCR(Cri) 699; 2020 3 SCC 35; 2020 1 Supreme 329; 2020 0 Supreme(SC) 28; 2020 1 SCC Cri 725;

It is fairly well settled that before acting upon the opinion of the hand-writing expert, prudence requires that the court must see that such evidence is corroborated by other evidence either direct or circumstantial evidence.

Prem Chand Singh VS State Of Uttar Pradesh, 07 Feb 2020; 2020 3 SCC 54; 2020 1 SCC(Cri) 740; 2020 0 Supreme(SC) 126;

If the substratum of the two FIRs are common, the mere addition of Sections 467, 468 and 471 in the subsequent FIR cannot be considered as different ingredients to justify the latter FIR as being based on different materials, allegations and grounds.

MOHAMMED SIDDIQUE VS NATIONAL INSURANCE COMPANY LTD., 08 Jan 2020; 2020 0 AIR(SC) 520; 2020 1 ALD(SC) 231; 2020 2 KHC(SN) 2; 2020 1 RCR(Civ) 689; 2020 3 SCC 57; 2020 1 Supreme 386; 2020 0 Supreme(SC) 38; 2020 1 SCC Cri 743;

But the above reason, in our view, is flawed. The fact that the deceased was riding on a motor cycle along with the driver and another, may not, by itself, without anything more, make him guilty of **contributory negligence**. At the most it would make him guilty of being a party to the violation of the law. Section 128 of the Motor Vehicles Act, 1988, imposes a restriction on the driver of a two- wheeled motor cycle, not to carry more than one person on the motor cycle. Section 194-C inserted by the Amendment Act 32 of 2019, prescribes a penalty for violation of safety measures for motor cycle drivers and pillion riders. Therefore, the fact that a person was a pillion rider on a motor cycle along with the driver and one more person on the pillion, may be a violation of the law. But such violation by itself, without anything more, cannot lead to a finding of contributory negligence, unless it is established that his very act of riding along with two others, contributed either to the accident or to the impact of the accident upon the victim. There must either be a causal connection between the violation and the accident or a causal connection between the violation and the impact of the accident upon the victim. It may so happen at times, that the accident could have been averted or the injuries sustained could have been of a lesser degree, if there had been no violation of the law by the victim. What could otherwise have resulted in a simple injury, might have resulted in a grievous injury or even death due to the violation of the law by the victim. It is in such cases, where, but for the violation of the law, either the accident could have been averted or the impact could have been minimized, that the principle of contributory negligence could be invoked. It is not the case of the insurer that the accident itself occurred as a result of three persons riding on a motor cycle. It is not even the case of the insurer that the accident would have been averted, if three persons were not riding on the motor cycle. The fact that the motor cycle was hit by the car from behind, is admitted. Interestingly, the finding recorded by the Tribunal that the deceased was wearing a helmet and that the deceased was knocked down after the car hit the motor cycle from behind, are all not assailed. Therefore, the finding of the High Court that 2 persons on the pillion of the motor cycle, could have added to the imbalance, is nothing but presumptuous and is not based either upon pleading or upon the evidence on record. Nothing

14. Therefore, in the absence of any evidence to show that the wrongful act on the part of the deceased victim contributed either to the accident or to the nature of the injuries sustained, the victim could not have been held guilty of contributory negligence.

PAUL VS STATE OF KERALA, 21 Jan 2020; 2020 0 AIR(SC) 966; 2020 1 Crimes(SC) 186; 2020 3 SCC 115; 2020 0 Supreme(SC) 52; 2020 1 SCC Cri 751

Section 86 of the IPC enunciates presumption that despite intoxication which is not covered by the last limb of the provision, the accused person cannot ward off the consequences of his act. A dimension however about intoxication may be noted. Section 86 begins by referring to an act which is not an offence unless done with a particular knowledge or intent. Thereafter, the law giver refers to a person committing the act in a state of intoxication. It finally attributes to him knowledge as he would have if he were not under the state of intoxication except undoubtedly, in cases where the intoxicant was administered to him either against his will or without his knowledge. What about an act which becomes an offence if it is done with a specific intention by a person who is under the state of intoxication? Section 86 does not attribute intention as such to an intoxicated man committing an act which amounts to an offence when the act is done by a person harbouring a particular intention. This question has engaged the attention of this Court in the decision in Basdev vs. State of Pepsu AIR 1956 SC 488. In the said case the appellant, a retired military official went to attend a wedding. The appellant was very drunk. He asked a young boy to step aside a little so that he could occupy a convenient seat. The boy did not budge. The appellant fired from a pistol, he had with him, in the abdomen of the boy which proved fatal. This Court inter alia held as follows:

"4. It is no doubt true that while the first part of the section speaks of intent or knowledge, the latter part deals only with knowledge and a certain element of doubt in interpretation may possibly be felt by reason of this omission. If in voluntary drunkenness knowledge is to be presumed in the same manner as if there was no drunkenness, what about those cases where mens rea is required.

Are we at liberty to place intent on the same footing, and if so, why has the section omitted intent in its latter part? This is not the first time that the question comes up for consideration. It has been discussed at length in many decisions and the result may be briefly summarised as follows:-

5. So far as knowledge is concerned, we must attribute to the intoxicated man the same knowledge as if he was quite sober. But so far as intent or intention is concerned, we must gather it from the attending general circumstances of the case paying due regard to the degree intoxication. Was the man beside his mind altogether for the time being?

If so it would not be possible to fix him with the requisite intention. But if he had not gone so deep in drinking, and from the facts it could be found that he knew what he was about, we can apply the rule that a man is presumed to intend the natural consequences of his act or acts.

6. Of course, we have to distinguish between motive, intention and knowledge. Motive is something which prompts a man to form an intention and knowledge is an awareness of the consequences of the act. In many cases intention and knowledge merge into each other and mean the same thing more or less and intention can be presumed from knowledge. The demarcating line between knowledge and intention is no doubt thin but it is not difficult to perceive that they connote different things. Even in some English decisions, the three ideas are used interchangeably and this has led to a certain amount of confusion." (emphasis supplied)

STATE OF MADHYA PRADESH VS BABBU RATHORE, 17 Jan 2020; 2020 0 AIR(SC) 472; 2020 1 Crimes(SC) 210; 2020 2 SCC 577; 2020 1 Supreme 356; 2020 0 Supreme(SC) 43; 2020 1 SCC Cri 773;

SC & ST (POA) Act, 1989- By virtue of its enabling power, it is the duty and responsibility of the State Government to issue notification conferring power of investigation of cases by notified police officer not below the rank of Deputy Superintendent of Police. Rule 7 of the Rules 1995 provides rank of investigation officer to be not below the rank of Deputy Superintendent of Police. An officer below that rank cannot act as investigating officer in holding investigation in reference to the offences committed under any provisions of the Act, 1989 but the question arose for consideration is that apart from the offences committed under the Act 1989, if the offence complained are both under the IPC and the offence enumerated in Section 3 of the Act, 1989 and the investigation being made by a competent police officer in accordance with the provisions of the Code of Criminal Procedure(hereinafter being referred to as the “Code”), the offences under IPC can be quashed and set aside for non- investigation of the offence under Section 3 of the Act, 1989 by a competent police officer.

Undisputedly, in the instant case, the respondents were charged under Sections 302/34, 404/34 IPC apart from Section 3(2)(v) of the Act, 1989 and the charges under IPC have been framed after investigation by a competent police officer under the Code, in such a situation, in our view, the High Court has committed an apparent error in quashing the proceedings and discharging the respondents from the offences committed under the provisions of IPC where the investigation has been made by a competent police officer under the provisions of the Code. In such a situation, the charge-sheet deserves to proceed in an appropriate competent Court of jurisdiction for the offence punishable under the IPC, notwithstanding the fact that the charge-sheet could not have proceeded confined to the offence under Section 3 of the Act, 1989.

Suraj Jagannath Jadhav VS State of Maharashtra, 13 Dec 2019; 2020 0 AIR(SC) 82; 2020 1 CGLJ 139; 2019 4 Crimes(SC) 575; 2020 2 SCC 693; 2019 0 Supreme(SC) 1364; 2020 1 SCC Cri 777;

Intoxication, as such, is not a defence to a criminal charge. At times, it can be considered to be a mitigating circumstance if the accused is not a habitual drinker, otherwise, it has to be considered as an aggravating circumstance. The question, as to whether the drunkenness is a defence while determining sentence, came up for consideration before this Court in Bablu v. State of Rajasthan [(2006) 13 SCC 116 : (2007) 2 SCC (Cri) 590], wherein this Court held (SCC p. 129, para 12)

that the defence of drunkenness can be availed of only when intoxication produces such a condition as the accused loses the requisite intention for the offence and onus of proof about reason of intoxication, due to which the accused had become incapable of having particular knowledge in forming the particular intention, is on the accused. Examining Section 85 IPC, this Court held that the evidence of drunkenness which renders the accused incapable of forming the specific intent essential to constitute the crime should be taken into account with the other facts proved in order to determine whether or not he had the intention. The Court held that merely establishing that his mind was affected by drink so that he more readily gave way to some violent passion, does not rebut the presumption that a man intends the natural consequences of his acts. This Court, in that case, rejected the plea of drunkenness after noticing that the crime committed was a brutal and diabolic act.

NAWAB VS STATE OF UTTARAKHAND, 22 Jan 2020; 2020 0 AIR(SC) 574; 2020 2 SCC 736; 2020 1 Supreme 420; 2020 0 Supreme(SC) 60; 2020 1 SCC Cri 736;

The wife of the appellant met a homicidal death in her own house past mid night when the appellant was alone with her. His defence has completely been disbelieved with regard to the intruders and we find no reason not to uphold the same. The prosecution had therefore established a prima facie case and the onus shifted to the appellant under Section 106 of the Evidence Act,1872 to explain the circumstances how his wife met a homicidal death. The appellant failed to furnish any plausible defence and on the contrary tried to lead false evidence which is an additional aggravating factor against him.

The deceased had only one entry and exit wound. The bullet apparently exited her body and thus the likelihood of its recovery from the place of occurrence with the round end damaged after it was fired. The pistol was recovered on the confession of the appellant from under the earth in the courtyard, the earth was freshly dug. The High Court disbelieved the recovery because the independent witness PW- 2 went hostile. But the High Court missed the reasoning by the trial court that PW-2 did not deny his signature on the recovery memo nor did he state that his signature was obtained by threat, duress or coercion. The absence of any FSL report may at best be defective investigation.

MYAKALA DHARMARAJAM VS STATE OF TELANGANA, 07 Jan 2020; 2020 0 AIR(SC) 317; 2020 1 Crimes(SC) 106; 2020 2 SCC 743; 2020 1 Supreme 44; 2020 0 Supreme(SC) 6; 2020 1 SCC Cri 799

6. The factors to be considered while granting bail have been held by this Court to be the gravity of the crime, the character of the evidence, position and status of the accused with reference to the victim and witnesses, the likelihood of the accused fleeing from justice and repeating the offence, the possibility of his tampering with the evidence and witnesses, and obstructing the course of justice etc. Each criminal case presents its own peculiar factual scenario and, therefore, certain grounds peculiar to a particular case may have to be taken into account by the Court. The court has to only opine as to whether there is prima facie case against the accused. For the purpose of bail, the Court must not undertake meticulous examination of the evidence collected by the police and comment on the same, Kanwar Singh Meena vs State of Rajasthan & Anr. (2012) 12 SCC 180.

7. In Raghubir Singh v. State of Bihar, (1986) 4 SCC 481 this Court held that bail can be cancelled where (i) the accused misuses his liberty by indulging in similar criminal activity, (ii) interferes with the course of investigation, (iii) attempts to tamper with evidence or witnesses, (iv) threatens witnesses or indulges in similar activities which would hamper smooth investigation, (v) there is likelihood of his fleeing to another country, (vi) attempts to make himself scarce by going underground or becoming unavailable to the investigating agency, (vii) attempts to place himself beyond the reach of his surety, etc. The above grounds are illustrative and not exhaustive. It must also be remembered that rejection of bail stands on one footing but cancellation of bail is a harsh order because it interferes with the liberty of the individual and hence it must not be lightly resorted to.

8. It is trite law that cancellation of bail can be done in cases where the order granting bail suffers from serious infirmities resulting in miscarriage of justice. If the court granting bail ignores relevant material indicating prima facie involvement of the accused or takes into account irrelevant material, which has no relevance to the question of grant of bail to the accused, the High Court or the Sessions Court would be justified in cancelling the bail Kanwar Singh Meena vs State of Rajasthan & Anr. (supra)..

M. E. Shivalingamurthy VS Central Bureau of Investigation, Bengaluru, 07 Jan 2020; 2020 1 Supreme 169; 2020 0 Supreme(SC) 12; 2020 2 SCC 768; 2020 1 SCC Cri 811;

The defence of the accused is not to be looked into at the stage when the accused seeks to be discharged under Section 227 of the Cr.PC (See State of J & K v. Sudershan Chakkar and another, AIR 1995 SC 1954). The expression, "the record of the case", used in Section 227 of the Cr.PC, is to be understood as the documents and the articles, if any, produced by the prosecution. The Code does not give any right to the accused to produce any document at the stage of framing of the charge. At the stage of framing of the charge, the submission of the accused is to be confined to the material produced by the Police (See State of Orissa v. Debendra Nath Padhi, AIR 2005 SC 359).

Shilpa Mittal VS State of NCT of Delhi, 09 Jan 2020; 2020 1 KHC 273; 2020 1 Supreme 193; 2020 0 Supreme(SC) 21; 2020 2 SCC 787; 2020 1 SCC Cri 787;

From the scheme of Section 14, 15 and 19 referred to above it is clear that the Legislature felt that before the juvenile is tried as an adult a very detailed study must be done and the procedure laid down has to be followed. Even if a child commits a heinous crime, he is not automatically to be tried as an adult. This also clearly indicates that the meaning of the words 'heinous offence' cannot be expanded by removing the word 'minimum' from the definition.

in exercise of powers conferred under Article142 of the Constitution, we direct that from the date when the Act of 2015 came into force, all children who have committed offences falling in the 4th category shall be dealt with in the same manner as children who have committed 'serious offences'.

Union of India VS Pirthwi Singh, 24 Apr 2018; 2020 1 SCC Cri 846;

None of the pious platitudes in the National Litigation Policy have been followed indicating not only the Union of India's lack of concern for the justice delivery system but scant regard for its own National Litigation Policy.

11. The website of the Department of Justice shows that the National Litigation Policy, 2010 is being reviewed and formulation of the National Litigation Policy, 2015 is under consideration. When this will be finalized is anybody's guess. There is also an Action Plan to Reduce Government Litigation which was formulated on 13th June, 2017.

12. Nothing has been finalised by the Union of India for the last almost about 8 years and under the garb of ease of doing business, the judiciary is being asked to reform. The boot is really on the other leg.

13. Interestingly, the Action Plan mentions, among others, two interesting steps to reduce pendency:

(i) Avoid unnecessary filing of appeals -appeals should not be filed in routine matters - only in cases where there is a substantial policy matter.

(ii) Vexatious litigation should be immediately withdrawn.

14. These pendency reduction steps (particularly (ii) above) have been conveniently overlooked as far as this appeal is concerned.

15. To make matters worse, in this appeal, the Union of India has engaged 10 lawyers, including an Additional Solicitor General and a Senior Advocate! This is as per the appearance slip submitted to the Registry of this Court. In other words, the Union of India has created a huge financial liability by engaging so many lawyers for an appeal whose fate can be easily imagined on the basis of existing orders of dismissal in similar cases. Yet the Union of India is increasing its liability and asking the taxpayers to bear an avoidable financial burden for the misadventure. Is any thought being given to this?

16. The real question is: When will the Rip Van Winkleism stop and Union of India wake up to its duties and responsibilities to the justice delivery system?

17. To say the least, this is an extremely unfortunate situation of unnecessary and avoidable burdening of this Court through frivolous litigation which calls for yet another reminder through the imposition of costs on the Union of India while dismissing this appeal. We hope that someday some sense, if not better sense, will prevail on the Union of India with regard to the formulation of a realistic and meaningful National Litigation Policy and what it calls 'ease of doing business', which can, if faithfully implemented benefit litigants across the country.

18. The appeal is dismissed with costs of Rs. 1,00,000/- as before to be deposited with the Supreme Court Legal Services Committee within four weeks from today for utilization for juvenile justice issues.

Extra Judl. Exec. Victim Families Assn. VS Union of India, 14 Jul 2017; 2020 1 SCC Cri 891

32. It was submitted (and we agree) that the NHRC has essentially four roles to play, namely that of protector, advisor, monitor and educator of human rights. It is in this capacity that the NHRC as a protector and monitor of human rights through effective investigations has issued guidelines from time to time with regard to various aspects including reporting of matters relating to custodial death and rape, videography of post-mortem examination etc.

33. On 14th December, 1993 the NHRC directed law and order agencies across the country to report matters relating to custodial deaths and rapes within 24 hours. (At that time, death in police action was classified under 'custodial deaths').

34. A couple of years later, on 10th August, 1995 the NHRC sent a letter to all Chief Ministers advising them of the necessity of introducing video-filming of post-mortem examinations from 1st October, 1995 onwards to avoid distortion of facts. This was followed by another letter dated 27th March, 1997 sent by the NHRC to all Chief Ministers recommending that all States adopt the "Model Autopsy Form" and "Additional Procedure for Inquest" prepared by the NHRC which was based on discussions with experts and the UN Model Autopsy Protocol. This was to ensure that all information was collected by the concerned officer and supplied to NHRC without delay.

35. On 29th March 1997 the NHRC issued Guidelines recommending the procedure to be followed by States and Union Territories with regard to encounter deaths. It was recommended, inter alia, that:

i. Deaths should be entered in an appropriate register at the Police Station;
ii. It should be treated as a cognizable offence and investigation should commence;
iii. It should be investigated by an independent agency such as the State CID, and not by officers of the same Police Station;
iv. Compensation to the victim's dependants should be considered in cases ending in conviction.

36. These Guidelines were revised and circulated on 2nd December, 2003 to introduce greater transparency and accountability, since the States were not regularly intimating the NHRC of encounter deaths thereby affecting statistical data. The revised Guidelines contained the following major changes, in addition to the previous Guidelines:

a. If a specific complaint was made against the police, an FIR must be lodged;
b. A Magisterial Inquiry was now mandatory in every encounter death;
c. It also required the State Director General of Police to send a 6-monthly statement of details of all deaths in police action to the NHRC.

37. As one would expect, there was continued non-compliance of the Guidelines by the States, making it necessary for the NHRC to further revise and circulate the Guidelines on 12th May, 2010 containing the following major changes, in addition to the previous guidelines:

a. The Magisterial Inquiry was required to be completed within 3 months;
b. Every death in police action was to be reported to the NHRC by the District Superintendent of Police within 48 hours;

c. A second report was to be sent to the NHRC by the District Superintendent of Police within 3 months, with the Post-Mortem Report, Inquest Report, Ballistic Report and findings of the Magisterial Inquiry.

These Guidelines are currently operational.

MS. X VS STATE OF TELANGANA, 17 May 2018; 2020 1 SCC Cri 902

it is a settled principle of law that bail once granted should not be cancelled unless a cogent case, based on a supervening event has been made out.

Satishkumar Nyalchand Shah VS State of Gujarat, 02 Mar 2020; 2020 0 AIR(SC) 1185; 2020 1 Crimes(SC) 410; 2020 0 Supreme(SC) 205; 2020 2 SCC Cri 1

when the proposed accused against whom the further investigation is sought, namely Shri Bhaumik is not required to be heard at this stage, there is no question of hearing the appellant-one of the co-accused against whom the charge-sheet is already filed and the trial against whom is in progress and no relief of further investigation is sought against him.

Sushil Sethi VS State of Arunachal Pradesh, 31 Jan 2020; 2020 0 Supreme(SC) 100; 2020 3 SCC 240; 2020 2 SCC Cri 38;

It is further observed and held that for the purpose of constituting an offence of cheating, the complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation. It is further observed and held that even in a case where allegations are made in regard to failure on the part of the accused to keep his promise, in the absence of a culpable intention at the time of making initial promise being absent, no offence under Section 420 IPC can be said to have been made out. It is further observed and held that the real test is whether the allegations in the complaint disclose the criminal offence of cheating or not.

Rajeev Kourav VS Baisahab, 11 Feb 2020; 2020 0 Supreme(SC) 143; 2020 2 SCC Cri 51; 2020 3 SCC 317; 2020 0 AIR(SC) 909; 2020 1 KLD 461; 2020 2 KLJ 463;

It is settled law that the evidence produced by the accused in his defence cannot be looked into by the Court, except in very exceptional circumstances, at the initial stage of the criminal proceedings. It is trite law that the High Court cannot embark upon the appreciation of evidence while considering the petition filed under Section 482 CrPC for quashing criminal proceedings. It is clear from the law laid down by this Court that if a prima facie case is made out disclosing the ingredients of the offence alleged against the accused, the Court cannot quash a criminal proceeding.

The conclusion of the High Court to quash the criminal proceedings is on the basis of its assessment of the statements recorded under Section 161 CrPC. Statements of witnesses recorded under Section 161 CrPC being wholly inadmissible in evidence cannot be taken into consideration by the Court, while adjudicating a petition filed under Section 482 CrPC [Rajendra Singh v. State of U.P. & Anr. (2007) 7 SCC 378].

Varinder Kumar Vs State of H.P; 2020 3 SCC 321; 2020 2 SCC Cri 54

The criminal justice delivery system, cannot be allowed to veer exclusively to the benefit of the offender making it uni-directional exercise. A proper administration of the criminal justice delivery system, therefore requires balancing the rights of the accused and the prosecution, so that the law laid down in Mohan Lal (supra) is not allowed to become a spring board for acquittal in prosecutions prior to the same, irrespective of all other considerations. We therefore hold that all pending criminal prosecutions, trials and appeals prior to the law laid down in Mohan Lal (supra) shall continue to be governed by the individual facts of the case.

Prospective overruling is not only a part of constitutional policy but also an extended facet of stare decisis and not judicial legislation.

Complainant cannot be the investigating officer.

Achpal @ Ramswaroop VS State of Rajasthan, 24 Sep 2018; 2020 2 SCC Cri 91

In the present case as on the 90th day, there were no papers or the charge-sheet in terms of Section 173 of the Code for the concerned Magistrate to assess the situation whether on merits the accused was required to be remanded to further custody. Though the charge-sheet in terms of Section 173 came to be filed on 05.07.2018, such filing not being in terms of the order passed by the High Court on 03.07.2018, the papers were returned to the Investigating Officer. Perhaps it would have been better if the Public Prosecutor had informed the High Court on 03.07.2018 itself that the period for completing the investigation was coming to a close. He could also have submitted that the papers relating to investigation be filed within the time prescribed and a call could thereafter be taken by the Superior Gazetted Officer whether the matter required further investigation in terms of Section 173(8) of the Code or not. That would have been an ideal situation. But we have to consider the actual effect of the circumstances that got unfolded. The fact of the matter is that as on completion of 90 days of prescribed period under Section 167 of the Code there were no papers of investigation before the concerned Magistrate. The accused were thus denied of protection established by law. The issue of their custody had to be considered on merits by the concerned Magistrate and they could not be simply remanded to custody dehors such consideration. In our considered view the submission advanced by Mr. Dave, learned Advocate therefore has to be accepted. We now turn to the subsidiary issue, namely, whether the High Court could have extended the period. The provisions of the Code do not empower anyone to extend the period within which the investigation must be completed nor does it admit of any such eventuality. There are enactments such as the Terrorist and Disruptive Activities (Prevention) Act, 1985 and Maharashtra Control of Organised Crime Act, 1999 which clearly contemplate extension of period and to that extent those enactments have modified the provisions of the Code including Section 167. In the absence of any such similar provision empowering the Court to extend the period, no Court could either directly or indirectly extend such

period. In any event of the matter all that the High Court had recorded in its order dated 03.07.2018 was the submission that the investigation would be completed within two months by a Gazetted Police Officer. The order does not indicate that it was brought to the notice of the High Court that the period for completing the investigation was coming to an end. Mere recording of submission of the Public Prosecutor could not be taken to be an order granting extension. We thus reject the submissions in that behalf advanced by the learned Counsel for the State and the complainant.

In our considered view the accused having shown their willingness to be admitted to the benefits of bail and having filed an appropriate application, an indefeasible right did accrue in their favour.

19. We must at this stage note an important feature. In Rakesh Kumar Paul (supra), in his conclusions, Madan B. Lokur, J. observed in para 49 as under:

> "49. The petitioner is held entitled to the grant of "default bail" on the facts and in the circumstances of this case. The trial Judge should release the petitioner on "default bail" on such terms and conditions as may be reasonable. However, we make it clear that this does not prohibit or otherwise prevent the arrest or re-arrest of the petitioner on cogent grounds in respect of the subject charge and upon arrest or re-arrest, the petitioner is entitled to petition for grant of regular bail which application should be considered on its own merit. We also make it clear that this will not impact on the arrest of the petitioner in any other case."

In his concurring judgment, Deepak Gupta, J. agreed [Para 86 of the Judgment of Hon'ble Deepak Gupta] with conclusions drawn and directions given by Madan B. Lokur, J. in paragraphs 49 to 51 of his judgment. According to the aforesaid conclusions, it would not prohibit or otherwise prevent the arrest or re-arrest of the accused on cogent grounds in respect of charge in question and upon arrest or re-arrest the accused would be entitled to petition for grant of regular bail which application would then be considered on its own merit.

Mahender Chawla VS Union of India, 05 Dec 2018; 2020 2 SCC Cri 101; 2019 SCC 14 615; 2019 1 AICLR 493; 2019 0 AllSCR(Cri) 1; 2019 Supp1 CLT(Cri) 369; 2019 73 CriR(Ori) 547; 2019 2 JLJ 384; 2019 1 JLJR(SC) 140; 2018 12 JT 21; 2019 1 KHC 43; 2019 1 KLJ 731; 2019 1 KLT 277; 2018 4 LawHerald(SC) 3342; 2019 1 NCC 193; 2019 1 OLR 126; 2019 1 PLJR(SC) 195; 2019 1 RCR(Cri) 268; 2018 15 Scale 497; 2018 0 Supreme(SC) 1225;

One of the main reasons behind establishing these Vulnerable Witness Deposition Complexes was that a large percentage of acquittals in criminal cases is due to witnesses turning hostile and giving false testimonies, mostly due to lack of protection for them and their families, especially in case of women and children.

35. We, accordingly, direct that :

(i) This Court has given its imprimatur to the Scheme prepared by respondent No.1 which is approved hereby. It comes into effect forthwith.

(ii) The Union of India as well as States and Union Territories shall enforce the Witness Protection Scheme, 2018 in letter and spirit.

(iii) It shall be the 'law' under Article 141/142 of the Constitution, till the enactment of suitable Parliamentary and/or State Legislations on the subject.

(iv) In line with the aforesaid provisions contained in the Scheme, in all the district courts in India, vulnerable witness deposition complexes shall be set up by the States and Union Territories. This should be achieved within a period of one year, i.e., by the end of the year 2019. The Central Government should also support this endeavour of the States/Union Territories by helping them financially and otherwise.

Rajeshbhai Muljibhai Patel VS State of Gujarat, 10 Feb 2020; 2020 0 AIR(SC) 818; 2020 0 Supreme(SC) 137; 2020 3 SCC 794; 2020 2 SCC Cri 239

When the issue as to the genuineness of the receipts is pending consideration in the civil suit, in our view, the FIR ought not to have been allowed to continue as it would prejudice the interest of the parties and the stand taken by them in the civil suit.

19. It is also to be pointed out that in terms of Section 45 of the Indian Evidence Act, the opinion of handwriting expert is a relevant piece of evidence; but it is not a conclusive evidence. It is always open to the plaintiff-appellant No.3 to adduce appropriate evidence to disprove the opinion of the handwriting expert. That apart, Section 73 of the Indian Evidence Act empowers the Court to compare the admitted and disputed writings for the purpose of forming its own opinion.

Mondi Murali Krishna VS Dumpa Hanisha Naga Lakshmi, 07 May 2020; 2020 0 Supreme(AP) 8; (A.P.HC)

As regards the contention of the respondents and also the finding of the learned Sessions Judge that there was no report given by the deceased during her life time that any such acts of sexual assault and sexual harassment were caused by the accused towards her or by any person on her behalf, that it shall be held that no offence under this Act is constituted, the said contention is absolutely devoid of any merit.

when L.W.1 who comes within the purview of the expression "any person" used in Section 19 of the POCSO Act who can furnish information of commission of such offence under the Act to the Police, has lodged report with the Police and when Police registered the said report and investigated the same and when the investigation revealed that these accused have committed the said offences under this Act along with other offences under the Indian Penal Code and under the A.P. Prohibition of Ragging Act, the case of the prosecution cannot be thrown away outright on the sole ground that there was no report from the victim girl. When evidence was collected during the course of investigation that the accused committed the said acts of sexual assault and sexual harassment against the victim girl and that she was subjected to such sexual assault and sexual harassment in their hands and when the Police filed charge-sheet stating that the accused committed the offences punishable under the POCSO Act, the Special Court is under the legal obligation to take the said charge-sheet on to the file and proceed according to law when prima facie the facts of the case show that it constitutes an offence under the POCSO Act. Whether the said evidence is sufficient to record a conviction or even as to the admissibility of the

said evidence etc., is altogether a different aspect which are all the matters to be considered after the trial in the final adjudication of the case. When the record prima facie reveals as per the evidence collected by the prosecution that the facts of the case constitutes an offence under the POCSO Act, the Special Court is not justified in returning the charge-sheet on flimsy grounds. So, the learned Judge grossly erred in rejecting the charge-sheet on the ground that there was no report from the victim girl. He has completely ignored Section 19 of the Act.

B. Parvathi VS State of Andhra Pradesh, 07 May 2020; 2020 0 Supreme(AP) 9; (A.P.HC)
when an allegation relating to the offence under Section 494 IPC is made by the aggrieved person to the Magistrate, then only the Court can take cognizance of the case. Certainly the Court cannot take cognizance of the case for the offence punishable under Section 494 IPC on a police report/charge-sheet filed by the police. Even though offence under Section 494 IPC is made "cognizable" offence as per amendment Act 3 of 1992, there is no corresponding amendment made to Section 198 Cr.P.C. Therefore, the bar under Section 198 Cr.P.C. still subsists. The legal position in this regard is not res nova and it has been clearly well settled.
Even if the factum of second marriage is proved, if it is not proved that it was solemnized in due form as per the ceremonies prevailing in the community, then also there would be no valid marriage and the question of it becoming void or the question of prosecuting any person for the offence of bigamy does not arise. In such case prosecution under Section 494 of IPC is not maintainable. Mere producing some evidence to prove or show that the accused is in cohabitation or in live-in relationship with another woman during the subsistence of his first marriage without proving that he has in fact contracted the second marriage and thereby living with her, by itself do not constitute any offence of bigamy under Section 494 IPC.
(THIS JUDGMENT HAS NOT DISCUSSED THE JUDGMENT OF THE APEX COURT IN BETWEEN A.SUBASH BABU VS STATE OF A.P, which discusses the judgment between S.Radhika Sameena Vs. Station House Officer, 1997 Criminal Law Journal 1655, relied upon by the court in this case AND the Apex Court has held that
"offences under Sections 494, 495 and 496 having been rendered cognizable and non-bailable by virtue of the Code of Criminal Procedure (Amendment Act, 1992) can be investigated by the Police and no illegality is attached to the investigation of these offences by the police. If the Police Officer in charge of a Police Station is entitled to investigate offences punishable under Section 494 and 495 IPC, there is no manner of doubt that the competent Court would have all jurisdiction to take cognizance of the offences after receipt of report as contemplated under Section 173(2) of the Code."
"Once, it is held that the offences under Section 494 and 495 IPC are cognizable offences, the bar imposed by operative part of sub-section 1 of Section 198 of the Criminal Procedure Code beginning with the words "No Court shall take cognizance of an offence punishable under Chapter XX of the Indian Penal Code except upon a complaint made by some person aggrieved by the offence" gets lifted so far as offences punishable under Sections 494 and 495 IPC are concerned.")
A. Subash Babu VS State of A. P. , 21 Jul 2011; 2011 0 AIR(SC) 3031; 2011 0 AIIMR(Cri)(SC) 2931; 2011 2 ANJ(SC) 202; 2012 1 BomCR(Cri)(SC) 379; 2011 0 CrLJ 4373; 2011 2 DMC 827; 2011 3 DMC 50; 2011 3 JCC 2189; 2011 3 JLJR(SC) 289; 2011 8 JT 483; 2011 3 RCR(Civ) 840; 2011 3 RCR(Cri) 674; 2011 7 Scale 671; 2011 7 SCC 616; 2011 3 SCC(Cri) 267; 2011 5 SLT 727; 2011 0 Supreme(SC) 689;

Avulla Yedukondalu VS State of A. P., 07 May 2020; 2020 0 Supreme(AP) 11;
From the evidence of these witnesses it is very much stands established that the accused alone is responsible for causing the death of the deceased. It may be true that none of them have seen the accused beating the deceased, but basing on the quarrel that took place between the accused and the deceased, PW11 informed PWs.1 and 2, and on receipt of the said information, they proceeded to the said house and noticed the accused coming out of the house, who, after giving them evasive answers left the place in a hurried manner. PWs.1 and 2 went inside the house and noticed the dead body with injuries. Therefore, in the absence of any explanation being given by the accused as to how the dead body is in the house and as the accused failed to discharge his burden under Section 106 of the Indian Evidence Act, in our considered view, the commission of the offence by the accused stands established. Hence, we feel that the conviction and sentence imposed by the trial Court warrants no interference.

G. Veema Reddy VS State of A. P., 12 May 2020; 2020 0 Supreme(AP) 23;
After going through the entire evidence, it is established that the appellant for rendering official favour to the complainant had demanded bribe, accepted the same and said currency notes were subsequently produced by the appellant after opening his almirah kept in his bedroom. In the evidence it has been established that on being caught, he was asked to dip fingers of his both hands in the solution kept in two tumblers and after dipping the same, colour of solution had turned pink. In those circumstances, when prosecution had established its case, merely on the ground of non-examination of the complainant, who obviously died and also non production of statement of the complainant recorded under Section 164 of Cr.P.C., may not be treated as a ground for demolishing a well established case.

Satti Arunasri VS Sathi Tata Reddy @ Tatanna (A-1), 22 May 2020; 2020 0 Supreme(AP) 31;
By the time the FIR was submitted to the jurisdictional Magistrate at Ramachandrapuram, inquest was completed and there is abnormal delay which creates cloud on the veracity of the prosecution case and possibility of planting the witnesses to establish the case of the prosecution cannot be ruled out. Therefore, the Sessions Court rightly disbelieved the evidence of Dwarampudi Venkata Ratna Reddy (P.W.4) and Sathi Ramasubba Reddy @ Babi (P.W.8) and more particularly, in the inquest report, the column meant for mentioning the names of direct witnesses was left blank, though inquest was held between 9:00am and 11:30 am on 20.12.2007, but the FIR reached the court by 2:00 pm on 20.12.2007. The distance between the police station and the court is 12 km and one can reach the court within a short

time by vehicle, but the delay creates any amount of suspicion. Considering the effect of such delay in the judgment in detail with reference to law, the Sessions Court rightly concluded that the prosecution failed to prove the guilt of the accused beyond reasonable doubt by adducing cogent and satisfactory evidence which inspires the confidence of the court.

Kedarnath Mahapatra, S/o. N. Ch. Mahapatra VS Union of India, 04 May 2020; 2020 0 Supreme(Telangana) 71;
The pleadings in the affidavit filed in support of writ petition are vague. It is not asserted as to how prejudice would be caused to him in criminal case if domestic enquiry is conducted and what are the complicated questions of law and facts. It is not stated how his defense in criminal case would affect if school management relies on material in their possession and by examining the witnesses. Thus, petitioner failed in discharging his burden to pray for stalling departmental proceedings. As noted above, in criminal case, prosecution has to prove with clear evidence that by his actions petitioner has committed offence under IPC and POCSO Act. In the domestic enquiry employer can consider circumstances in which alleged incident happened to hold against employee

In view of the aforesaid discussion, we issue the following directions:
50.1. No person can print or publish in print, electronic, social media, etc. the name of the victim or even in a remote manner disclose any facts which can lead to the victim being identified and which should make her identity known to the public at large.
50.2. In cases where the victim is dead or of unsound mind the name of the victim or her identity should not be disclosed even under the authorisation of the next of kin, unless circumstances justifying the disclosure of her identity exist, which shall be decided by the competent authority, which at present is the Sessions Judge.
50.3. FIRs relating to offences under Sections 376, 376-A, 376-AB, 376-B, 376-C, 376-D, 376-DA, 376-DB or 376-E IPC and the offences under POCSO shall not be put in the public domain.
50.4. In case a victim files an appeal under Section 372 CrPC, it is not necessary for the victim to disclose his/her identity and the appeal shall be dealt with in the manner laid down by law.
50.5. The police officials should keep all the documents in which the name of the victim is disclosed, as far as possible, in a sealed cover and replace these documents by identical documents in which the name of the victim is removed in all records which may be scrutinised in the public domain.
50.6. All the authorities to which the name of the victim is disclosed by the investigating agency or the court are also duty-bound to keep the name and identity of the victim secret and not disclose it in any manner except in the report which should only be sent in a sealed cover to the investigating agency or the court.
50.7. An application by the next of kin to authorise disclosure of identity of a dead victim or of a victim of unsound mind under Section 228-A(2)(c) IPC should be made only to the Sessions Judge concerned until the Government acts under Section 228-A(1)(c) and lays down criteria as per our directions for identifying such social welfare institutions or organisations.
50.8. In case of minor victims under POCSO, disclosure of their identity can only be permitted by the Special Court, if such disclosure is in the interest of the child.
50.9. All the States/Union Territories are requested to set up at least one “One- Stop Centre” in every district within one year from today.
(emphasis supplied)
33.3. The Director General of Police, shall ensure that strict instructions are issued to all the police stations / investigating officers not to refer to the name of the victim and their parents while registering the crime and in remand report and while filing the charge sheet. Whenever crime is reported on committing of offence under Sections 376, 376-A, 376-AB, 376-B, 376-C, 376-D, 376-DA, 376-DB or 376-E of IPC and offences under POCSO Act, registering of crime should not be put in public domain. It may be open to the police to put all the details in a sealed cover and place the same before the Special Court as directed by the Supreme Court in Nipun Saxena and that the directions of Supreme Court are strictly complied.
33.4. Similarly, in the charge sheet, imputations to charge memo and in the counter affidavit, the respondent-school management extensively refers to the name of the victim girl and her parents. This shows the insensibility of the school management to privacy of the girl student and her parents. The directions of the Supreme Court in Nipun Saxena are equally applicable to establishments when they deal with sexual harassment. The respondent-school management is warned to be careful in future whenever such incidents take place and not to disclose the name of the child and the parents. The personal details of the student should be kept in a sealed cover.
33.5. Having regard to the seriousness of the issue, the Chief Secretary is requested to take note of the observations and directions of Hon’ble Supreme Court in Nipun Saxena and shall formulate guidelines in this regard and notify to all establishments, specially to managements of schools and colleges and to print and electronic media to scrupulously comply with the directions of Hon’ble Supreme Court.
33.6. The Registry is directed not to print the full cause title of the case in the judgment. Instead, it shall show only name of the petitioner and respondent as Union of India.

Javed Abdul Rajjaq Shaikh VS State Of Maharashtra, 06 Nov 2019; 2020 2 ALD Crl 187(SC); 2019 0 AIR(SC) 5721; 2019 4 Crimes(SC) 198; 2020 1 EastCrC(SC) 79; 2019 10 SCC 778; 2020 1 SCC(Cri) 101; 2019 0 Supreme(SC) 1236;
As far as the injuries in the Inquest report not being noticed in the post-mortem report is concerned, there can no doubt that the medical doctor knows exactly what medical injuries are and ordinarily in case of inconsistency, the medical report of the doctor should prevail. Having regard to the post mortem and the evidence of P.W.1, the nature of injuries noticed as explained by the deposition of P.W.1 unerringly point to the death being caused by throttling as opined by the doctor.

Much may not turn on the injuries which are alleged to have been noted in the Inquest not being noted in the post mortem note.

Lakshman VS State of Karnataka, 17 Oct 2019; 2019 0 AIR(SC) 5268; 2019 9 SCC 677; 2019 3 SCC(Cri) 760; 2019 0 Supreme(SC) 1153; 2020 2 ALD Crl 214(SC)

As the contract is for the purpose of procuring the land, as such the same is of civil nature, as held by the High Court, is also no ground for quashing. Though the contract is of civil nature, if there is an element of cheating and fraud it is always open for a party in a contract, to prosecute the other side for the offences alleged. Equally, mere filing of a suit or complaint filed under Section 138 of the N.I. Act, 1881 by itself is no ground to quash the proceedings.

Ravi S/o Ashok Ghumare VS State of Maharashtra, 03 Oct 2019; 2020 2 ALD Crl 218(SC); 2019 0 AIR(SC) 5170; 2019 4 Crimes(SC) 39; 2019 9 SCC 622; 2019 3 SCC(Cri) 723; 2019 8 Supreme 661; 2019 0 Supreme(SC) 1100;

The globally acknowledged medical literature coupled with the statement of PW-11 Assistant Director, Forensic Science Laboratory leaves nothing mootable that in cases of sexual assault, DNA of the victim and the perpetrator are often mixed. Traditional DNA analysis techniques like "autosomal- STR" are not possible in such cases. Y-STR method provides a unique way of isolating only the male DNA by comparing the Y-Chromosome which is found only in males. It is no longer a matter of scientific debate that Y-STR screening is manifestly useful for corroboration in sexual assault cases and it can be well used as excalpatory evidence and is extensively relied upon in various jurisdictions throughout the world. ["Y-STR analysis for detection and objective confirmation of child sexual abuse" authored by Frederick C. Delfin - Bernadette J. Madrid - Merle P. Tan - Maria Corazon A. De Ungria and "Forensic DNA Evidence: Science and the Law" authored by Justice Ming W. Chin, Michael Chamberlain, A, Y Roja, Lance Gima] Science and Researches have emphatically established that chances of degradation of the 'Loci' in samples are lesser by this method and it can be more effective than other traditional methods of DNA analysis. Although Y-STR does not distinguish between the males of same lineage, it can, nevertheless, may be used as a strong circumstantial evidence to support the prosecution case. Y-STR techniques of DNA analysis are both regularly used in various jurisdictions for identification of offender in cases of sexual assault and also as a method to identify suspects in unsolved cases.

Though the High Court has observed that 'satisfaction of lust' and 'removal of trace' was the appellant's motive but motive is not an explicit requirement under the Indian Penal Code, though 'motive' may be helpful in proving the case of the prosecution in a case of circumstantial evidence. This Court has held in a catena of decisions that lack of motive would not be fatal to the case of prosecution as sometimes human beings act irrationally and at the spur of the moment. The case in hand is not entirely based on circumstantial evidence as there are reliable eye-witness depositions who have seen the appellant committing the crime, may be in part. Such an unshakable evidence with dense support of DNA test does not require the definite determination of the motive of the appellant behind the gruesome crime.

It is noteworthy that the object and purpose of determining quantum of sentence has to be 'society centric' without being influenced by a 'judges' own views, for society is the biggest stake holder in the administration of criminal justice system. A civic society has a 'fundamental' and 'human' right to live free from any kind of psycho fear, threat, danger or insecurity at the hands of anti-social elements. The society legitimately expects the Courts to apply doctrine of proportionality and impose suitable and deterent punishment that commensurate with the gravity of offence.

The Sentencing Policy, therefore, needs to strike a balance between the two sides and count upon the twin test of (i) deterrent effect, or (ii) complete reformation for integration of the offender in civil society. Where the Court is satisfied that there is no possibility of reforming the offender, the punishments before all things, must be befitting the nature of crime and deterrent with an explicit aim to make an example out of the evil-doer and a warning to those who are still innocent. There is no gainsaying that the punishment is a reflection of societal morals. The subsistence of capital punishment proves that there are certain acts which the society so essentially abhores that they justify the taking of most crucial of the rights - the right to life.

The appellant who had no control over his carnal desires surpassed all natural, social and legal limits just to satiate his sexual hunger. He ruthlessly finished a life which was yet to bloom. The appellant instead of showing fatherly love, affection and protection to the child against the evils of the society, rather made her the victim of lust. It's a case where trust has been betrayed and social values are impaired. The unnatural sex with a two-year old toddler exhibits a dirty and perverted mind, showcasing a horrifying tale of brutality. The appellant meticulously executed his nefarious design by locking one door of his house from the outside and bolting the other one from the inside so as to deceive people into believing that nobody was inside. The appellant was thus in his full senses while he indulged in this senseless act. Appellant has not shown any remorse or repentance for the gory crime, rather he opted to remain silent in his 313 Cr.P.C. statement. His deliberate, well-designed silence with a standard defence of 'false' accusation reveals his lack of kindness or compassion and leads to believe that he can never be reformed. That being so, this Court cannot write off the capital punishment so long as it is inscribed in the statute book.

"Aggravating circumstances: A court may, however, in the following cases impose the penalty of death in its discretion:

(a) if the murder has been committed after previous planning and involves extreme brutality.

(b) if the murder involves exceptional depravity.

(c) if the murder is of a member of any of the armed forces of the Union or of a member of any police force or of any public servant and was committed:

(i) while such member or public servant was on duty.

(ii) in consequence of anything done or attempted to be done by such member or public servant in the lawful discharge of his duty as such member or public servant whether at the time of murder he was such member or public servant, as the case may be, or had ceased to be such member or public servant.

(d) if the murder is of a person who had acted in the lawful discharge of his duty under Section 43 of the Code of Criminal Procedure, 1973 or who had rendered assistance to a Magistrate or a police officer demanding his aid or requiring his assistance under Section 37 and Section 129 of the said Code."
"Mitigating circumstances - In the exercise of its discretion in the above cases, the court shall take into account the following circumstances:
(1) That the offence was committed under the influence of extreme mental or emotional disturbance.
(2) The age of the accused. If the accused is young or old, he shall not be sentenced to death.
(3) The probability that the accused would not commit criminal acts of violence as would constitute a continuing threat to society.
(4) The probability that the accused can be reformed and rehabilitated. The State shall by evidence prove that the accused does not satisfy the conditions (3) and (4) above.
(5) That in the facts and circumstances of the case the accused believed that he was morally justified in committing the offence.
(6) That the accused acted under the duress or domination of another person.
(7) That the condition of the accused showed that he was mentally defective and that the said defect impaired his capacity to appreciate the criminality of his conduct."

Rasula Ravi Vs State of A.P; http://tshcstatus.nic.in/hcorders/2013/crla/crla_74_2013.pdf; 2020 2 ALD Crl 322 (TS) (DB);
Of course, in his testimony, Raghu (P.W. 6) {eye witness} does not claim that he went to the hospital with A. Radha (P.W. 2). But even if, he had not accompanied the deceased to the hospital, it would not dilute the veracity of his testimony. 18 For, different people behave differently in the same situation. Therefore, the learned counsel for the appellant is unjustified in claiming that the conduct of the witness, Raghu (P.W. 6) is an unusual one
It is a settled principle of law that any lapses committed by the investigating agency do not support the defense [Ref. Krishnegowda v. State of Karnataka (2017) 13 SCC 98].
it is a settled principle of criminal jurisprudence that in a case of direct evidence, motive need not be established. The existence of, or non-existence of a motive is essential in a case of circumstantial evidence.
Furthermore, even if there is some variation with regard to the scene of offence, it is not fatal to the case of the prosecution. As long as the substratum of the prosecution case has ring of truth and is, thus, believable, the conviction can be recorded against the accused.

UNION OF INDIA VS ASHOK KUMAR SHARMA AND OTHERS decided on 28.08.2020 https://main.sci.gov.in/supremecourt/2019/10817/10817_2019_37_1501_23696_Judgement_28-Aug-2020.pdf;

Thus, we may cull out our conclusions/directions as follows:

I. In regard to cognizable offences under Chapter IV of the Act, in view of Section 32 of the Act and also the scheme of the CrPC, the Police Officer cannot prosecute offenders in regard to such offences. Only the persons mentioned in Section 32 are entitled to do the same.

II. There is no bar to the Police Officer, however, to investigate and prosecute the person where he has committed an offence, as stated under Section 32(3) of the Act, i.e., if he has committed any cognizable offence under any other law.

III. Having regard to the scheme of the CrPC and also the mandate of Section 32 of the Act and on a conspectus of powers which are available with the Drugs Inspector under the Act and also his duties, a Police Officer cannot register a FIR under Section 154 of the CrPC, in regard to cognizable offences under Chapter IV of the Act and he cannot investigate such offences under the provisions of the CrPC.

IV. Having regard to the provisions of Section 22(1)(d) of the Act, we hold that an arrest can be made by the Drugs Inspector in regard to cognizable offences falling under Chapter IV of the Act without any warrant and otherwise treating it as a cognizable offence. He is, however, bound by the law as laid down in D.K. Basu (supra) and to follow the provisions of CrPC.

V. It would appear that on the understanding that the Police Officer can register a FIR, there are many cases where FIRs have been registered in regard to cognizable offences falling under Chapter IV of the Act. We find substance in the stand taken by learned Amicus Curiae and direct that they should be made over to the Drugs Inspectors, if not already made over, and it is for the Drugs Inspector to take action on the same in accordance with the law. We must record that we are resorting to our power under Article 142 of the Constitution of India in this regard.

VI. Further, we would be inclined to believe that in a number of cases on the understanding of the law relating to the power of arrest as, in fact, evidenced by the facts of the present case, police officers would have made arrests in regard to offences under Chapter IV of the Act. Therefore, in regard to the power of arrest, we make it clear that our decision that Police Officers do not have power to arrest in respect of cognizable offences under Chapter IV of the Act, will operate with effect from the date of this Judgment.

VII. We further direct that the Drugs Inspectors, who carry out the arrest, must not only report the arrests, as provided in Section 58 of the CrPC, but also immediately report the arrests to their superior Officers.

Parvinder Kansal Vs The State of NCT of Delhi & Anr.; decided on 28.08.2020; https://main.sci.gov.in/supremecourt/2020/14248/14248_2020_35_1503_23651_Judgement_28-Aug-2020.pdf
While it is open for the State Government to prefer appeal for inadequate sentence under Section 377 Cr.PC but similarly no appeal can be maintained by victim under Section 372, Cr.PC on the ground of inadequate sentence.

Mohd. Anwar VS The State (N.C.T. of Delhi); 19.08.2020; https://main.sci.gov.in/supremecourt/2010/9400/9400_2010_32_1501_23468_Judgement_19-Aug-2020.pdf
Pleas of unsoundness of mind under Section 84 of IPC or mitigating circumstances like juvenility of age, ordinarily ought to be raised during trial itself. Belated claims not only prevent proper production and appreciation of evidence, but they also undermine the genuineness of the defence's case.
Mere production of photocopy of an OPD card and statement of mother on affidavit have little, if any, evidentiary value. In order to successfully claim defence of mental unsoundness under Section 84 of IPC, the accused must show by preponderance of probabilities that he/she suffered from a serious-enough mental disease or infirmity which would affect the individual's ability to distinguish right from wrong.2 Further, it must be established that the accused was afflicted by such disability particularly at the time of the crime and that but for such impairment, the crime would not have been committed. The reasons given by the High Court for disbelieving these defences are thus well reasoned and unimpeachable.

Ghanshyam Upadhyay vs The State Of Uttar Pradesh on 19 August, 2020; https://indiankanoon.org/doc/2700953/
As noted, the entire basis for making the allegations as contained in the miscellaneous petition is an Article relied on by the petitioner said to have been published in the newspaper. There is no other material on record to confirm the truth or otherwise of the statement made in the newspaper. In our view this Court will have to be very circumspect while accepting such contentions based only on certain newspaper reports. This Court in a series of decisions has repeatedly held that the newspaper item without any further proof is of no evidentiary value. The said principle laid down has thereafter been taken note in several public interest litigations to reject the allegations contained in the petition supported by newspaper report. It would be appropriate to notice the decision in the case of Kushum Lata vs. Union of India & Ors. (2006) 6 SCC 180 wherein it is observed thus, "…. It is also noticed that the petitions are based on newspaper reports without any attempt to verify their authenticity. As observed by this Court WP (Crl) No.177/2020 in several cases, newspaper reports do not constitute evidence. A petition based on unconfirmed news reports, without verifying their authenticity should not normally be entertained. As noted above, such petitions do not provide any basis for verifying the correctness of statements made and information given in the petition."

Sri M.Laxman Rao vs The State Of Telangana on 26 August, 2020; https://indiankanoon.org/doc/23071115/
The Hon'ble High Court had disposed the writ petition, on the ground that the respondent no.5 police have registered a case under sec 500 IPC, after obtaining permission from the jurisdictional court as the same was non-cognizable.
{It appears that the bar u/sec Sec 199 CrPC was not brought to the notice of the Hon'ble High Court and it was not adhered to)

Allaboyna Golla Sai, vs The State Of Telangana on 26 August, 2020; https://indiankanoon.org/doc/100725922/
I.A.No.3 of 2020 is filed by the petitioners/respondent Nos.2 and 3 in the criminal petition to compound the offence pursuant to the FIR.No.96 of 2019 dated 08.02.2019 of P.S. Chilkalguda under Sections 323, 504, 506 IPC and Sections 3(1)(f) and 3(2)(Va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities Act), 2015, is allowed.

NOSTALGIA

Question whether the offence is murder' or culpable homicide not amounting to murder'
This Court in the judgment in State of Andhra Pradesh vs. Rayavarapu Punnayya and Another, (1976) 4 SCC 382 inter alia held as follows:
21. From the above conspectus, it emerges that whenever a court is confronted with the question whether the offence is murder' or culpable homicide not amounting to murder' , on the facts of a case, it will be convenient for it to approach the problem in three stages. The question to be considered at the first stage would be, whether the accused has done an act by doing which he has caused the death of another. Proof of such causal connection between the act of the accused and the death, leads to the second stage for considering whether that act of the accused amounts to "culpable homicide" as defined in Section 299. If the answer to this question is prima facie found in the affirmative, the stage for considering the operation of Section 300 of the Penal Code, is reached. This is the stage at which the court should determine whether the facts proved by the prosecution bring the case within the ambit of any of the four clauses of the definition of "murder" contained in Section 300. If the answer to this question is in the negative the offence would be "culpable homicide not amounting to murder", punishable under the first or the second part of Section 304, depending, respectively, on whether the second or the third clause of Section 299 is applicable. If this question is found in the positive, but the case comes within any of the exceptions enumerated in Section 300, the offence would still be "culpable homicide not amounting to murder", punishable under the first part of Section 304, of the Penal Code. (emphasis supplied)

Purpose of deprivation of Liberty:

Paragraph 19 of the decision of this Court in Babu Singh and others vs. State of U.P., (1978) 1 SCC 579.

"19. A few other weighty factors deserve reference. All deprivation of liberty is validated by social defense and individual correction along an anti-criminal direction. Public justice is central to the whole scheme of bail law. Fleeing justice must be forbidden but punitive harshness should be minimised. Restorative devices to redeem the man, even through community service, meditative drill, study classes or other resources should be innovated, and playing foul with public peace by tampering with evidence, intimidating witnesses or committing offences while on judicially sanctioned "free enterprise", should be provided against. No seeker of justice shall play confidence tricks on the Court or community. Thus, conditions may be hung around bail orders, not to cripple but to protect. Such is the holistic jurisdiction and humanistic orientation invoked by the judicial discretion correlated to the values of our Constitution."

Death Sentence

In Machhi Singh vs. State of Punjab, (1983) 3 SCC 470, this Court formulated the following two questions to be considered as a test to determine the rarest of the rare cases in which the death sentence can be inflicted:

"(a) Is there something uncommon, which renders sentence for imprisonment for life inadequate calls for death sentence?

(b) Rather the circumstances of the crime such that there is no alternative, but to impose the death sentence even after according maximum weightage to the mitigating circumstances which speaks in favour of the offender?"

Machhi Singh then proceeded to lay down the circumstances in which death sentence may be imposed for the crime of murder and held as follows:-

"The reasons why the community as a whole does not endorse the humanistic approach reflected in "death sentence-in-no-case" doctrine are not far to seek. In the first place, the very humanistic edifice is constructed on the foundation of "reverence for life" principle. When a member of the community violates this very principle by killing another member, the society may not feel itself bound by the shackles of this doctrine. Secondly, it has to be realized that every member of the community is able to live with safety without his or her own life being endangered because of the protective arm of the community and on account of the rule of law enforced by it. The very existence of the rule of law and the fear of being brought to book operates as a deterrent for those who have no scruples in killing others if it suits their ends. Every member of the community owes a debt to the community for this protection. When ingratitude is shown instead of gratitude by "killing" a member of the community which protects the murderer himself from being killed, or when the community feels that for the sake of self- preservation the killer has to be killed, the community may well withdraw the protection by sanctioning the death penalty. But the community will not do so in every case. It may do so "in rarest of rare cases" when its collective conscience is so shocked that it will expect the holders of the judicial power centre to inflict death penalty irrespective of their personal opinion as regards desirability or otherwise of retaining death penalty. The community may entertain such a sentiment when the crime is viewed from the platform of the motive for, or the manner of commission of the crime, or the anti-social or abhorrent nature of the crime, such as for instance:

(I) Manner of commission of murder

When the murder is committed in an extremely brutal, grotesque, diabolical, revolting or dastardly manner so as to arouse intense and extreme indignation of the community. For instance:

(i) when the house of the victim is set aflame with the end in view to roast him alive in the house.

(ii) when the victim is subjected to inhuman acts of torture or cruelty in order to bring about his or her death.

(iii) when the body of the victim is cut into pieces or his body is dismembered in a fiendish manner.

(II) Motive for commission of murder

When the murder is committed for a motive which evinces total depravity and meanness. For instance when (a) a hired assassin commits murder for the sake of money or reward (b) a cold-blooded murder is committed with a deliberate design in order to inherit property or to gain control over property of a ward or a person under the control of the murderer or vis-a-vis whom the murderer is in a dominating position or in a position of trust, or (c) a murder is committed in the course for betrayal of the motherland.

(III) Anti-social or socially abhorrent nature of the crime

(a) When murder of a member of a Scheduled Caste or minority community etc., is committed not for personal reasons but in circumstances which arouse social wrath. For instance when such a crime is committed in order to terrorize such persons and frighten them into fleeing from a place or in order to deprive them of, or make them surrender, lands or benefits conferred on them with a view to reverse past injustices and in order to restore the social balance.

(b) In cases of "bride burning" and what are known as "dowry deaths" or when murder is committed in order to remarry for the sake of extracting dowry once again or to marry another woman on account of infatuation.

(IV) Magnitude of crime

When the crime is enormous in proportion. For instance when multiple murders say of all or almost all the members of a family or a large number of persons of a particular caste, community, or locality, are committed.

(V) Personality of victim of murder

When the victim of murder is (a) an innocent child who could not have or has not provided even an excuse, much less a provocation, for murder (b) a helpless woman or a person rendered helpless by old age or infirmity (c) when the victim is a person vis-a-vis whom the murderer is in a position of domination or trust (d) when the victim is a public figure generally loved and respected by the community for the services rendered by him and the murder is committed for political or similar reasons other than personal reasons....."

NEWS

- GOVERNMENT OF ANDHRA PRADESH- Public Services – A.P.State Prosecution Services - Promotions – Senior Assistant Public Prosecutors - Promotion to the post of Additional Public Prosecutor Grade-II in the panel year 2019-2020 on temporary basis – Orders – Issued –vide G.O.MS.No. 95 HOME (COURTS.A) DEPARTMENT Dated: 27-08-2020

SlNo	Name of Additional Public Prosecutor Grade-II	Promotional postings
1.	Y.H.S.Maha Lakshmi	Promoted as Additional Public Prosecutor Grade-II and posted in Assistant Sessions Judge Court, Gudivada, Krishna District.
2.	T.Srinivasa Murthy	Promoted as Additional Public Prosecutor Grade-II and posted in Assistant Sessions Judge Court, Machilipatnam, Krishna District.

- GOVERNMENT OF ANDHRA PRADESH- Public Services - Prosecution Department – Smt. V.Subbalakshumma, Joint Director of Prosecutions, O/o. the Directorate of Prosecutions, Andhra Pradesh, Vijayawada – Transfer on deputation to the Intelligence Department to work as Legal Advisor-Cum- Public Prosecutor - Orders – Issued- G.O.RT.No. 769 HOME (COURTS.A) DEPARTMENT; Dated: 07-08-2020
- GOVERNMENT OF ANDHRA PRADESH- Public Services – A.P. Prosecutions Department - Additional Charge arrangements for the post of Director of Prosecutions, Andhra Pradesh – Orders – Issued.- G.O.RT.No. 849, HOME (COURTS.A) DEPARTMENT, Dated: 25-08-2020

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ON A LIGHTER VEIN

A young lawyer was defending a wealthy businessman in a complicated lawsuit. Unfortunately, the evidence was against his client, and he feared the worst. So the lawyer asked the senior partner of the law firm if it would be appropriate to send the judge a box of Havana cigars as bribe.

The partner was horrified. "The judge is an honorable man,"

the partner exclaimed. "If you do that, I can guarantee you will lose the case!"

Weeks later the judge ruled in favor of the lawyer's client.

The partner took him to lunch to congratulate him. "Aren't you glad you didn't send those cigars to the judge?",

The partner asked. "But I did send them,..." Replied the lawyer and continued,...

* * * * * * * * * * * *

"I just enclosed the complainant's lawyer's business card.!" Source: https://www.mr-funny.com

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Ministry of Health & Family Welfare
Government of India

NOVEL CORONAVIRUS DISEASE (COVID-19)

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(Above the age of 60)

Those with co-morbid conditions

Pregnant women

Children under the age of 10

Stay home, stay safe

Badalkar Apna Vyavahar, Karein Corona Par Vaar

For information related to COVID-19

Call the State helpline numbers or Ministry of Health and Family Welfare, Government of India's 24x7 helpline number **1075** (Toll Free), Email at ncov2019@gov.in , ncov2019@gmail.com

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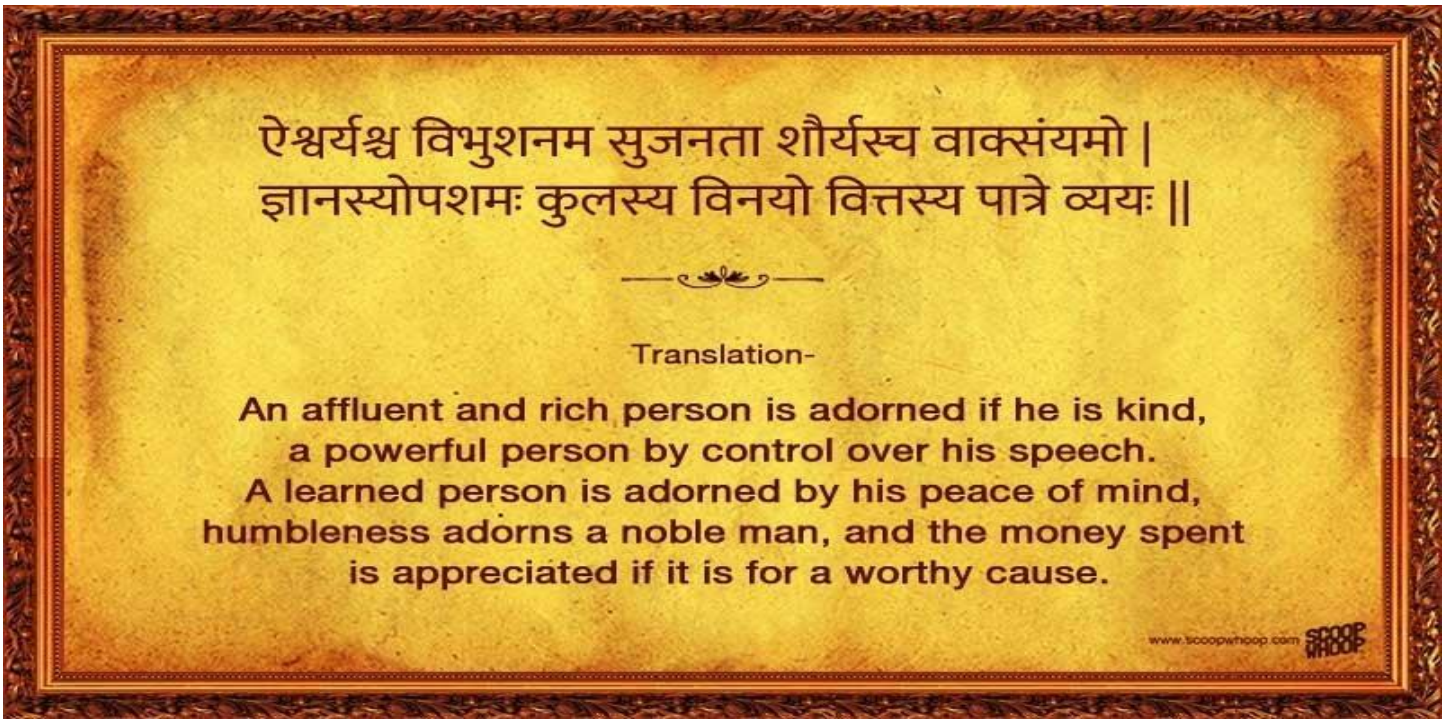

DOCTRINE OF CONFIRMATION BY SUBSEQUENT EVENTS

By
Sri D.V.R. Tejo Karthik,
Judicial Magistrate of First Class, Special Mobile Court, Mahabubnagar.

Section 27 of the Indian Evidence Act is based on the doctrine of confirmation by subsequent events. Section 27 lays down that in the course of investigation or during police custody any information is given by the accused of an offence to the police officer that leads to discovery of any fact, may be proved whether such information amounts to confession or not.

Section 27 of the Evidence Act reads as follows:
27. How much of information received from accused may be proved.—Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.

The philosophy behind this hypothesis has been compactly discussed by the Hon'ble Supreme Court of India in *State of Maharashtra v. Damu.,*: (2000) 6 SCC 269. It was observed that the basic idea embedded in Section 27 of the Evidence Act is the doctrine of confirmation by subsequent events. The doctrine is founded on the principle that if any fact is discovered in a search made on the strength of any information obtained from a prisoner, such a discovery is guarantee that the information supplied by the prisoner is true. The information might be confessional or non-inculpatory in nature, but it results in discovery of a fact it becomes reliable information. Hence the legislature permitted such information to be used as evidence by restricting the admissible portion to the minimum.

The expressions used in the Section namely **"Provided that"** and **"Whether it amounts to confession or not"** signifies that the Section is in the nature of exception to Sections 25 and 26. This provision lays down that in the course of investigation or during police custody any information given by the accused of an offence to the police officer which leads to a "discovery of any fact, may be proved whether such information amounts to confession or not.

The reason behind this partial lifting of the ban against confessions and statements made to the police, is that if a fact is actually discovered in consequence of information given by the accused, it affords some guarantee of truth of that part, and that part only, of the information which was the clear, immediate and proximate cause of the discovery. No such guarantee or assurance attaches to the rest of the statement which may be indirectly or remotely related to the fact discovered.

The word "distinctly" appearing in the Section 27 means "directly", "indubitably", "strictly", "unmistakably". The word has been advisedly used to limit and define the scope of the provable information. The phrase "distinctly" relates to the fact thereby "discovered" is the linchpin of the provision.

This phrase refers to that part of the information supplied by the accused which is the direct and immediate cause of the discovery. (See. *Mohmed Inayatullah v. The State of Maharashtra:* (1976) 1 SCC 828)

In *Bodh Raj @ Bodha v. State of Jammu and Kashmir:* 2002 (2) ALT (Crl.) 268 (SC) = AIR 2002 SC 3164 it was observed that the object of the provision i.e. Section 27 was to provide for the admission of evidence which but for the existence of the section could not in consequences of the preceding sections, be admitted in evidence.

In *Jaffar Hussain Dastagir v. State of Maharashtra:* AIR 1970 SC 1934 it was observed that the essential ingredient of the section is that the information given by the accused must lead to the discovery of the fact which is the direct outcome of such information. Secondly, only such portion of the information given as is distinctly connected with the said recovery is admissible against the accused. Thirdly, the discovery of the fact must relate to the commission of some offence.

The scope and ambit of Section 27 has been expounded in an enlightening way by the Privy Council in the celebrated judgment between *Pulukuri Kottaya v. Emperor:* AIR 1947 PC 67. The observations of the Privy Council is a locus classicus in so far as the section is concerned. It was observed that it would be fallacious to treat the "fact discovered" within the section as equivalent to the object produced and that the fact discovered embraces the place from which the object is produced and the knowledge of the accused as to this, and the information given must relate distinctly to this fact.

The“condition necessary to bring the section into operation is that the discovery of a fact in consequence of information received from a person accused of any offence in the custody of a Police officer must be deposed to, and thereupon so much of the information as relates distinctly to the fact thereby discovered may be proved. The section seems to be based on the view that if a fact is actually discovered in consequence of information given, some guarantee is afforded thereby that the information was true, and accordingly can be safely allowed to be given in evidence; but clearly the extent of the information admissible must depend on the exact nature of the fact discovered to which such information is required to relate. Normally the section is brought into operation when a person in police custody produces from some place of concealment some object, such as a dead body, a weapon, or ornaments, said to be connected with the crime of which the informant is accused

In *Pandurang Kalu Patil and another v. State of Maharashtra:* (2002) 2 SCC 490 = 2002 (1) ALT 28.1 (DN SC), it was held that the essence of Section 27 is that it was enacted as a proviso to the two preceding Sections i.e., sections 25 and 26 which imposed a complete ban on the admissibility of any confession made by an accused either to the police or to any one while the accused is in police custody. The object of making a provision in Section 27 was to permit a certain portion of the statement made by an accused to a police officer admissible in evidence whether or not such statement is confessional or non-confessional.

Nonetheless he ban against admissibility would stand lifted if the statement distinctly related to a discovery of fact. A fact can be discovered by the police or investigating officer pursuant to an information elicited from the accused if such disclosure was followed by one or more of a variety of causes. Recovery of an object is only one such cause. Recovery, or even production of object by itself need not necessarily result in discovery of a fact.

In *Anter Singh v. State of Rajasthan:* (2004) 10 SCC 657 = 2004 (3) ALT 12.1 (DN SC), the Hon’ble Supreme Court had summed up various requirements for attracting the Section which are as follows:

(1) The fact of which evidence is sought to be given must be relevant to the issue. It must be borne in mind that the provision has nothing to do with question of relevancy. The relevancy of the fact discovered must be established according to the prescriptions relating to relevancy of other evidence connecting it with the crime in order to make the fact discovered admissible.
(2) The fact must have been discovered.
(3) The discovery must have been in consequence of some information received from the accused and not by accused's own act.
(4) The persons giving the information must be accused of any offence.
(5) He must be in the custody of a police officer.
(6) The discovery of a fact in consequence of information received from an accused in custody must be deposed to.
(7) Thereupon only that portion of the information which relates distinctly or strictly to the fact discovered can be proved. The rest is inadmissible.

Fact discovered in the Section 27 embraces in itself not only the recovery of the object but also the mental awareness of the accused as to the existence of the place of concealment.

In Pulukuri Kottaya v. Emperor: AIR 1947 PC 67 it has been held that the recovery of an object is not discovery of fact envisaged in the section the "fact discovered" envisaged in the section embraces the place from which the object was produced, the knowledge of the accused as to it, but the information given must relate distinctly to that effect.

In *Himachal Pradesh Administration v. Shri Om Prakash:* AIR 1972 SC 975 it was observed a fact discovered within the meaning of Section 27 must refer to a material fact to which the information directly relates. In order to render the information admissible the fact discovered must be relevant and must have been such that it constitutes the information through which the discovery was made.

In *Asar Mohammad v. The State of U.P.,* 2019 (1) ALT (Crl.) 49 (SC) = 2018 (14) SCALE 343 it was observed by the Hon'ble Supreme Court that now it is fairly settled that the expression 'fact discovered' includes not only the physical object produced, but also the place from which it is produced and the knowledge of the accused as to this. The 'fact discovered' envisaged in the section embraces the place from which the object was produced, the knowledge of the accused as to it, but the information given must relate distinctly to that effect.

It is a settled legal position that the facts need not be self probatory and the word "fact" as contemplated in Section 27 of the Evidence Act is not limited to "actual physical material object". The discovery of fact arises by reason of the fact that the information given by the accused exhibited the knowledge or the mental awareness of the informant as to its "existence at a particular place. It includes a discovery of an object, the place from which it is produced and the knowledge of the accused as to its existence. It is not obligatory that the disclosure statement shall be made in the presence of the witnesses and that they shall hear the statement. The disclosure statement made in the absence of the witnesses does not make such statement inadmissible.

In *State of Himachal Pradesh v. Jeet Singh:* (1999) 4 SCC 370 = 1999 (4) ALT 15.2 (DN SC) it was held that it is not necessary that witnesses should be present when the accused was interrogated by the Investigating Officer. On the contrary, investigating officers interrogate accused persons without the presence of others. So the mere fact that any witness to the recovery did not overhear the disclosure statement of the accused is hardly sufficient to hold that no such disclosure was made by the accused.

In *Praveen Kumar v. State of Karnataka:* (2003) 12 SCC 199 it was held that Section 27 does not lay down that the statement made to a Police Officer should always be in the presence of independent witnesses. Normally in cases where the evidence led by the prosecution as to a fact depends solely on the Police witnesses, the courts seek corroboration as a matter of caution and not as a matter of rule. Thus it is only a rule of prudence which makes the court to seek corroboration from independent source, in such cases while assessing the evidence of Police. But in cases where the court is satisfied that the evidence of the Police can be independently relied upon then in such cases there is no prohibition in law that the same cannot be accepted without independent corroboration.

It is not necessary that the disclosure statement made by the accused should be reduced into writing which led to the discovery of a fact, (See. *Suresh Chandra Bahri v. State of Bihar:* AIR 1994 SC 2420)

Even it is not necessary to call independent inhabitants of the locality for the search and discovery of a fact and its seizure under Section 27 of the Act and it is not obligatory to obtain the signatures of the mediators in the confessional statement of the accused.

In *State Government of NCT of Delhi v. Sunil and another:* (2001) 1 SCC 652 = 2001 (1) ALT 60.1 (DN SC), the Hon'ble Supreme Court held that there is no requirement either under Section 27 of the Evidence Act or under Section 161 of the Code of Criminal Procedure, to obtain signature of "independent witnesses on the record in which statement of an accused is written. The legal obligation to call independent and respectable inhabitants of the locality to attend and witness the exercise made by the police is cast on the police officer when searches are made under Chapter VII of the Code of Criminal Procedure. Section 100(5) of the Code of Criminal Procedure requires that such search shall be made in their presence and a list of all things seized in the course of such search and of the places in which they are respectively found, shall be prepared by such officer or other person and signed by such witnesses. Therefore it is a fallacious impression that when recovery is effected pursuant to any statement made by the accused the document prepared by the investigating officer contemporaneous with such recovery must necessarily be attested by the independent witnesses. The court has to consider the evidence of the investigating officer who deposed to the fact of recovery based on the statement elicited from the accused on its own worth.

For invoking Section 27 it is not required that there shall be a formal arrest of the accused . If the accused is in the custody of the police or under their surveillance the section can be pressed into. The Hon'ble Supreme Court in *Vikram Singh and others v. State of Punjab:* 2010 (2) ALT (Crl.) 73 (SC) = (2010) 3 SCC 56 held that a bare reading of the provision would reveal that a "person must be accused of any offence" and that he must be "in the custody of a police officer" and it is not essential that such an accused must be under formal arrest.

A Constitution bench between *State of U.P. v. Deoman Upadhyaya*: AIR 1960 SC 1125, observed that the adjectival clause "accused of any offence" is therefore descriptive of the person against whom a confessional statement made by him is declared not provable, and does not predicate a condition of that person at the time of making the statement for the applicability of the ban. The expression, *"accused of any offence"* in Section 27, as in Section 25, is also descriptive of the person concerned i.e. against a person who is accused of an offence, Section 27 renders provable certain statements made by him while he was in the custody of a police officer. Section 27 is founded on the principle that even though the evidence relating to confessional or other statements made by a person, whilst he is in the custody of a police officer, is tainted and therefore inadmissible, if the truth of the information given by him is assured by the discovery of a fact, it may be presumed to be untainted and is therefore declared provable insofar as it distinctly relates to the fact thereby discovered.

When the person was neither an accused nor was in custody when he is alleged to have made statement resulting in recovery, the statement is not admissible under Section 27 of the Evidence Act. In *State of U.P. v. Deoman Upadhyaya:* AIR 1960 SC 1125 it was held that Section 27 applies only when the information is received from a person who is an accused and in custody. A statement made by an accused not in custody even though confirmed by subsequent facts is not made admissible by Section 27. A statement confirmed by subsequent facts is admissible under Section 27 if made after the arrest while the person is in custody but not if made prior to it. If the police already knew the place of concealment of the object, then the disclosure statement made by the accused would render it inadmissible (See. *Aher Raja Khima v. The State of Saurashtra:* AIR 1956 SC 217 and *Jaffar Hussain Dastagir v. State of Maharashtra*: AIR 1970 SC 1934)

Bare recovery at the instance of the accused would not become incriminating unless the element of criminality tending to connect the accused with the crime lies in the authorship of concealment by the accused. The Hon'ble Supreme Court of India in *Pohalya Motya Valvi v. State of Maharashtra:* 1980) 1 SCC 530 held the element of criminality tending to connect the accused with the crime lies in the authorship of concealment who gave information leading to its discovery was the person who concealed it. The accused may have only the knowledge of the place where it was hidden. To make such a circumstance incriminating it must be shown that the accused himself had concealed the bloodstained spear which was the weapon of offence.

If accused did not give any information or instead did not make any statement to the police which relate distinctly to the fact thereby discovered, then it does not fall within the four corners of Section 27. Nevertheless, it would be admissible as conduct of the accused under Section 8 of the Evidence Act. In *Bahadul Alias Ghanshyam Padhan v. State of Orissa:*(1979) 4 SCC 346 it was observed that when there is nothing to show that the accused had made any statement under Section 27 of the Evidence Act relating to the recovery of the weapon hence the factum of recovery thereof cannot be admissible under Section 27 of the Evidence Act. When there is nothing to show that the accused had concealed it at a place which was known to him alone and no one else other than the accused had knowledge of it then under these circumstances the mere production of the weapon would not be sufficient to convict the accused.

That an accused person led a Police officer without making any statement and pointed out the place where stolen articles or weapons which might have been used in the commission of the offence were found hidden, would be admissible as conduct, under Section 8 of the Evidence Act, irrespective of whether any statement by the accused contemporaneously with or antecedent to such conduct falls within the purview of Section 27 of the Evidence Act. (See. *Prakash Chand v. State (Delhi Administration):* AIR 1979 SC 400)

The disclosure statement of the other accused in the crime is not admissible if the disclosure statement of the main accused distinctly lead to the discovery of a fact. The Evidence Act does not envisage the theory of re-discovery of a fact. The Hon'ble Supreme Court of India between *Sukhvinder Singh and others v. State of Punjab:* (1994) 5 SCC 152 observed that once the fact has been discovered Section 27 of the Evidence Act cannot again be made use of to 're-discover' the discovered fact. It would be a total misuse even abuse of the provisions of Section 27 of the Evidence Act.

Marking or exhibiting the entire confessional statement which includes admissible as well as inadmissible portion will not render the entire confessional statement of the accused illegal. Only that portion of the confession which is admissible in evidence has to be considered. But such exhibiting of the entire confessional statement which also includes inadmissible portion of the accused attracting Sections 24 and 25 of the Act has to be deprecated. The Hon'ble Supreme Court of India between *Aloke Nath Dutta and others v. State of West Bengal:* (2007) 12 SCC 230 observed that Law does not envisage taking on record the entire confession by marking it as an exhibit incorporating both the admissible and inadmissible part thereof together. only that part of confession which is admissible which would be leading to the recovery is admissible and nothing else. However, the Hon'ble Supreme Court of India in *C. Muniappan v. State of Tamil Nadu:* 2012 (2) ALT (Crl.) 318

(SC) = (2010) 9 SCC 567 observed that if the entire marking of the confessional statement causes prejudice to the accused then the entire statement cannot be relied.

Even if the object is concealed in an open place which is accessible to public and sundry the recovery will be admissible and fall with in the ambit of Section 27. There is nothing in Section 27 of the Evidence Act which renders the statement of the accused inadmissible if recovery of the articles was made from any place which is open or "accessible to others. In this regard, the Hon'ble Supreme Court has held in *State of Himachal Pradesh v. Jeet Singh:* AIR 1999 SC 1293, that it is a fallacious notion that when recovery of any incriminating article was made from a place which is open or accessible to others, it would vitiate the evidence under Section 27 of the Evidence Act. Any object can be concealed in places which are open or accessible to others. For example, if the article is buried on the main road-side or if it is concealed beneath dry leaves lying on public places or kept hidden in a public office, the article would remain out of the visibility of others in normal circumstances.

Until such article is disinterred into hidden state would remain unhampered. The person who hid it alone knows where it is until he discloses that fact to any other person. Hence the crucial question is not whether the place was accessible to others or not but whether it was ordinarily visible to others. If it is not, then it is immaterial that the concealed place is accessible to others.

CONCLUSION

Summing up, the wisdom of the Legislature cannot be faulted as it permitted such information to be used as evidence by restricting the admissible portion of the statement made by the accused which distinctly connect with the discovery of a fact, as no such sureness could be attached to the rest of the statement which remotely relate to the fact discovered. The rationale behind the partial lifting of the ban is evident from the fact that it aids the police in investigation to collect evidence to unearth the crime and the statement to the limited extent of its admissibility could be proved against the accused in the court of law which otherwise cannot be completely relied upon by the prosecution in view of the bar under Section 162 of Code of Criminal Procedure.

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CITATIONS

Manoj Suryavanshi VS State of Chhattisgarh, 05 Mar 2020; 2020 0 Supreme(SC) 341; 2020 2 SCC Cri 601; 2020 4 SCC 451; (THREE JUDGE BENCH)

The minor discrepancies and inconsistencies in the statements of the prosecution witnesses and the minor lacuna in the investigation led by the police cannot be a reason for discarding the entire prosecution case, if the evidence is otherwise sufficient and inspiring to bring home the guilt of the accused. As observed by this Court in the case of Leema Ram v. State of Haryana [AIR 1999 SC 3717], there are bound to be some discrepancies between the narrations of different witnesses, when they speak on details, and unless the contradictions are of a material dimension, the same should not be used to jettison the evidence in its entirety. It is further observed that corroboration of evidence with mathematical niceties cannot be expected in criminal cases. Minor embellishment, there may be, but variations by reason therefore should not render the evidence unbelievable. Trivial discrepancies ought not to obliterate an otherwise acceptable evidence. The Court shall have to bear in mind that different witnesses react differently under different situations: whereas some become speechless; some start wailing while some others run away from the scene and yet there are some who may come forward with courage, conviction and belief that the wrong should be remedied. So it depends upon individuals and individuals. There cannot be any set pattern or uniform rule of human reaction and to discard a piece of evidence on the ground of his reaction not falling within a set pattern is unproductive. Therefore, we are of the opinion that the so-called minor discrepancies/contradictions do not ultimately affect the case of the prosecution. The benefit of such minor discrepancies/ contradictions should not go to the accused, more particularly, when from the other evidences on record the guilt of the accused has been established and proved.

CHIEF INFORMATION COMMISSIONER VS HIGH COURT OF GUJARAT, 04 Mar 2020; 2020 2 KHC 322; 2020 2 KLT 739; 2020 0 Supreme(SC) 229; 2020 2 SCC Cri 636; 2020 4 SCC 702

This Court is further of the opinion that if any information can be accessed through the mechanism provided under another statute-then the provisions of the RTI Act cannot be resorted to as there is absence of the very basis for invoking the provisions of RTI Act, namely, lack of transparency. In other words, the provisions of RTI Act are not to be resorted to if the same are not actuated to achieve transparency.

Section 31 of the RTI Act repeals only the Freedom of Information Act, 2002 and not other laws. If the intention of the legislature was to repeal any other Acts or laws which deal with the dissemination of information to an applicant, then the RTI Act would have clearly specified so. In the absence of any provision to this effect, the provisions of the RTI Act cannot be interpreted so as to attribute a meaning to them which was not intended by the legislature. In the RTI Act, there is no specific reference to the rules framed by the various High Courts or any other special law excepting the Freedom of Information Act, 2002.
When there is an effective machinery for having access to the information or obtaining certified copies which, in our view, is a very simple procedure i.e. filing of an application/affidavit with requisite court fee and stating the reasons for which the certified copies are required, we do not find any justification for invoking Section 11 of the RTI Act and adopt a cumbersome procedure. This would involve wastage of both time and fiscal resources which the preamble of the RTI Act itself intends to avoid.
(i) Rule 151 of the Gujarat High Court Rules stipulating a third party to have access to the information/obtaining the certified copies of the documents or orders requires to file an application/affidavit stating the reasons for seeking the information, is not inconsistent with the provisions of the RTI Act; but merely lays down a different procedure as the practice or payment of fees, etc. for obtaining information. In the absence of inherent inconsistency between the provisions of the RTI Act and other law, overriding effect of RTI Act would not apply.
(ii) The information to be accessed/certified copies on the judicial side to be obtained through the mechanism provided under the High Court Rules, the provisions of the RTI Act shall not be resorted to.

NATIONAL CO-OPERATIVE DEVELOPMENT CORPORATION Vs COMMISSIONER OF INCOME TAX, DELHI-V 2020 0 Supreme(SC) 539;
In the end before parting we may refer to the legal legend Mr. Nani A. Palkhivala, who while addressing a letter of congratulations to Mr. Soli J. Sorabjee on attaining his appointment as the Attorney General on 11.12.1989 referred to the greatest glory of Attorney General as not to win cases for the Government but to ensure that justice is done to the people. In this behalf, he refers to the motto of the Department of Justice in the United States carved out into the Rotunda of the Attorney General Office:

"The United States wins its case whenever justice is done to one of its citizens in the courts."

The Indian citizenry is entitled to a hope that the aforesaid is what must be the objective of Government litigation, which should prevail even within the Indian legal system. In the words of Martin Luther King, Jr., "We must accept finite disappointment, but never lose infinite hope."

NEETU KUMAR NAGAICH Vs THE STATE OF RAJASTHAN AND OTHERS Decided on : 16-09-2020; 2020 0 Supreme(SC) 545; (THREE JUDGE BENCH)
Normally when an investigation has been concluded and police report submitted under Section 173(2) of the Code, it is only further investigation that can be ordered under Section 173(8) of the Code. But where the constitutional court is satisfied that the investigation has not been conducted in a proper and objective manner, as observed in Kashmeri Devi vs. Delhi Administration, (1988) Suppl. SCC 482, fresh investigation with the help of an independent agency can be considered to secure the ends of justice so that the truth is revealed. The power may also be exercised if the court comes to the conclusion that the investigation has been done in a manner to help someone escape the clutches of the law. In such exceptional circumstances the court may, in order to prevent miscarriage of criminal justice direct de novo investigation as observed in Babubhai vs. State of Gujarat, (2010) 12 SCC 254. A fair investigation is as much a part of a constitutional right guaranteed under Article 21 of the Constitution as a fair trial, without which the trial will naturally not be fair.

M/s Bandekar Brothers Pvt. Ltd. & Anr. Vs. Prasad Vassudev Keni; Decided on : 02-09-2020; 2020 4 Supreme 582; 2020 0 Supreme(SC) 522;
On the reading of these sections, it can be easily seen that the offences under Section 195(1)(b)(i) and Section 195(1)(b)(ii) are clearly distinct. The first category of offences refers to offences of false evidence and offences against public justice, whereas, the second category of offences relates to offences in respect of a document produced or given in evidence in a proceeding in any court.
in cases which fall under Section 195(1)(b)(ii) of the CrPC, the document that is said to have been forged should be custodia legis after which the forgery takes place.
An analysis of Section 464 of the Penal Code shows that it divides false documents into three categories:

1. The first is where a person dishonestly or fraudulently makes or executes a document with the intention of causing it to be believed that such document was made or executed by some other person, or by the authority of some other person, by whom or by whose authority he knows it was not made or executed.
2. The second is where a person dishonestly or fraudulently, by cancellation or otherwise, alters a document in any material part, without lawful authority, after it has been made or executed by either himself or any other person.

3. The third is where a person dishonestly or fraudulently causes any person to sign, execute or alter a document knowing that such person could not by reason of (a) unsoundness of mind; or (b) intoxication; or (c) deception practised upon him, know the contents of the document or the nature of the alteration.

Stalin Vs. State Decided on : 09-09-2020; 2020 5 Supreme 120; 2020 0 Supreme(SC) 532;
As observed and held by this Court in the case of Jafel Biswas vs. State of West Bengal (2019) 12 SCC 560, the absence of motive does not disperse a prosecution case if the prosecution succeed in proving the same. The motive is always in the mind of person authoring the incident. Motive not being apparent or not being proved only requires deeper scrutiny of the evidence by the courts while coming to a conclusion. When there are definite evidence proving an incident and eye-witness account prove the role of accused, absence in proving of the motive by prosecution does not affect the prosecution case.

Rizwan Khan Vs The State of Chhattisgarh; Decided On : 10-09-2020; 2020 5 Supreme 142; 2020 0 Supreme(SC) 535; (THREE JUDGE BENCH)
It is true that all the aforesaid witnesses are police officials and two independent witnesses who were panchnama witnesses had turned hostile. However, all the aforesaid police witnesses are found to be reliable and trustworthy. All of them have been thoroughly cross-examined by the defence. There is no allegation of any enmity between the police witnesses and the accused. No such defence has been taken in the statement under Section 313, Cr.P.C. There is no law that the evidence of police officials, unless supported by independent evidence, is to be discarded and/or unworthy of acceptance.
It is settled law that the testimony of the official witnesses cannot be rejected on the ground of non-corroboration by independent witness. As observed and held by this Court in catena of decisions, examination of independent witnesses is not an indispensable requirement and such non-examination is not necessarily fatal to the prosecution case
To prove the case under the NDPS Act, the ownership of the vehicle is not required to be established and proved. It is enough to establish and prove that the contraband articles were found from the accused from the vehicle purchased by the accused. Ownership of the vehicle is immaterial. What is required to be established and proved is the recovery of the contraband articles and the commission of an offence under the NDPS Act? Therefore, merely because of the ownership of the vehicle is not established and proved and/or the vehicle is not recovered subsequently, trial is not vitiated, while the prosecution has been successful in proving and establishing the recovery of the contraband articles from the accused on the spot.

National Alliance for People's Movements & Ors. Vs. The State of Maharashtra & Ors.; Decided on : 22-09-2020; 2020 0 Supreme(SC) 553;(THREE JUDGE BENCH)
we cannot also lose sight of the fact that the entire right to claim such interim bail has arisen in the unprecedented circumstance of the pandemic and the consideration for interim bail is not in the nature of a statutory right for bail based on other legal consideration but is more in the nature of human right to safeguard the health. The provision for bail as otherwise provided in law in any case would be considered by the competent courts if such right for bail is made out before the competent court irrespective of the pandemic or not. The present option provided is only as a solution to help decongestion and to avoid the spread of virus. At the same time the benefit granted in such circumstance cannot be to the detriment of social order by releasing all categories of prisoners irrespective of the categorisation to be made depending on the severity of the crime etc. The genesis for the present claim being the order passed by this Court in a Suo Motu Writ Petition, a balance was struck.

Evidence Act, 1872 — Ss. 35, 74 and 76 — Proof of age: School leaving certificate/transfer certificate, on its own is not sufficient for proving date of birth, in the absence of examination of the official in-charge of school who recorded the date of birth in the school register. Proving of the records of School is necessary. [C. **Doddanarayana Reddy v. C. Jayarama Reddy, (2020) 4 SCC 659]**

Criminal Procedure Code, 1973 — S. 438 — Grant of anticipatory bail: Law clarified regarding
(1) When may be granted;
(2) Offences in respect of which may be granted [except where there is a statutory bar or restriction];
(3) Duration for which may be granted;
(4) Anticipatory bail granted cannot be a blanket protection;
(5) Normal conditions; and Restrictive conditions that may be imposed while granting anticipatory bail, depending on facts and circumstances of the case;
(6) Requirements of investigating agency under S. 27 of Evidence Act, met by concept of deemed custody when accused is on anticipatory bail;

(7) Effect of filing of charge-sheet/issuance of summons in a case where accused is on anticipatory bail;
(8) Recourse of investigating agency to have accused on anticipatory bail arrested at any time by order of court under S. 439(2), if circumstances so warrant (it being not always necessary to seek cancellation of the bail therefor);
(9) Permissibility of exclusion of right to anticipatory bail by statute. **[Sushila Aggarwal v. State (NCT of Delhi), (2020) 5 SCC 1]**

Evidence Act, 1872 — Ss. 65 and 66 — Secondary evidence — When can be admitted: Factual foundational evidence must be adduced showing reasons for not furnishing evidence. Mere admission in evidence and making exhibit of a document not enough as the same has to be proved in accordance with law. **[Jagmail Singh v. Karamjit Singh, (2020) 5 SCC 178]**

Terrorist and Disruptive Activities (Prevention) Act, 1987 — S. 15 — Conviction on basis of confession to police — When permissible: Law summarised regarding when conviction is permissible on basis of confession to police. In this case, there was conviction for conspiracy in respect of offences under TADA Act and Explosive Substances Act on basis of confession of appellant-accused and confession statement of two other co-accused, made before police. Said confession of accused does not met the requirements for reliance upon the same, hence, the same rejected. Furthermore, as per S. 30 of Evidence Act, 1872, if for any reason, a joint trial is not held, confession of co-accused cannot be held to be admissible in evidence against another accused, who would face trial at a later point of time in same case. Since trial of two co-accused was separate, their confession statements are not admissible in evidence and same cannot be taken as evidence against appellant-accused herein. Hence, conviction of appellant was set aside. **[Raja v. State of T.N., (2020) 5 SCC 118]**

Criminal Procedure Code, 1973 — Ss. 200 to 204, 156(3), 173, 300 and 362 — Second complaint — Maintainability or otherwise under different scenarios: Principles regarding scope of inquiry under S. 202 and duty of Magistrate while entertaining private complaints, discussed in detail, and summarised. Second protest petition, held, stands on a similar footing as second complaint. **[Samta Naidu v. State of M.P., (2020) 5 SCC 378]**

Narcotic Drugs and Psychotropic Substances Act, 1985 — Ss. 50 and 18 — Search and seizure: In this case there was recovery of contraband, weighing 6.3 kg, from bag carried by accused, hence compliance with S. 50 was not required. Hence, conviction of accused under S. 18, confirmed. **[Than Kunwar v. State of Haryana, (2020) 5 SCC 260]**

Kannekanti Yadagiri vs State Of Telangana; https://indiankanoon.org/doc/27554977/; http://tshcstatus.nic.in/hcorders/2020/wp/wp_16423_2020.pdf; 24 September 2020;
Sharmistha Dhar vs The State Of Telangana And 4 Others on 24 September, 2020; https://indiankanoon.org/doc/85254709/; http://tshcstatus.nic.in/hcorders/2020/wp/wp_16431_2020.pdf;
Mohammed Yousuf Ali vs The State Of Telangana; https://indiankanoon.org/doc/102495528/; http://tshcstatus.nic.in/hcorders/2020/wp/wp_11491_2020.pdf; on 23 September, 2020
Writ jurisdiction cannot be invoked for aspects concerning non-registration of crimes, not investigating into the crimes registered, delay in investigation, not following due procedure in filing the final report and the scope of provisions of the Code of Criminal Procedure, more particularly, Sections 156, 190 and 200 of Cr.P.C.

Ramanarsaiah vs The State Of Telangana on 24 September, 2020
http://tshcstatus.nic.in/hcorders/2020/crlp/crlp_4335_2020.pdf; https://indiankanoon.org/doc/167464178/;
Section 109 Cr.P.C., deals with security for good behaviour from suspected persons. When an Executive Magistrate receives information that there is within his local jurisdiction a person taking precaution to conceal his presence and that there is reason to believe that he is doing so with a view to committing a cognizable offence, the Magistrate may in the manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with or without sureties, for his good behaviour for such period, not exceeding one year, as the Magistrate thinks fit, whereas, in the present case, the Police, Shaligouraram, have registered the present case against the petitioners on the complaint given by a Head Constable of the very same Police Station. Thus, the police, Shaligouraram have not followed the procedure laid under Section 109 Cr.P.C.
In view of the same and also since the procedure laid down under Section 109 Cr.P.C., is not followed by the police, Shaligouraram, the very registration of Crime No.102 of 2020 is in violation of the procedure laid down

under Section 109 Cr.P.C. Therefore, the proceedings against the petitioners in Crime No.102 of 2020 are liable to be quashed.

Dorishetty Rajaiah vs The State Of Telangana on 22 September, 2020; https://indiankanoon.org/doc/125737113/; http://tshcstatus.nic.in/hcorders/2020/wp/wp_10691_2020.pdf;
When a crime is registered, the police are entitled to investigate into crime and in the process of investigation they can call upon the persons whose names are mentioned in the crime reported to them.

Pothuganti Srinivas Palle Srinu vs The State Of Telangana And 4 Others on 22 September, 2020; https://indiankanoon.org/doc/13790130/; http://tshcstatus.nic.in/hcorders/2020/wp/wp_16004_2020.pdf;
Having considered the respective submissions made by the learned counsel, inasmuch as enquiry under Section 6-A of the Essential Commodities Act and the criminal prosecution before the criminal Court is yet to commence, pending enquiry of the proceedings, the petitioner being the owner of the vehicle transporting the rice as a goods vehicle, there is no specification about the PDS commodities either in the Essential Commodities Act or in the Control Orders, and none can identify whether it is PDS rice or not, the respondents shall release the seized vehicle in question on condition the petitioner furnishing a Personal Bond for Rs.50,000/- (Rupees Fifty thousands only) or 3rd party security to the value of the vehicle and also on furnishing an undertaking from the petitioner he will not alienate or change the physical features of the vehicle. The 2nd respondent shall also write to the RTA authority not to transfer the vehicle in question on any third parties name without clearance from the Civil Supplies Department. The release of vehicle is in view of the situation existing on account of COVID-19. The release of the seized vehicle shall be subject to the orders to be passed in the enquiry under Section 6-A of the Essential Commodities Act. Subject to the above, the writ petition is disposed of. No costs. Miscellaneous petitions, if any pending, shall stand closed.

State of Himachal Pradesh VS Manga Singh, 28 Nov 2018 ; 2019 16 SCC 759; 2020 2 SCC(Cri) 470; 2018 0 Supreme(SC) 1288;
It is well settled by a catena of decisions of the Supreme Court that corroboration is not a sine qua non for conviction in a rape case. If the evidence of the victim does not suffer from any basic infirmity and the 'probabilities factor' does not render it unworthy of credence. As a general rule, there is no reason to insist on corroboration except from medical evidence. However, having regard to the circumstances of the case, medical evidence may not be available. In such cases, solitary testimony of the prosecutrix would be sufficient to base the conviction, if it inspires the confidence of the court.
The prosecutrix was aged only nine years, she had no reason to falsely implicate her cousin. Since the prosecutrix has been compelled to face the ordeal of sleeping with the respondent-accused everyday night. On 04.03.2010 she refused to go the house of her aunt. Considering the evidence of PW-4 – a girl of tender year, corroboration from an independent source of the evidence of the prosecutrix is not required. The evidence of the prosecutrix clearly established that the accused was committing rape on her by penetration.
In the absence of injury on the private part of the prosecutrix, it cannot be concluded that the incident had not taken place or the sexual intercourse was committed with the consent of the prosecutrix. The prosecutrix being a small child of about nine years of age, there could be no question of her giving consent to sexual intercourse. The absence of injuries on the private part of the prosecutrix can be of no consequence in the facts and circumstances of the present case.the respondent-accused is the son of the aunt of the prosecutrix. Nothing prevented the respondent-accused to have examined his mother as his witness. The non-examination of aunt of the prosecutrix (PW-4) cannot be put against the prosecution.
In the present case, the prosecutrix (PW-4), being a young girl aged about nine years, had no reason to falsely implicate the respondent-accused. The testimony of the prosecutrix (PW-4) must have been appreciated in the light of the background of the case; more so, the prosecutrix (PW-4) was reluctant to go back to the house of her aunt and complained the act of sexual intercourse committed by the respondent-accused to her teachers, Pooja Mahajan (PW-1) and Ritubala (PW-2).

NOSTALGIA

DISTINCTION BETWEEN CONFESSION AND ADMISSION
In Central Bureau of Investigation v. V.C. Shukla and others, AIR 1998 SC 1406, a Bench of three learned Judges, after approving Pakala Narayana Swami (supra), had occasion to consider the distinction between confession and admission. This Court went on to hold as follows:
"45. It is thus seen that only voluntary and direct acknowledgement of guilt is a confession but when a confession falls short of actual admission of guilt it may nevertheless be used as evidence against the person who made it or his authorised agent as an "admission" under Section 21. The law

in this regard has been clearly - and in our considered view correctly - explained in Monir's Law of Evidence (New Edn. at pp. 205 and 206), on which Mr Jethmalani relied to bring home his contention that even if the entries are treated as "admission" of the Jains still they cannot be used against Shri Advani. The relevant passage reads as under:
"The distinction between admissions and confessions is of considerable importance for two reasons. Firstly, a statement made by an accused person, if it is an admission, is admissible in evidence under Section 21 of the Evidence Act, unless the statement amounts to a confession and was made to a person in authority in consequence of some improper inducement, threat or promise, or was made to a Police Officer, or was made at a time when the accused was in custody of a Police Officer. If a statement was made by the accused in the circumstances just mentioned its admissibility will depend upon the determination of the question whether it does not amount to a confession. If it amounts to a confession, it will be inadmissible, but if it does not amount to a confession, it will be admissible under Section 21 of the Act as an admission, provided that it suggests an inference as to a fact which is in issue in, or relevant to, the case and was not made to a Police Officer in the course of an investigation under Chapter XIV of the Code of Criminal Procedure. Secondly, a statement made by an accused person is admissible against others who are being jointly tried with him only if the statement amounts to a confession. Where the statement falls short of a confession, it is admissible only against its maker as an admission and not against those who are being jointly tried with him. Therefore, from the point of view of Section 30 of the Evidence Act also the distinction between an admission and a confession is of fundamental importance."" (Emphasis supplied)

TESTIMONY OF POLICE OFFICIALS
In State (NCT of Delhi) v. Sunil, (2011) 1 SCC 652, it was held as under: (SCC p. 655)

> "It is an archaic notion that actions of the police officer should be approached with initial distrust. It is time now to start placing at least initial trust on the actions and the documents made by the police. At any rate, the court cannot start with the presumption that the police records are untrustworthy. As a proposition of law, the presumption should be the other way round. That official acts of the police have been regularly performed is a wise principle of presumption and recognised even by the legislature."

100 CRPC – NON COMPLIANCE- CONSEQUENCES.
non-compliance of the directory provisions contained in Section 100 Cr.P.C. can at the most be treated as defective investigation but that cannot come in the way of dispensation of justice. Heavy reliance is placed upon the decision of this Court in the case of C. Muniappan vs. State of Tamil Nadu, (2010) 9 SCC 567 (para 55).
It is submitted that as held by this Court in the case of State of Punjab vs. Balbir Singh, (1994) 3 SCC 299 (para 6), a defective investigation if any does not vitiate the trial. It is submitted that as held by this Court in the case of Sudha Renukaiah vs. State of Andhra Pradesh, (2017) 13 SCC 81, inwhich the decision in the case of Muniappan (supra) was relied upon, that even if the IO has committed any error and has been negligent in carrying out any investigation or in the investigation there is some omission and defect, it is the legal obligation on the part of the court to examine the prosecution evidence de hors such lapses.

APPRECIATION OF DEPOSITION OF A RAPE VICTIM:
in State of Rajasthan v. N.K. The Accused, (2000) 5 SCC 30, this Court has held as under :
"9. ...A Doubt, as understood in criminal jurisprudence, has to be a reasonable doubt and not an excuse for a finding in favour of acquittal. An unmerited acquittal encourages wolves in the society being on the prowl for easy prey, more so when the victims of crime are helpless females. It is the spurt in the number of unmerited acquittals recorded by criminal courts which gives rise to the demand for death sentence to the rapists. The courts have to display a greater sense of responsibility and to be more sensitive while dealing with charges of sexual assault on women. In Bharwada Bhoginbhai Hirjibhai v. State of Gujarat, (1983) 3 SCC 217 this Court observed that refusal to act on the testimony of a victim of sexual assault in the absence of corroboration as a rule, is adding insult to injury. This Court deprecated viewing evidence of such victim with the aid of spectacles fitted with lenses tinted with doubt, disbelief or suspicion. We need only remind ourselves of what this Court has said through one of us (Dr. A.S. Anand, J. as his Lordship then was)in State of Punjab v. Gurmeet Singh, (1996) 2 SCC 384 : p. 403, para 21)

"[A] rapist not only violates the victim's privacy and personal integrity, but inevitably causes serious psychological as well as physical harm in the process. Rape is not merely a physical assault- it is often destructive of the whole personality of the victim. A murderer destroys the physical body of his victim, a rapist degrades the very should of the helpless female. The courts, therefore, shoulder a great responsibility while trying an accused on charges of rape. The must deal with such cases with utmost sensitivity. The courts should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable prosecution case."

NEWS

- GOVERNMENT OF TELANGANA- The Telangana Disaster Management and Public Health Emergency (Special Provisions) Act, 2020- Notification under Section 6 of the Act – Orders – Issued- FINANCE (TFR) DEPARTMENT G.O.MS.No. 61 Dated: 30th September, 2020

- THE EPIDEMIC DISEASES (AMENDMENT) ACT, 2020, shall be deemed to have come into force on the 22nd day of April, 2020

- THE TAXATION AND OTHER LAWS (RELAXATION AND AMENDMENT OF CERTAIN PROVISIONS) ACT, 2020, shall be deemed to have come into force on the 31st day of March, 2020.

- THE CODE ON SOCIAL SECURITY, 2020, published in Gazette.

- THE ESSENTIAL COMMODITIES (AMENDMENT) ACT, 2020, shall be deemed to have come into force on the 5th day of June, 2020

THE COPIES OF THESE CIRCULARS, GAZETTES MENTIONED IN NEWS SECTION OF THIS LEAFLET ARE AVAILABLE IN OUR "PROSECUTION REPLENISH" CHANNEL IN TELEGRAM APP. ***http://t.me/prosecutionreplenish*** and also on our website http://prosecutionreplenish.com/

ON A LIGHTER VEIN

A man in an interrogation room says "I'm not saying a word without my lawyer present."

"You are the lawyer." said the policeman.

"Exactly, so where's my present?" replied the lawyer.

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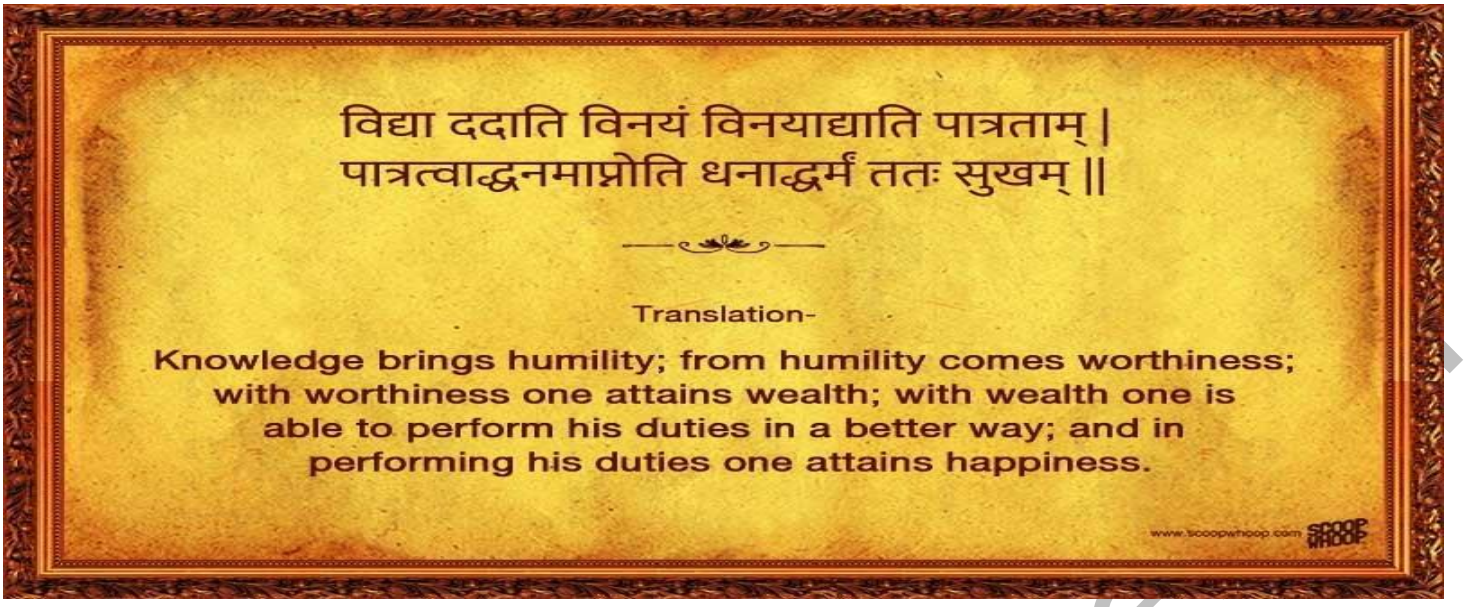
"Let Noble Thoughts Come To Me From All Directions"



DOCTRINE OF RESIDUAL DOUBT – A MITIGATING CIRCUMSTANCE IN AWARDING CAPITAL SENTENCE

by

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What is a Residual Doubt?

Residual doubt is any remaining doubt in the judicial mind concerning the offender's guilt despite having been satisfied that the offender had committed an offence "beyond reasonable doubt". The term "lingering doubt" is at times used synonymously with "residual doubt,". Residual doubt is "lingering uncertainty about facts, a state of mind that exists somewhere between 'beyond a reasonable doubt' and 'absolute certainty.' Residual doubt serves as a heightened burden of proof, requiring the imposition of the death sentence only upon proof beyond *all* doubt. "Residual doubt" is equated with an "absolute certainty" standard that "may be a more appropriate standard for the imposition of the death penalty".

The use of residual doubt as a mitigating circumstance can functionally equate to the use of a enhanced certainty standard requiring a conviction. Absolute certainty standards have been acknowledged in two main contexts. First, the offender may ask the Court to find that, in performing the weighing process, aggravation outweighs mitigation "beyond all doubt" i.e., "beyond a reasonable doubt" standard. This can been termed as, "measuring the balance." Second, the accused may ask the Court to find that there is "no doubt" that death is the only suitable punishment because the mitigation is not sufficiently substantial to call for leniency and if there is any doubt, this doubt should be resolved in favor of punishment for life. These standards are not aimed or designed at securing certainty of the offender's *guilt*, but at the *appropriateness* or suitability of a death sentence in light of all proven mitigating factors.

What are the Mitigating Circumstances?

Capital sentencing require the Court to weigh the "aggravating circumstances"' of the crime against any "mitigating circumstances" and recommend a life or death sentence accordingly. Mitigating circumstances are those which are connected to the commission of the offence, which the court while sentencing considers as meriting a lesser punishment. Some of the mitigating circumstances which are normally considered by the courts while sentencing are

the age of the offender, his previous record/ criminal antecedents, his good character, the circumstances which resulted in the commission of the offence, the health condition of the offender, effect of the sentence imposed on the family of the offender/ his dependents, socio-economic background, the behaviour of the offender subsequent to the commission of crime, regret during trial, etc. Normally the mitigating factors are well thought out by the courts to decide appropriate sentence and it may have some influence to award lesser punishment in minor offences. Nevertheless, in cases where the offences are so serious the mitigating factors will have only a peripheral or marginal effect and even sometimes the mitigating factors are ignored in such cases for the reasons of public policy.

The question as to why and in what circumstances should the extreme sentence of death be awarded has been pondered, reviewed and considered upon by a Constitution Bench of the Hon'ble Supreme Court of India consisting of 5 Judges in **Bachan Singh V. State of Punjab, (1980) 2 SCC 684.** The Constitution Bench had observed that a real and abiding concern for the dignity of human life postulates resistance to taking a life through law's instrumentality. That ought not to be done save in the rarest of rare cases when the alternative option is unquestionably foreclosed.

The Hon'ble Supreme Court had further mandated consideration of the probability of reform or rehabilitation of the criminal. It, thus, formed the genesis of the 'rarest of the rare' doctrine for awarding the sentence of death.

This rarest of the rare doctrine was further developed by a 3 Judge Bench of the Hon'ble Supreme Court of India in **Machhi Singh and Others V. State Of Punjab, (1983) 3 SCC 470** wherein the Hon'ble Court held that as part of the `rarest of rare' test, the Court should address itself as to whether; (i) there is something uncommon about the crime which renders sentence of imprisonment for life inadequate and calls for a death sentence; (ii) the circumstances are such that there is no alternative but to impose death sentence even after according maximum weightage to the mitigating circumstances which speak in favour of the offender. Further, the Hon'ble Supreme Court ruled that :

> "(i) The extreme penalty of death need not be inflicted except in gravest cases of extreme culpability.
>
> (ii) Before opting for the death penalty the circumstances of the 'offender' also require to be taken into consideration along with the circumstances of the 'crime'.
>
> (iii) Life imprisonment is the rule and death sentence is an exception. In other words death sentence must be imposed only when life imprisonment appears to be an altogether inadequate punishment having regard to the relevant circumstances of the crime, and provided, and only provided, the option to impose sentence of imprisonment for life cannot be conscientiously exercised having regard to the nature and circumstances of the crime and all the relevant circumstances.
>
> (iv) A balance sheet of aggravating and mitigating circumstances has to be drawn up and in doing so the mitigating circumstances have to be accorded full weightage and a just balance has to be struck between the aggravating and the mitigating circumstances before the option is exercised."

After these two judgments (Bachan Singh & Machhi Singh) there has been a numerous judgments where the Hon'ble Supreme Court has steadily restricted the circumstances for award of death penalty and has inflated the burden of showing special reasons before mandating death penalty, as contemplated under Section 354 sub-section (3) of the Code of Criminal Procedure. Nonetheless, the exercise of balancing the aggravating and mitigating circumstances while considering the facts and circumstances which are peculiar to each case had resulted in lack of unanimity of standard among different benches in the Hon'ble Supreme Court which ultimately resulted in evolution of different standards for award of death penalty.

Apparently in order to overcome such situation a 3 Judges bench of the Hon'ble Supreme Court of India in **Swamy Shraddananda @ Murali Manohar Mishra V. State of Karnataka, (2008) 13 SCC 767 = (2009) 3 SCC (Cri) 113** evolved an another category of sentence and ruled that the Court could commute the death sentence and substitute it with life imprisonment with the direction that the convict would not be released from prison for the rest of his life.

The Hon'ble Supreme court observed that "The truth of the matter is that the question of death penalty is not free from the subjective element and the confirmation of death sentence or its commutation by this Court depends a good deal on the personal predilection of the Judges constituting the Bench. The inability of the Criminal Justice System to deal with all major crimes equally effectively and the want of uniformity in the sentencing process by the Court lead to a marked imbalance in the end results. On the one hand there appears a small band of cases in which the murder convict is sent to the gallows on confirmation of his death penalty by this Court and on the other hand there is a much wider area of cases in which the offender committing murder of a similar or a far more revolting kind is spared his life due to lack of consistency by the Court in giving punishments or worse the offender is allowed to slip away unpunished on account of the deficiencies in the Criminal Justice System. Thus the overall larger picture gets asymmetric and lop-sided and presents a poor reflection of the system of criminal administration of justice. This situation is matter of concern for this Court and needs to be remedied."

The Court further went on to observe that "……..The issue of sentencing has two aspects. A sentence may be excessive and unduly harsh or it may be highly disproportionately inadequate. When an appellant comes to this Court carrying a death sentence awarded by the trial court and confirmed by the High Court, this Court may find, as in the present appeal, that the case just falls short of the rarest of the rare category and may feel somewhat reluctant in endorsing the death sentence. But at the same time, having regard to the nature of the crime, the Court may strongly feel that a sentence of life imprisonment subject to remission normally works out to a term of 14 years would be grossly disproportionate and inadequate. What then should the Court do? If the Court's option is limited only to two punishments, one a sentence of imprisonment, for all intents and purposes, of not more than 14 years and the other death, the Court may feel tempted and find itself nudged into endorsing the death penalty. Such a course would indeed be disastrous. A far more just, reasonable and proper course would be to expand the options and to take over what, as a matter of fact, lawfully belongs to the Court i.e. the vast hiatus between 14 years' imprisonment and death. It needs to be emphasised that the Court would take recourse to the expanded option primarily because in the facts of the case, the sentence of 14 years' imprisonment would amount to no punishment at all."

" Further, the formalization of a special category of sentence, though for an extremely few number of cases, shall have the great advantage of having the death penalty on the statute book but to actually use it as little as possible, really in the rarest of rare cases. This would only be a reassertion of the Constitution Bench decision in Bachan Singh ((1980) 2 SCC 684 : 1980 SCC (Cri) 580 : AIR 1980 SC 898) besides being in accord with the modern trends in penology."

"…….. we are clearly of the view that there is a good and strong basis for the Court to substitute a death sentence by life imprisonment or by a term in excess of fourteen years and further to direct that the convict must not be released from the prison for the rest of his life or for the actual term as specified in the order, as the case may be."

After the judgment in Swamy Shraddananda @ Murali Manohar Mishra's case, the Hon'ble Supreme Court in a Constitution Bench judgment between **Union of India V. V.Sriharan @ Murugan & Ors,(2016) 7 SCC 1,** observed that that the power derived from the Penal Code for any modified punishment within the punishment provided for

in the Penal Code for such specified offences can only be exercised by the High Court and in the event of further appeal only by the Supreme Court and not by any other court in this country. To put it differently, the power to impose a modified punishment providing for any specific term of incarceration or till the end of the convict's life as an alternate to death penalty, can be exercised only by the High Court and the Supreme Court and not by any other inferior court.

The Hon'ble Supreme Court in V.Sriharan @ Murugan's case had approved the ratio laid down in Swamy Shraddananda's case which had expounded the special category of sentence instead of death for a term exceeding 14 years and putting that category beyond application of remission to be well founded.

In **State Of U.P V. Krishna Gopal & Another, AIR 1988 SC 2154,** it was observed by the Hon'ble Supreme Court that the concepts of probability, and the degrees of it, cannot obviously be expressed in terms of units to be mathematically enumerated as to how many of such units constitute proof beyond reasonable doubt. There is an unmistakable subjective element in the evaluation of the degrees of probability and the quantum of proof. Forensic probability must, in the last analysis, rest on a robust common sense and, ultimately, on the trained intuitions of the judge. While the protection given by the criminal process to the accused persons is not to be eroded, at the same time, uninformed legitimization of trivialities would make a mockery of administration of criminal justice.

The Hon'ble Supreme Court of India in **Krishnan and Another V. State represented by Inspector of Police, (2003) 7 SCC 56,** held that the doubts would be called reasonable if they are free from a zest for abstract speculation. Law cannot afford any favourite other than truth and to constitute reasonable doubt, it must be free from an over emotional response. Doubts must be actual and substantial doubts as to the guilt of the accused persons arising from the evidence, or from the lack of it, as opposed to mere vague apprehensions. A reasonable doubt is not an imaginary, trivial or a merely possible doubt, but a fair doubt based upon reason and common sense. It must grow out of the evidence in the case.

In **Ashok Debbarma @ Achak Debbarma V. State Of Tripura, (2014) 4 SCC 747** after discussing various judicial precedents of American Courts the Hon'ble Supreme Court had observed that in our criminal justice system, for recording guilt of the accused, it is not necessary that the prosecution should prove the case with absolute or mathematical certainty, but only beyond reasonable doubt. Criminal Courts, while examining whether any doubt is beyond reasonable doubt, may carry in their mind, some "residual doubt", even though the Courts are convinced of the accused persons' guilt beyond reasonable doubt." We also, in this country, expect the prosecution to prove its case beyond reasonable doubt, but not with "absolute certainty". But, in between "reasonable doubt" and "absolute certainty", a decision maker's mind may wander possibly, in a given case, he may go for "absolute certainty" so as to award death sentence, short of that he may go for "beyond reasonable doubt". All element test as well as the residual doubt test, in a given case, may favour the accused, as a mitigating factor.

In **Ravishankar @ Baba Vishwakarma V. State of Madhya Pradesh,(2019) 3 SCC 68 = (2019) 3 SCC (Cri) 768, 3 Judge Bench of the Hon'ble Supreme Court had applied the 'residual doubt theory' and commuted the death penalty awarded to a person for rape and murder of a 13-year-old girl.**

It was observed that the residual doubt theory creates a higher standard of proof over and above the `beyond reasonable doubt' standard used at the stage of conviction, as a safeguard against routine capital sentencing, keeping in mind the irreversibility of death.

It further observed that the fact that use of such 'residual doubt' as a mitigating factor would effectively raise the standard of proof for imposing the death sentence, the benefit of which would be availed of not by the innocent only. However, it would be a **misconception to make a cost-benefit** comparison between cost to society owing to acquittal of one guilty versus loss of life of a perceived innocent.

In **Sudam @ Rahul Kaniram Jadhav V. The State of Maharashtra, (2019) 9 SCC 388,** while dealing with the death sentence awarded basing on circumstantial evidence it was observed that while the concept of "residual doubt" has undoubtedly not been given much attention in Indian capital sentencing jurisprudence, the fact remains that the Supreme Court has on several occasions held the quality of evidence to a higher standard for passing the irrevocable sentence of death than that which governs conviction, that is to say, it has found it unsafe to award the death penalty for convictions based on the nature of the circumstantial evidence on record.

Ultimately the Hon'ble Supreme Court allowed the review petitions to the extent that the sentence of death awarded to the Petitioner and commuted to imprisonment for the remainder of his life sans any right to remission.

A Division Bench of Hon'ble High Court of Calcutta between **Ustab Ali V. State of West Bengal, State of West Bengal V. Ustab Ali, 2020 LawSuit (Cal) 231**, while deciding the appeal and the death reference observed that the Law Commission of India in its 262nd Report , August 2015, while noting the vagaries of the criminal justice system involving lack of resources, outmoded techniques of investigation, ineffective prosecution and poor legal aid recommended the abolition of death penalty for all crimes except terrorism related cases.

Taking into consideration, the observation made by the Law Commission of India, the Hon'ble Division Bench held that outmoded investigational techniques and ineffective prosecution justifies the invocation of doctrine of residual doubt in our jurisprudence. When tools for unraveling truth are themselves blunt or ineffective, one must come to an absolute certainty with regard to guilt of an offender bereft of any shadow of lingering doubt arising out of sublime or unexplored factors before the court may proceed to pronounce a sentence of death.

CONCLUSION

In summation it can be said that mitigating factors play an crucial role in infliction of sentence appropriate to the offence committed by the offender. Residual doubt acts as an operative mitigating factor when Courts decide not to impose a death sentence because they are not absolutely certain of the offender's guilt. The extent to which the Courts consider the residual doubt may depend on facts and circumstances peculiar to each case. The Courts are trained to be objective and to that extent they use their own sense of residual doubt in determining the appropriate sentences as residual doubt is not mere a possible doubt, because everything relating to human affairs is open to some possible or imaginary doubt.

(Prosecution Replenish conveys its heartfelt thanks to **Sri D.V.R. Tejo Karthik,** Judicial Magistrate of First Class, Special Mobile Court, Mahabubnagar, for contributing this article for our leaflet**)**

CITATIONS

2020 0 Supreme(SC) 596;(3 Judge Bench) STATE OF U.P. Vs. GAYATRI PRASAD PRAJAPATI CRIMINAL APPEAL NO. 686 of 2020 (arising out of SLP (Crl.) No.4337 of 2020); 15-10-2020
Interim bail on medical grounds cannot be granted unless it is proved that there are no proper facilities provided by the prison authorities.

2020 0 Supreme(SC) 598; Satish Chander Ahuja Vs. Sneha Ahuja Civil Appeal No. 3483 of 2020 (Arising out of SLP(C) No.1048 of 2020); 15-10-2020 (THREE JUDGE BENCH)

Principle enumerated in Section 300 Cr.P.C. may be relevant with respect to two criminal proceedings against same accused, which might have no relevance in reference to one criminal proceeding and one civil proceeding

A woman under DV Act, 2005, can contest the case to evict her from the shared household, in which her husband is a tenant/ allottee/ licensee.

finding recorded by the Magistrate under Section 145 Cr.P.C. does not bind when the matter comes for adjudication before competent court.

There can be no applicability of principle of res judicata or double jeopardy when orders of Criminal Courts are pitted against proceedings in Civil Court.

2020 0 Supreme(SC) 599; SaravananVs. State represented by the Inspector of Police ; Criminal Appeal Nos. 681-682 of 2020 (Arising from S.L.P. (Criminal) Nos.4386-4387 of 2020) : 15-10-2020 (THREE JUDGE BENCH)

The circumstances while considering the regular bail application under Section 437 Cr.P.C. are different, while considering the application for default bail/statutory bail.

Imposing condition of deposit of the alleged amount involved, while releasing the accused on default bail/statutory bail would frustrate the very object and purpose of default bail under Section 167(2), Cr.P.C.

2020 0 Supreme(SC) 601; ASIAN RESURFACING OF ROAD AGENCY PVT. LTD. & ANR. Vs CENTRAL BUREAU OF INVESTIGATION; MISCELLANEOUS APPLICATION NO. 1577 OF 2020 IN CRIMINAL APPEAL NOS. 1375-1376 OF 2013; 15-10-2020 (THREE JUDGE BENCH)

The trial Court, without insisting on filing an application from the parties, on the expiry of the first period of six months from the stay granted by any court, is to set a date for the trial and go ahead with the same.

2020 0 Supreme(SC) 595; GANESAN Vs. STATE REPRESENTED BY ITS INSPECTOR OF POLICE; CRIMINAL APPEAL No. 680 of 2020 (Arising from S.L.P.(Criminal) No.4976 of 2020) ; 14-10-2020 (THREE JUDGE BENCH)

POCSO - Conviction can be based on the sole testimony of the victim, despite the hostile evidence of the victim's mother, if it is found trustworthy

If accused does not have sufficient means to pay the compensation awarded to the victim, there can be a direction to State to pay the compensations awarded and subsequently is accused is found to have sufficient means, the same can be recovered by the State from the accused under revenue laws.

2020 0 Supreme(SC) 586; Bikramjit Singh Vs. The State of Punjab; Criminal Appeal No. 667 of 2020 (@ Special Leave Petition (Crl.) No. 2933 of 2020): 12-10-2020; (THREE JUDGE BENCH)

UAPA- Under the UAPA read with the NIA Act, the Special Court alone had jurisdiction to extend time to 180 days under the first proviso in Section 43-D(2)(b).

The fact that an application for grant of default bail was wrongly dismissed on 25.02.2019 would make no difference and ought to have been corrected in revision. The fact that the Appellant filed yet another application for default bail on 08.04.2019, would not mean that this application would wipe out the effect of the earlier application that had been wrongly decided.

2020 0 Supreme(SC) 582; Karulal & Ors.Vs. The State of Madhya Pradesh; Criminal Appeal No. 316 of 2011; 09-10-2020 (THREE JUDGE BENCH)

Some witness may not support the prosecution story for their own reasons and in such situation, it is necessary for the Court to determine whether the other available evidence comprehensively proves the charge.

If the witnesses are otherwise trustworthy, past enmity by itself will not discredit any testimony.

the testimony of the related witness, if found to be truthful, can be the basis of conviction

2020 0 Supreme(SC) 583; ANIL KUMAR SINGH ALIAS ANIL SINGH & ORS. Vs. HIGH COURT OF JUDICATURE AT PATNA THROUGH ITS REGISTRAR GENERAL & ANR.; Writ Petition(s)

(Criminal) No(s). 293 of 2020 (FOR ADMISSION and IA No.98446/2020-EXEMPTION FROM FILING O.T.): 09-10-2020 (THREE JUDGE BENCH)

It cannot be said that as the petitioners held a high office, they are ipso facto entitled to anticipatory bail.

2020 0 Supreme(SC) 578; MISS' A Vs STATE OF UTTAR PRADESH AND ANR.; Criminal Appeal No. 659 of 2020 (Arising out of Special Leave Petition (Criminal) No. 10401 of 2019); 08-10-2020 (THREE JUDGE BENCH)

The filing of the charge-sheet by itself, does not entitle an accused to copies of any of the relevant documents including statement under Section 164 of the Code, unless the stages indicated under Sec 207 & 208 are undertaken.

2020 0 Supreme(SC) 569; GURCHARAN SINGH Vs. THE STATE OF PUNJAB; CRIMINAL APPEAL NO.40 OF 2011: 01-10-2020 (THREE JUDGE BENCH)

In order to bring a case within the purview of Section 306 IPC there must be a case of suicide and in the commission of the said offence, the person who is said to have abetted the commission of suicide must have played an active role by an act of instigation or by doing certain act to facilitate the commission of suicide.

The definition U/Sec 107 IPC makes it clear that whenever a person instigates or intentionally aids by any act or illegal omission, the doing of a thing, a person can be said to have abetted in doing that thing.

As in all crimes, mens rea has to be established. To prove the offence of abetment, as specified under Sec 107 of the IPC, the state of mind to commit a particular crime must be visible, to determine the culpability. In order to prove mens rea, there has to be something on record to establish or show that the appellant herein had a guilty mind and in furtherance of that state of mind, abetted the suicide of the deceased. The ingredient of mens rea cannot be assumed to be ostensibly present but has to be visible and conspicuous.

https://indiankanoon.org/doc/185312765/ ; Rapolu Rammurthy vs The State Of Telangana on 6 October, 2020;

https://indiankanoon.org/doc/11229310/ ; Radapaka Sathaiah vs The State Of Telangana And 2 Others on 21 October, 2020;

FIR cannot be issued under Section 107 to 110 CrPC. FIR quashed.

2020 2 SCC (Cri) 657; 2020 0 AIR(SC) 1036; 2020 1 ALD(Cri)(SC) 693; 2020 3 ALD(SC) 17; 2020 4 CTC 906; 2020 2 KHC 423; 2020 1 KLJ 718; 2020 1 KLT 810; 2020 1 MLJ(Cri) 378; 2020 4 SCC 727; 2020 2 Supreme 291; 2020 0 Supreme(SC) 139; 2020 1 WBLR 649; Prathvi Raj Chauhan – Vs. Union Of India & Ors.; Writ Petition [C] no. 1015 of 2018 with Writ Petition [C] No. 1016 of 2018 : 10-02-2020(THREE JUDGE BENCH)

2020 2 SCC (Cri) 686; 2020 110 ACC 627; 2019 0 AIR(SC) 4917; 2020 0 AllMR(Cri) 1; 2020 1 ALT(Cri) 26; 2020 1 ALT(SC) 116; 2019 4 BomCR(Cri)(SC) 322; 2019 4 Crimes(SC) 6; 2020 0 CrLJ 65; 2019 4 JLJR(SC) 382; 2019 5 KHC 57; 2019 4 KLT(SN) 36; 2019 4 MLJ(Cri) 289; 2019 3 NCC 621; 2019 4 PLJR(SC) 307; 2019 4 RCR(Cri) 828; 2019 13 Scale 280; 2020 4 SCC 761; 2019 8 Supreme 481; 2019 0 Supreme(SC) 1085; Union of India Vs. State Of Maharashtra And Ors. INHERENT JURISDICTION REVIEW PETITION (CRL.) NO.228 OF 2018 IN CRIMINAL APPEAL NO.416 OF 2018 WITH REVIEW PETITION (CRIMINAL) NO.275 OF 2018 IN CRIMINAL APPEAL NO.416 OF 2018 : 01-10-2019 (THREE JUDGE BENCH)

SC & ST POA Act- Preliminary enquiry though barred by Sec 18-A of the amended act, preliminary enquiry can is permissible only in the circumstances as per the law laid down by a Constitution Bench of this Court in Lalita Kumari v. Government of U.P.,

In cases where no prima facie materials exist warranting arrest in a complaint, the court has the inherent power to direct a pre-arrest bail, but it is to be used sparingly

2020 2 SCC (Cri)721; 2020 111 ACC 528; 2020 2 ADJ 322; 2020 0 AIR(SC) 831; 2020 0 AllMR(Cri)(SC) 497; 2020 1 Crimes(SC) 225; 2020 0 CrLJ 1655; 2020 0 CrLJ 1590; 2020 266 DLT 741; 2020 1 ILR(Ker) 517; 2020 1 KHC 663; 2020 1 KLD 235; 2020 1 KLT 545; 2020 2 LW(Cri)

161; 2020 1 PLJR(SC) 524; 2020 1 RLW(Raj) 373; 2020 5 SCC 1; 2020 2 Supreme 65; 2020 0 Supreme(SC) 87; Sushila Aggarwal and others Vs. State (NCT of Delhi) and another, SPECIAL LEAVE PETITION (CRIMINAL) NOS.72817282 of 2017: 29-01-2020 (CONSTITUTION BENCH)

In view of the concurring judgments of Justice M.R. Shah and of Justice S. Ravindra Bhat with Justice Arun Mishra, Justice Indira Banerjee and Justice Vineet Saran agreeing with them, the following answers to the reference are set out:

(1) Regarding Question No. 1, this court holds that the protection granted to a person under Section 438 Cr. PC should not invariably be limited to a fixed period; it should inure in favour of the accused without any restriction on time. Normal conditions under Section 437 (3) read with Section 438 (2) should be imposed; if there are specific facts or features in regard to any offence, it is open for the court to impose any appropriate condition (including fixed nature of relief, or its being tied to an event) etc.

(2) As regards the second question referred to this court, it is held that the life or duration of an anticipatory bail order does not end normally at the time and stage when the accused is summoned by the court, or when charges are framed, but can continue till the end of the trial. Again, if there are any special or peculiar features necessitating the court to limit the tenure of anticipatory bail, it is open for it to do so.

1. This court, in the light of the above discussion in the two judgments, and in the light of the answers to the reference, hereby clarifies that the following need to be kept in mind by courts, dealing with applications under Section 438, Cr. PC:

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

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

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

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

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

(5) Anticipatory bail granted can, depending on the conduct and behavior of the accused, continue after filing of the charge sheet till end of trial.

(6) An order of anticipatory bail should not be “blanket” in the sense that it should not enable the accused to commit further offences and claim relief of indefinite protection from arrest. It should be confined to the offence or incident, for which apprehension of arrest is sought, in relation to a specific incident. It cannot operate in respect of a future incident that involves commission of an offence.

(7) An order of anticipatory bail does not in any manner limit or restrict the rights or duties of the police or investigating agency, to investigate into the charges against the person who seeks and is granted prearrest bail.
(8) The observations in Sibbia regarding “limited custody” or “deemed custody” to facilitate the requirements of the investigative authority, would be sufficient for the purpose of fulfilling the provisions of Section 27, in the event of recovery of an article, or discovery of a fact, which is relatable to a statement made during such event (i.e deemed custody). In such event, there is no question (or necessity) of asking the accused to separately surrender and seek regular bail. Sibbia (supra) had observed that “if and when the occasion arises, it may be possible for the prosecution to claim the benefit of Section 27 of the Evidence Act in regard to a discovery of facts made in pursuance of information supplied by a person released on bail by invoking the principle stated by this Court in State of U.P. v Deoman Upadhyaya.”
(9) It is open to the police or the investigating agency to move the court concerned, which grants anticipatory bail, for a direction under Section 439 (2) to arrest the accused, in the event of violation of any term, such as absconding, noncooperating during investigation, evasion, intimidation or inducement to witnesses with a view to influence outcome of the investigation or trial, etc.
(10) The court referred to in para (9) above is the court which grants anticipatory bail, in the first instance, according to prevailing authorities.
(11) The correctness of an order granting bail, can be considered by the appellate or superior court at the behest of the state or investigating agency, and set aside on the ground that the court granting it did not consider material facts or crucial circumstances. (See Prakash Kadam & Etc. Etc vs Ramprasad Vishwanath Gupta & Anr, (2011) 6 SCC 189; Jai Prakash Singh (supra) State through C.B.I. vs. Amarmani Tripathi, (2005) 8 SCC 21). This does not amount to “cancellation” in terms of Section 439 (2), Cr. PC.
(12) The observations in Siddharam Satlingappa Mhetre v. State of Maharashtra & Ors, 2011 (1) SCC 694 (and other similar judgments) that no restrictive conditions at all can be imposed, while granting anticipatory bail are hereby overruled. Likewise, the decision in Salauddin Abdulsamad Shaikh v. State of Maharashtra, (1996 (1) SCC 667) and subsequent decisions (including K.L. Verma v. State & Anr, 1998 (9) SCC 348; Sunita Devi v. State of Bihar & Anr, 2005 (1) SCC 608; Adri Dharan Das v. State of West Bengal, 2005 (4) SCC 303; Nirmal Jeet Kaur v. State of M.P. & Anr, 2004 (7) SCC 558; HDFC Bank Limited v. J.J. Mannan, 2010 (1) SCC 679; Satpal Singh v. the State of Punjab, 2018 SCC Online (SC 415) and Naresh Kumar Yadav v Ravindra Kumar, 2008 (1) SCC 632) which lay down such restrictive conditions, or terms limiting the grant of anticipatory bail, to a period of time are hereby overruled.
2. The reference is hereby answered in the above terms.

2020 2 SCC (Cri) 828 ; 2019 16 SCC 610; 2020 2 SCC(Civ) 713; 2019 0 Supreme(SC) 562; BIRLA CORPORATION LIMITED – Vs. ADVENTZ INVESTMENTS AND HOLDINGS; CRIMINAL APPEAL NO. 875 OF 2019 (Arising out of SLP(Crl.) No.9053 of 2016) WITH BIRLA BUILDINGS LIMITEDVs. BIRLA CORPORATION LIMITED; CRIMINAL APPEAL NO. 877 OF 2019 (Arising out of SLP(Crl.) No.4609 of 2019 @ D. No.6405 of 2019)WITH GOVIND PROMOTERS PVT. LTD. Vs. BIRLA CORPORATION LIMITED – CRIMINAL APPEAL NO. 876 OF 2019 (Arising out of SLP(Crl.) No. 4608 of 2019 @ D. No.6122 of 2019) : 09-05-2019;
Information contained in a document, if replicated, can be the subject of theft and can result in wrongful loss, even though the original document was only temporarily removed from its lawful custody for the purpose of extracting the information contained therein.
A person can be said to have "dishonest intention" if in taking the property it is the intention to wrongful gain by unlawful means or to cause wrongful loss by unlawful means.

2020 2 SCC Cri 863; 2020 4 CTC 887; 2020 2 MLJ(Cri) 568; 2020 5 SCC 118; 2020 0 Supreme(SC) 288; RAJA @ AYYAPPAN Vs. STATE OF TAMIL NADU; Criminal Appeal No. 1120 of 2010; 01-04-2020
Section 30 of the Indian Evidence Act mandates that to make the confession of a co-accused admissible in evidence, there has to be a joint trial. If there is no joint trial, the confession of a co-accused is not at all admissible in evidence

2020 2 SCC Cri 890; 2020 1 Crimes(SC) 397; 2020 5 SCC 260; 2020 3 Supreme 39; 2020 0 Supreme(SC) 210; THAN KUNWAR Vs. STATE OF HARYANA; Criminal Appeal No. 2172 of 2011: 02-03-2020

NDPS Act - If the seizure is otherwise not in doubt, there is no requirement that the entire material ought to be produced before the court. At times the material could be so bulky, that it may not be possible and feasible to produce the entire bulk before the court. If the seizure is otherwise proved, what is required to be proved is the fact that the samples taken from and out of the contraband material were kept intact, that when the samples were submitted for forensic examination the seals were intact, that the report of the forensic experts shows the potency, nature and quality of the contraband material and that based on such material, the essential ingredients constituting an offence are made out.

https://indiankanoon.org/doc/160446685/; Mohammad Baligur Rehaman vs The State Of Telangana on 21 October, 2020;

the police are incompetent to take cognizance of the offences punishable under Sections 54 and 59 (1) of the Food Safety and Standards (FSS) Act, 2006, investigating into the offences along with 188, 270, 272 and 273 of IPC., and filing charge sheet is a grave illegality, as the Food Safety Officer alone is competent to investigate and to file charge sheet following the Rules laid down under Sections 41 and 42 of FSS Act.

https://indiankanoon.org/doc/75504267/; **Chinthireddy Devender Reddy vs The State Of Telangana And 6 Others on 21 October, 2020**

https://indiankanoon.org/doc/165216212/; Ryala Aravind Yadav vs The State Of Telangana And 6 Others on 21 October, 2020

https://indiankanoon.org/doc/165014099/; Peddi Suresh vs The State Of Telangana on 21 October, 2020

https://indiankanoon.org/doc/138174136/; Shanigarapu Devender vs The State Of Telangana And 6 Others on 21 October, 2020

https://indiankanoon.org/doc/140460009/; R.K. Ahuja vs The State Of Telangana And Another on 21 October, 2020

Writ jurisdiction cannot be invoked for non-registration of an FIR by Police.

2020 2 ALD Crl 360(SC); 2019 0 AIR(SC) 3746; 2019 3 ALT(Cri)(SC) 112; 2019 0 CrLJ 4956; 2019 8 JT 210; 2019 3 MLJ(Cri) 477; 2019 10 Scale 284; 2019 7 SCC 716; 2019 0 Supreme(SC) 805; Manoharan Vs State by Inspector of Police, Variety Hall Police Station, Coimbatore; Criminal Appeal Nos. 1174-1175 of 2019 [Arising out of SLP (Criminal) Nos.7581-7582 of 2014); 01-08-2019 (THREE JUDGE BENCH WITH ONE JUDGE DISSENTING)

POCSO- we have no doubt that the trial court and High Court have correctly applied and balanced aggravating circumstances with mitigating circumstances to find that the crime committed was cold blooded and involves the rape of a minor girl and murder of two children in the most heinous fashion possible. No remorse has been shown by the Appellant at all and given the nature of the crime as stated in paragraph 84 of the High Court's judgment it is unlikely that the Appellant, if set free, would not be capable of committing such a crime yet again. The fact that the Appellant made a confessional statement would not, on the facts of this case, mean that he showed remorse for committing such a heinous crime. He did not stand by this confessional statement, but falsely retracted only those parts of the statement which implicated him of both the rape of the young girl and the murder of both her and her little brother. Consequently, we confirm the death sentence and dismiss the appeals.

2020 2 ALD Crl 400(SC) ; 2019 0 AIR(SC) 4010; 2019 3 ALT(Cri)(SC) 216; 2019 4 Crimes(SC) 487; 2019 3 LawHerald(SC) 2326; 2019 4 PLJR(SC) 71; 2019 4 RCR(Cri) 135; 2019 11 Scale 209; 2019 9 SCC 608; 2019 3 SCC(Cri) 903; 2019 0 Supreme(SC) 901; 2019 3 UC 1899; Pramod Suryabhan Pawar Vs. The State of Maharashtra & Anr. Criminal Appeal No. 1165 of 2019 (@SLP (Crl) No. 2712 of 2019): 21-08-2019

the "consent" of a woman with respect to Section 375 must involve an active and reasoned deliberation towards the proposed act. To establish whether the "consent" was vitiated by a "misconception of fact" arising out of a promise to marry, two propositions must be established. The

promise of marriage must have been a false promise, given in bad faith and with no intention of being adhered to at the time it was given. The false promise itself must be of immediate relevance, or bear a direct nexus to the woman's decision to engage in the sexual act.

2019 0 AIR(SC) 4030; 2019 3 ALT(Cri)(SC) 156; 2019 4 CriCC 169; 2019 4 East Cr C(SC) 138; 2019 4 JLJR(SC) 1; 2019 4 JLJR(SC) 44; 2019 8 JT 421; 2019 3 Law Herald(SC) 2611; 2019 4 PLJR(SC) 130; 2019 4 RCR(Cri) 174; 2019 11 Scale 485; 2019 0 Supreme(SC) 963; 2019 2 UC 1399; KHUMAN SINGH Vs. STATE OF MADHYA PRADESH; Criminal Appeal No. 1283 of 2019 (Arising Out of SLP(Crl) No. 6647 of 2018); 27-08-2019

Sine qua non for application of Section 3(2)(v) is that an offence must have been committed against a person on the ground that such person is a member of Scheduled Castes and Scheduled Tribes.

2020 2 ALD Cri 444 (SC) ; 2020 0 AIR(SC) 1758; 2020 2 PLJR(SC) 4; 2020 3 SCC 736; 2020 2 SCC(Cri) 217; 2020 2 Supreme 643; 2020 0 Supreme(SC) 134; Arun Singh and Others Vs. State of U.P. through its Secretary and Another ; Criminal Appeal No. 250 of 2020, Special Leave Petition (CRL) No. 5224 of 2017: 10-02-2020

"Quashing of offences or criminal proceedings on the ground of settlement between an offender and victim is not the same thing as compounding of the offence. They are different and not interchangeable.

The physical relationship between the victim and accused in the intermediate period of fixing marriage and marriage does not constitute an offence u/Sec 493 IPC.

The offences under Sec 3 & 4 DP act cannot be allowed to quashed on the ground of compromise.

2020 2 ALD Crl 454(DB)(AP); Shaik Farooq Basha Vs State of A.P. Crl.A. Nos 25 &148 of 2013: 30.08.2019.

Plea not even suggested to the main witnesses but taken in Sec 313 CrPC examination cannot be believed.

The dying declaration given to magistrate stating that she committed suicide by pouring kerosene though inconsistent with her statement to the police, in which she stated that her husband poured the kerosene on her, coupled with the absence of particulars of torture of husband in dying declaration though the same is present in the statement made to police, the dying declaration is admissible despite the improvement.

The statements of the parents and panchayat elders, that deceased informed them several times about the harassment for additional dowry, can be construed to have continued and come under Soon before the death under Sec 304BIPC.

2020 2 ALD Crl 539(SC); 2019 0 AIR(SC) 3635; 2020 110 AllCriC 298; 2020 2 AllLJ 673; 2019 0 AllSCR(Cri) 1622; 2019 3 Crimes(SC) 261; 2019 4 EastCrC(SC) 4; 2019 3 JKJ(SC) 187; 2019 7 JT 401; 2019 3 NCC 75; 2019 3 NCC 75; 2019 3 RCR(Cri) 846; 2019 9 Scale 511; 2019 7 SCC 204; 2019 3 SCC(Cri) 48; 2019 7 Supreme 304; 2019 0 Supreme(SC) 764; RAM GOPAL Vs/ CENTRAL BUREAU OF INVESTIGATION, DEHRADUN ; CRIMINAL APPEAL NO(s). 1085 OF 2019 (arising out of SLP (Crl.) No(s). 9004 of 2017) WITH PANKAJ KUMAR JAIN Vs. CENTRAL BUREAU OF INVESTIGATION, DEHRADUN ; CRIMINAL APPEAL NO(s).1086 OF 2019 arising out of SLP (Crl.) No(s). 1981 of 2018) : 22-07-2019

The fraud was committed in a systematic manner by persons well acquainted with banking procedures. The appellants were also the employees of the Bank. There is no defence evidence that they had no access to records of the Bank at any stage to commit the offence attributed to them. On the contrary, the evidence of their involvement is clinching. They also had access to the vouchers and ledgers as part of their normal duties. Even the specimen signature card was made to disappear replaced by a torn paper.

2020 2 ALD Crl 606(SC); 2020 111 ACC 660; 2020 1 Crimes(SC) 380; 2020 2 KLT(SN) 9; 2020 5 SCC 378; 2020 3 Supreme 142; 2020 0 Supreme(SC) 217;Samta Naidu And Anr Vs. State of Madhya Pradesh And Anr; Criminal Appeal Nos. 367-368 of 2020 (Arising out of Special Leave Petition (Crl.)Nos. 4418-4419 of 2019) : 02-03-2020

The earlier complaint was dismissed after the Judicial Magistrate found that no prima facie case was made out; the earlier complaint was not disposed of on any technical ground; the material adverted to in the second complaint was only in the nature of supporting material; and the material relied upon in the second complaint was not such which could not have been procured earlier. Pertinently, the core allegations in both the complaints were identical. In the circumstances, the instant matter is completely covered by the decision of this Court in Taluqdar (supra) as explained in Jatinder Singh(supra) and Poonam Chand Jain.(supra) The High Court was thus not justified in holding the second complaint to be maintainable.

2020 2 ALD Cri 635 (SC); 2020 2 KHC 551; 2020 1 KLD 495; 2020 2 KLJ 843; 2020 2 MLJ(Cri) 628; 2020 0 Supreme(SC) 320; HIRA SINGH AND ANOTHER Vs. UNION OF INDIA AND ANOTHER; CRIMINAL APPEAL NO. 722 OF 2017 WITH CIVIL APPEAL NO. 5218 OF 2017; CRIMINAL APPEAL NO. 721 OF 2017; WRIT PETITION (CRIMINAL) NO. 186 OF 2014; CRIMINAL APPEAL NO. 444 OF 2016; CRIMINAL APPEAL NO. 1557 OF 2017; WRIT PETITION (CRIMINAL) NO. 77 OF 2016; CRIMINAL APPEAL NO. 884 OF 2016; CRIMINAL APPEAL NO. 984 OF 2016; WRIT PETITION (CRIMINAL) NO. 154 OF 2016; CRIMINAL APPEAL NO. 388 OF 2017; CRIMINAL APPEAL NO. 1678 OF 2017; CRIMINAL APPEAL NO. 2156 OF 2017 AND CRIMINAL APPEAL NO. 2155 OF 2017: 22-04-2020 (THREE JUDGE BENCH)

Reference is answered as under:

(I). The decision of this Court in the case of E. Micheal Raj (supra) taking the view that in the mixture of narcotic drugs or psychotropic substance with one or more neutral substance(s), the quantity of the neutral substance(s) is not to be taken into consideration while determining the small quantity or commercial quantity of a narcotic drug or psychotropic substance and only the actual content by weight of the offending narcotic drug which is relevant for the purpose of determining whether it would constitute small quantity or commercial quantity, is not a good law;

(II). In case of seizure of mixture of Narcotic Drugs or Psychotropic Substances with one or more neutral substance(s), the quantity of neutral substance(s) is not to be excluded and to be taken into consideration along with actual content by weight of the offending drug, while determining the "small or commercial quantity" of the Narcotic Drugs or Psychotropic Substances;

(III). Section 21 of the NDPS Act is not stand-alone provision and must be construed along with other provisions in the statute including provisions in the NDPS Act including Notification No.S.O.2942(E) dated 18.11.2009 and Notification S.O 1055(E) dated 19.10.2001;

(IV). Challenge to Notification dated 18.11.2009 adding "Note 4" to the Notification dated 19.10.2001, fails and it is observed and held that the same is not ultra vires to the Scheme and the relevant provisions of the NDPS Act. Consequently, writ petitions and Civil Appeal No. 5218/2017 challenging the aforesaid notification stand dismissed.

2020 2 ALD Crl 658(SC); 2020 3 Supreme 716; 2020 0 Supreme(SC) 379; OMBIR SINGH Vs STATE OF UTTAR PRADESH AND ANOTHER; Criminal Appeal No. 982 of 2011; 26-05-2020 (THREE JUDGE BENCH)

Delay in compliance of Section 157 of the Code cannot, in itself, be a good ground to acquit the appellant.

The fact that the field unit had not recorded the name of the deceased in the proceedings, in our opinion, is inconsequential for these details are duly mentioned in the panchayatnama and other documents which were prepared on the same day

2020 2 ALD Crl 663(SC); 2020 0 Supreme (SC) 514; PARVINDER KANSAL Vs THE STATE OF NCT OF DELHI & ANR.: CRIMINAL APPEAL NO. 555 OF 2020 [ARISING OUT OF S.L.P. (CRL.) NO. 3928 OF 2020]: 28-08-2020

While it is open for the State Government to prefer appeal for inadequate sentence under Section 377, Cr.PC but similarly no appeal can be maintained by victim under Section 372, Cr.PC on the ground of inadequate sentence.

https://indiankanoon.org/doc/83178600/; Gujjula Chenna Rao vs The State Of Telangana on 14 October, 2020

Writ jurisdiction cannot be invoked for delay in investigation of Sc & ST POA Act Cases.

https://services.ecourts.gov.in/ecourtindiaHC/cases/display_pdf.php; CRIMINAL PETITION No.4661 OF 2020; 22.10.2020. K.Govindhu Vs State of A.P.
The mere fact that A-1 and A-2, who are already arrested in this case, are enlarged on bail is also not a valid ground to grant anticipatory bail to the petitioners herein as they are not similarly placed with the arrested persons who are A-1 and A-2.

https://services.ecourts.gov.in/ecourtindiaHC/cases/display_pdf.php?filename=U%2BbhtlrLe2adAHN8Tz%2F1d05CCVBpDna2XI0SlqyNQ7J6SOyXaAT10D4rlVQJaP12&caseno=CRLP/4788/2020&cCode=1&appFlag; =CRIMINAL PETITION No.4788 OF 2020 Dated : 22-10-2020; PYLA SUBHASH CHANDRA BOSE Vs State of A.P.
Sec 188 IPC and Sec 3 of Epidemic diseases Act are quashed as the same are non-cognizable.

https://services.ecourts.gov.in/ecourtindiaHC/cases/display_pdf.php?filename=U%2BbhtlrLe2adAHN8Tz%2F1d4GuSi3nwitMWSeyxMpdhk8GRVyZgGGYUYOwiz4rPK%2BZ&caseno=CRLP/4285/2020&cCode=1&appFlag=; Pemi Satish Chandra Vs State of A.P; CRIMINAL PETITION No.4285 OF 2020 Dated : 21-10-2020;
Sec 41-A CrPC notice issued in SC & ST POA act cases.

2020 0 Supreme(SC) 628; Rajesh Dhiman Vs. State of Himachal Pradesh; Criminal Appeal No. 1032 of 2013 With Gulshan Rana Vs State of Himachal Pradesh ; Criminal Appeal No. 1126 of 2019: 26-10-2020 (THREE JUDGE BENCH)
the safeguards for search of a person would not extend to his bag or other article being carried by them.
non-examination of independent witnesses would not ipso facto entitle one to seek acquittal.
To entitle an accused person to the benefit of a doubt arising from the possibility of a duality of views, the possible view in favour of the accused must be as nearly reasonably probable as that against him.

2020 0 Supreme(SC) 627; M. Ravindran Vs.The Intelligence Officer, Directorate of Revenue Intelligence; Criminal Appeal No. 699 of 2020 (arising out of S.L.P. (Criminal) No. 2333 of 2020) : 26-10-2020 THREE JUDGE BENCH
The right to be released on default bail continues to remain enforceable if the accused has applied for such bail, notwithstanding pendency of the bail application; or subsequent filing of the chargesheet or a report seeking extension of time by the prosecution before the Court; or filing of the chargesheet during the interregnum when challenge to the rejection of the bail application is pending before a higher Court.
However, where the accused fails to apply for default bail when the right accrues to him, and subsequently a chargesheet, additional complaint or a report seeking extension of time is preferred before the Magistrate, the right to default bail would be extinguished. The Magistrate would be at liberty to take cognizance of the case or grant further time for completion of the investigation, as the case may be, though the accused may still be released on bail under other provisions of the CrPC.

Notwithstanding the order of default bail passed by the Court, by virtue of Explanation I to Section 167(2), the actual release of the accused from custody is contingent on the directions passed by the competent Court granting bail. If the accused fails to furnish bail and/or comply with the terms and conditions of the bail order within the time stipulated by the Court, his continued detention in custody is valid.

NOSTALGIA

Civil Court Judgment vs Criminal Court Judgment
in Kishan Singh (Dead) Through LRs. vs. Gurpal Singh and Ors., (2010) 8 SCC 775 after noticing the several earlier judgments concluded that finding of fact recorded by the civil court do not have any bearing so as the criminal case is concerned and vice versa. In paragraph 18, following was laid down:-

> "18. Thus, in view of the above, the law on the issue stands crystallised to the effect that the findings of fact recorded by the civil court do not have any bearing so far as the criminal case is concerned and vice versa.

Standard of proof is different in civil and criminal cases. In civil cases it is preponderance of probabilities while in criminal cases it is proof beyond reasonable doubt. There is neither any statutory nor any legal principle that findings recorded by the court either in civil or criminal proceedings shall be binding between the same parties while dealing with the same subject-matter and both the cases have to be decided on the basis of the evidence adduced therein. However, there may be cases where the provisions of Sections 41 to 43 of the Evidence Act, 1872, dealing with the relevance of previous judgments in subsequent cases may be taken into consideration."

Weapon should be shown to the Medical expert at time of evidence

Kartarey and Ors. vs. State of U.P., (1976) 1 SCC 172 has observed as under:-

"We take this opportunity of emphasizing the importance of eliciting the opinion of the medical witness, who had examined the injuries of the victim, more specifically on this point, for the proper administration of justice particularly in a case where injuries found are forensically of the same species, example stab wound, and the problem before of the Court is whether all or any those injuries could be caused with one or more than one weapon. It is the duty of the prosecution, and no less of the Court, to see that the alleged weapon of the offence, if available, is shown to the medical witness and his opinion invited as to whether all or any of the injuries on the victim could be caused with that weapon. Failure to do so may sometimes, cause aberration of the course of justice".

enmity is a double-edged weapon

in Sushil & Ors. Vs. State of U.P., (1995) Supp 1 SCC 363 where the learned Judge so correctly observed:

"8…….It goes without saying that enmity is a double-edged weapon which cuts both ways. It may constitute a motive for the commission of the crime and at the same time it may also provide a motive for false implication. In the present case there is evidence to establish motive and when the prosecution adduced positive evidence showing the direct involvement of the accused in the crime, motive assumes importance. The evidence of interested witnesses and those who are related to the deceased cannot be thrown out simply for that reason. But if after applying the rule of caution their evidence is found to be reliable and corroborated by independent evidence there is no reason to discard their evidence but it has to be accepted as reliable……."

NEWS

- Prosecution replenish Welcomes and congratulates all the Assistant Public Prosecutors appointed and posted in Andhra Pradesh.
- Public Services – Prosecuting officers – Recruitment to the category of Assistant Public Prosecutors - Appointments – Notification – Orders – Issued. G.O.MS.No. 117 HOME (COURTS.A) DEPARTMENT; Dated: 16-10-2020
- the Arms (Third Amendment) Rules, 2020, published, MINISTRY OF HOME AFFAIRS NOTIFICATION New Delhi, the 9th October, 2020 G.S.R. 625(E).
- the National Forensic Sciences University Rules, 2020- MINISTRY OF HOME AFFAIRS (WOMEN SAFETY DIVISION) NOTIFICATION New Delhi, the 20th October, 2020 G.S.R. 654 (E)
- Government of Telangana- Allowances- GOMs 69 Finance(HRM-IV) Dept. dated 23.10.2020- Dearness allowance to the State Government Employees sanctioned @ 38.776% of basic pay from 01.07.2019.
- Government of Telangana- Allowances- GOMs 70 Finance(HRM-IV) Dept. dated 23.10.2020- Dearness allowance to the State Government Pensioners sanctioned @ 38.776% of basic pay from 01.07.2019.

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ON A LIGHTER VEIN

"Dad, I got my smarts from you, didn't I?"
– "That's right my clever boy!"
– "Yup, thought so, mom still has hers."

Source: https://short-funny.com/

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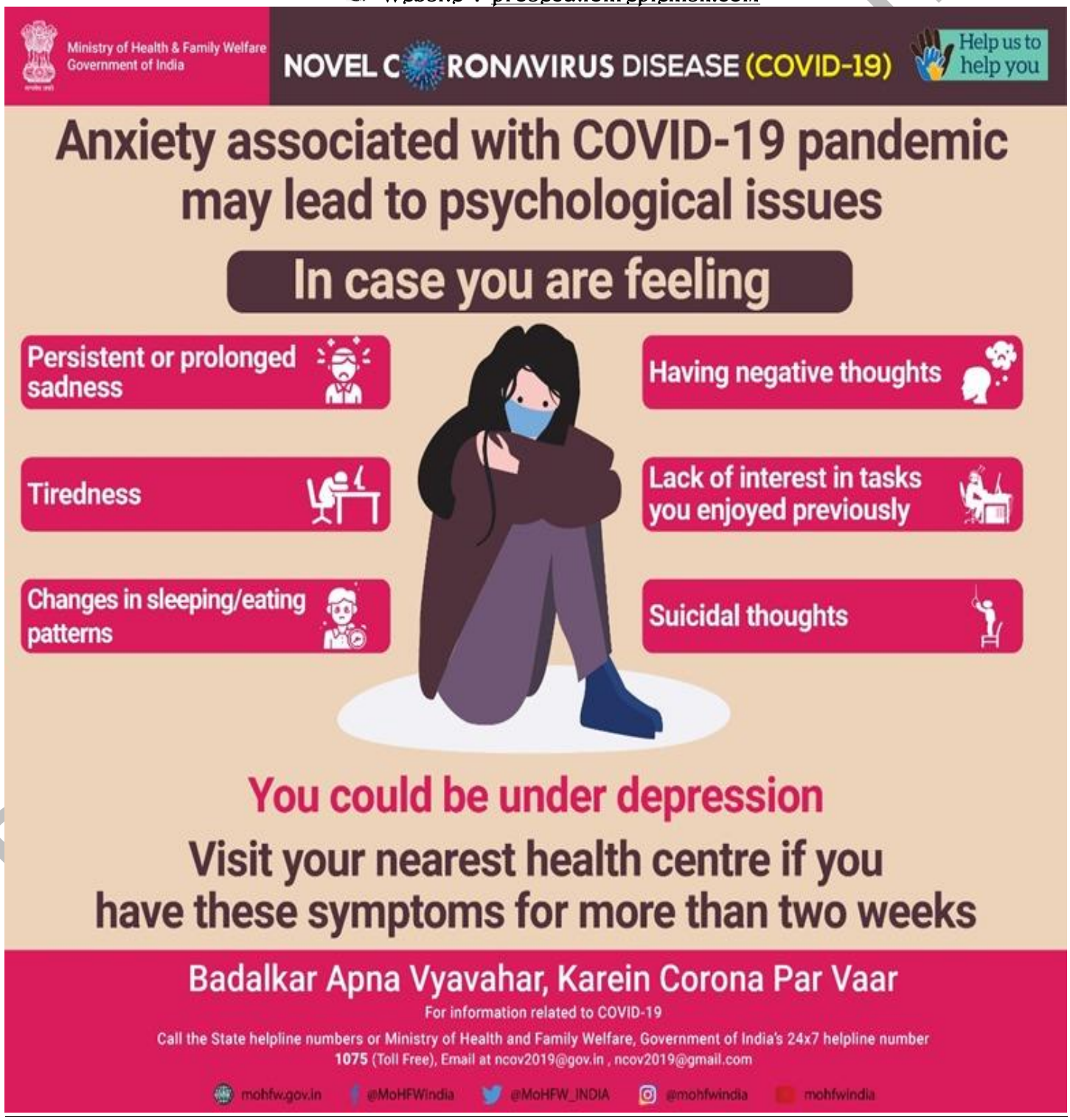

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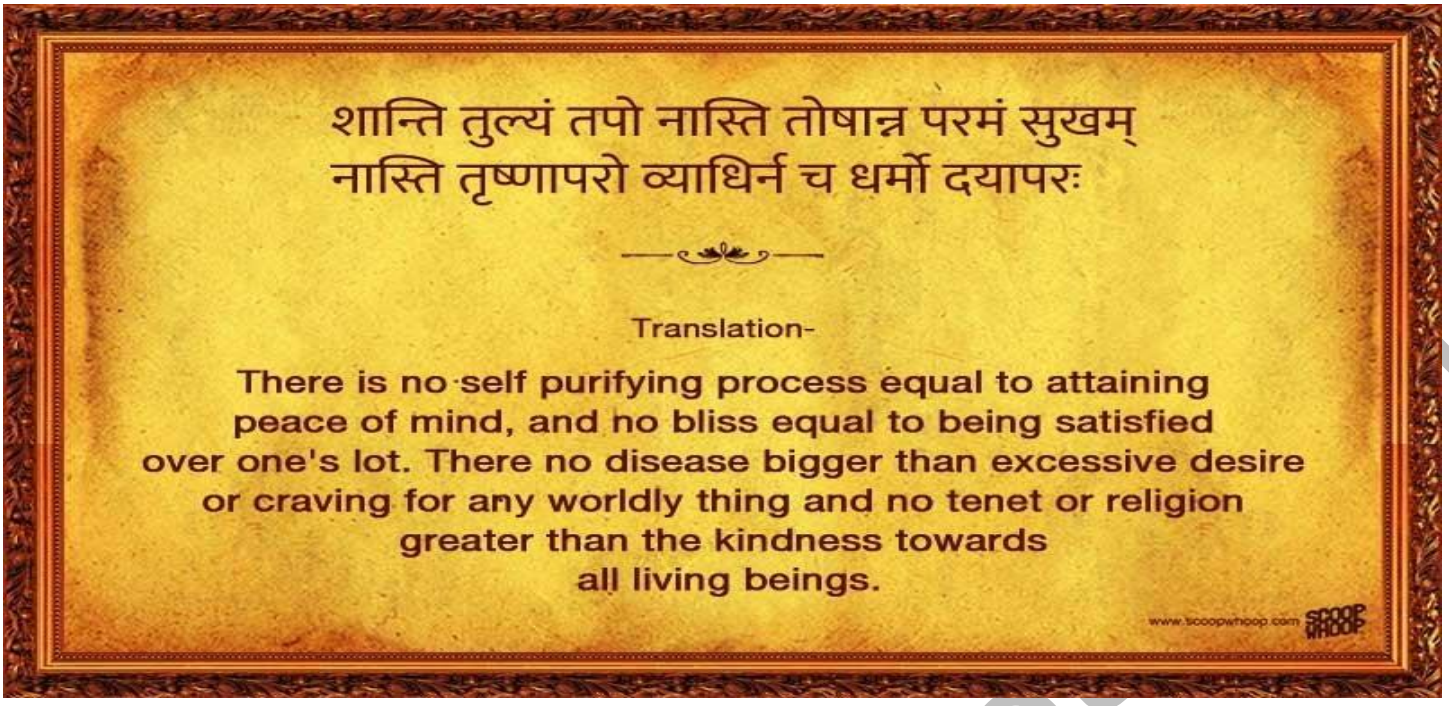
December, 2020

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



CONTRADICTIONS AND OMISSIONS, OMISSIONS AMOUNTING TO CONTRADICTIONS, RECORDING AND PROOF OF CONTRADICTIONS AND OMISSIONS

DVR Tejo Karthik
JMFC - Special Mobile Court;
Mahabubnagar

The Code of Criminal Procedure lays down various provisions as to how investigation is to be done. Section 160 of the Code empowers a Police Officer to summon a person who is familiar with the facts of the case by issuing notice in writing. Section 161 Cr.P.C lays down what Police Officer has to do if a person in response to the notice under section 160 Cr.P.C appears before him. As per Sec.161 Cr.P.C a Police Officer conducting investigation may examine orally any person supposed to be acquainted with the facts and circumstances of the case. On examination of such person, the Police Officer may reduce into writing any statement made to him in the course of the investigation. This recording of the statement by the Police Officer/investigating Officer is popularly known as Sec.161 Cr.P.C statement or case diary statement. Sec.161 Cr.P.C gives wide discretion to the Police Officer whether to record or not to record any statement made by any person during the investigation. If the statement is recorded by reducing it in writing then the Investigating Officer is governed by Sec.162 Cr.P.C. Sec.162 Cr.P.C prohibits the Investigating Officer or the Police Officer from obtaining the signature of the person from whom he recorded the statement. It is pertinent to note that the expression "Any person" in Secs. 160 and 161 Cr.P.C would include even an accused.

Then the next question is what is the use of the statement recorded by the Police Officer during investigation, whether the statement recorded U/Sec.161 Cr.P.C can be treated as evidence and what is the evidentiary value of the statement.

Sec.162 of the Code provides that the statement recorded U/Sec.161 Cr.P.C shall not be used for any purpose except to contradict a witness in a manner provided under section 145 of the Indian Evidence Act, 1872. Therefore, the statement recorded U/Sec.161 Cr.P.C does not constitute evidence that can be relied upon by the court to convict an accused.

As noted supra that the statement recorded U/Sec.161 Cr.P.C can only be used for the purpose of contradicting a witness. According to Oxford Dictionary "contradiction means to offer the contrary". It is a statement given by a witness on a material fact which is running contrary to the earlier statement. Contradiction means stating two versions at two different points of time. If a witness states about existence of certain fact to the police in his statement and in the court deposes different from the statement made to the police about the existence of certain fact which he had stated

to the police in his previous statement then it is a case of **contradiction**. Let us understand the meaning of contradiction by way of an illustration. Suppose in a case of murder a witness who claims to have witnessed the commission of the offence states to the police in his case diary statement that he saw "X" stabbing "A" with a knife. But in the court he deposes that he saw "X" banging the head of "A" against the wall thereby causing serious head injury resulting in the death of "A" . This is a clear case of contradiction as the witness before the police in his statement did not state about "X" banging the head of "A" against the wall resulting in his death. Now this contradiction has to be brought on record and proved.

On the other hand if a witness deposes in his examination in chief about existence of a certain fact or a relevant fact which he omitted to state to the police in his case diary statement then it is called as **omission**. Omission is a statement of a witness while giving evidence on a material fact which he did not sate earlier to the police in his previous statement. We shall understand it by way of an illustration. In a case of Voluntarily causing hurt, a witness in the Court deposes that he saw "X" causing hurt to "A" with a stick. But in his previous statement to the police he does not state having witnessed the incident of "X" causing injury to "A" with a stick. It is a case of omission.

Then when an omission amounts to contradiction. The Explanation to Section 162 CrPC used the words "if the same appears to be significant" indicates that in order to attract this provision an omission must in the first place appear to be significant. Thereafter it must be otherwise relevant having regard to the context in which it occurs. The materiality of an omission decides whether it amounts or does not amount to a contradiction. If the omission is of minor nature or insignificant, it is not contradiction and fatal to the case of prosecution and court will not take notice of those omissions and Court will not allow it to be brought on record. Court will only take notice of those omissions which are material and significant in nature having effect of contradiction.

Section 145 of the Evidence Act provides that a witness may be cross examined as to previous statements made by him in writing or reduced into writing, and relevant to matter in question, without such writing being shown to him , or being proved. Section 145 of Evidence Act, however, provides that where a cross examination as to previous statement is intended to contradict him by such previous statement, the attention of the witness must, before the statement can be proved, be called to those parts of the statement which are to be used for the purpose of contradicting him.

In the illustrious judgment of **Tahsildar Singh V. State of Uttar Pradesh, AIR 1959 SC 1012,** the Hon'ble Supreme Court had succinctly explained that Section 145 of the Evidence Act is in two parts : the first part enables the accused to cross-examine a witness as to previous statement made by him in writing or reduced to writing without such writing being shown to him; the second part deals with a situation where the cross-examination assumes the shape of contradiction : in other words, both parts deal with cross-examination; the first part with cross examination other than by way of contradiction, and the second with cross- examination by way of contradiction only. The procedure prescribed is that, if it is intended to contradict a witness by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him. The proviso to S. 162 of the Code of Criminal Procedure only enables the accused to make use of such statement to contradict a witness in the manner provided by S. 145 of the Evidence Act. It would be doing violence to the language of the proviso if the said statement be allowed to be used for the purpose of cross-examining a witness within the meaning of the first part of S. 145 of the Evidence Act. The contradiction, under the section, should be between what a witness asserted in the witness-box and what he stated before the police-officer, and not between what he said he had stated before the police officer and what he actually made before him. Section 145 of the Evidence Act indicates the manner in which contradiction is brought out. The cross-examining Counsel shall put the part or parts of the statement which affirms the contrary to what is stated in evidence. This indicates that there is something in writing which can be set against another statement made in evidence. Section 145 of the Evidence Act

deals with cross-examination in respect of a previous statement made by the witness. One of the modes of cross-examination is by contradicting the witness by referring him to those parts of the writing which are inconsistent with his present evidence. Section 162, while confining the right to the accused to cross-examine the witness in the said manner, enables the prosecution to re- examine the witness to explain the matters referred to in the cross-examination. This enables the prosecution to explain the alleged contradiction by pointing out that if a part of the statement used to contradict be read in the context of any other part, it would give a different meaning; and if so read, it would explain away the alleged contradiction. The word "cross-examination" in the last line of the first proviso to S. 162 of the Code of Criminal Procedure cannot be understood to mean the entire gamut of cross-examination without reference to the limited scope of the proviso, but should be confined only to the cross-examination by contradiction allowed by the said proviso.

For contradicting a witness the exact passage occurring in his case diary statement should be read out and put to the witness whether the witness admits having made such a statement before the Investigating Officer. The statement read over to the witness should be incorporated verbatim in the deposition i.e., **Ipsissima verba** for "the very words,". If the witness admits having made such a statement to the police then there is no need of further proof of contradiction. If the witness denies having made such a statement to the police then it shall be mentioned in the deposition of the witness so as to bring the contradiction on record and the relevant passage in the case diary statement should be exhibited tentatively by assigning exhibit number. It is important to note that by merely bringing the contradiction on record it does not amount to the proof of contradiction. Contradiction is said to be proved only when the Investigating Officer who has recorded the statement is examined in the court and the passage in the case diary statement marked for the purpose of contradiction should be read out to the Investigating Officer and he should be asked whether the witness had stated to him as mentioned in the passage which was exhibited tentatively. If the Investigating Officer answers it in the affirmative then the contradiction brought on record is said to have been proved. Same is case with omissions also. Omissions, if denied by the witness can be proved by questioning the Investigating Officer whether the witness had made such a statement which the witness says he had made in his previous statement.

The Hon'ble Supreme Court between **V.K. Mishra & Anr V. State of Uttarakhand & Anr, AIR 2015 SC 3043,** observed that Court cannot suo moto make use of statements to police not proved and ask question with reference to them which are inconsistent with the testimony of the witness in the court. The words in Section 162 Cr.P.C. "if duly proved" clearly show that the record of the statement of witnesses cannot be admitted in evidence straightway nor can be looked into but they must be duly proved for the purpose of contradiction by eliciting admission from the witness during cross-examination and also during the cross-examination of the investigating officer. Statement before the investigating officer can be used for contradiction but only after strict compliance with Section 145 of Evidence Act that is by drawing attention to the parts intended for contradiction. 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 moto make use of statements to police not proved in compliance with Section 145 of Evidence Act that is, by drawing attention to the parts intended for contradiction.

An omission may amount to contradiction if the matter omitted was one which the witness would have been expected to mention in the ordinary course which the investigating officer would have made note of. Omissions which amount to contradictions are omissions relating to facts which are expected to be included in the statement before the police by a person who is giving a narrative of what he saw, on the ground that they relate to important features of the incident about which the deposition is made. A failure to assert a fact, when it would have been natural to assert it, amounts in effect to an assertion of the non-existence of the fact.

The discrepancies or the omissions have to be material ones and then alone, they may amount to contradiction of some serious consequence. Every omission cannot take the place of a contradiction in law and therefore, be the foundation for doubting the case of the prosecution. Minor contradictions, inconsistencies or embellishments of trivial nature which do not affect the core of the prosecution case should not be taken to be a ground to reject the prosecution evidence in its entirety. It is only when such omissions amount to a contradiction creating a serious doubt about the truthfulness or creditworthiness of the witness and other witnesses also make material improvements or contradictions before the court in order to render the evidence unacceptable, that the courts may not be in a position to safely rely upon such evidence. Serious contradictions and omissions which materially affect the case of the prosecution have to be understood in clear contra-distinction to mere marginal variations in the statement of the witnesses. The prior may have effect in law upon the evidentiary value of the prosecution case; however, the latter would not adversely affect the case of the prosecution.

The court should not draw any conclusion by picking up an isolated portion from the testimony of a witness without adverting to the statement as a whole. Sometimes it may be feasible that admission of a fact or circumstance by the witness is only to clarify his statement or what has been placed on record. Where it is a genuine attempt on the part of a witness to bring correct facts by clarification on record, such statement must be seen in a different light to a situation where the contradiction is of such a nature that it impairs his evidence in its entirety. **(See., Shyamal Ghosh V. State of W.B., (2012) 7 SCC 646 = (2012) 3 SCC (Cri) 685)**

The Hon'ble Supreme Court in **Mohanlal Gangaram Gehani V. State of Maharashtra, AIR 1982 SC 839** and in **Chaudhari Ramjibhai Narasangbhai V. State of Gujarat, (2004) 1 SCC 184,** held that Section 145 of the Indian Evidence Act, 1872 applies when same person makes two contradictory statements. It is not permissible in law to draw adverse inference because of alleged contradictions between one prosecution witness vis-a-vis statement of other witnesses. It is not open to Court to completely demolish evidence of one witness by referring to the evidence of other witnesses. Witnesses can only be contradicted in terms of Section 145 of the Evidence Act by his own previous statement and not with the statement of any other witness.

In **Yogesh Singh V. Mahabeer Singh (2017) 11 SCC 195**, wherein it has been held that it is well settled in law that the minor discrepancies are not to be given undue emphasis and the evidence is to be considered from the point of view of trustworthiness. The test is whether the same inspires confidence in the mind of the court. If the evidence is incredible and cannot be accepted by the test of prudence, then it may create a dent in the prosecution version. If an omission or discrepancy goes to the root of the matter and ushers in incongruities, the defence can take advantage of such inconsistencies. It needs no special emphasis to state that every omission cannot take place of a material omission and, therefore, minor contradictions, inconsistencies or insignificant embellishments do not affect the core

of the prosecution case and should not be taken to be a ground to reject the prosecution evidence. The omission should create a serious doubt about the truthfulness or creditworthiness of a witness.

The Hon'ble High Court of Andhra Pradesh between **Shaik Subhani @ Bombay Subhani V. State of Andhra Pradesh, (1999) 2 ALT (Cri) 208 = (1999) 2 ALD (Cri) 393** held that merely by putting suggestions to the witness and the witness denying the same will not amount putting contradiction to the witness. The contradiction has to be put to the witness as contemplated under Section 145 of the Evidence Act.

On ultimate analysis it would be significant to note that contradictions, omissions serves the purpose of throwing doubt on the veracity of the witness and for nothing else. The propositions which emerge from the observations of the Hon'ble Supreme Court in **Tahsildar Singh's case** are **(1)** A statement in writing made by a witness before a police officer in the course of investigation can be used only to contradict his statement in the witness box and for no other purpose; **(2)** statements not reduced to writing by the police officer cannot be used for contradiction; **(3)** though a particular statement is not expressly recorded, a statement that can be deemed to be part of that expressly recorded can be used for contradiction, not because it is an omission strictly so-called but because it is deemed to form part of the recorded statement; **(4)** such a fiction is permissible by construction only in the following three cases: **(i)** when a recital is necessarily implied from the recital or recitals found in the statement **(ii)** a negative aspect of a positive recital in a statement **(iii)** when the statement before the police and that before the Court cannot stand together

illustration for (4) (i) : In the recorded statement before the police the witness states that he saw A stabbing B at a particular point of time, but in the witness box he says that he saw A and C stabbing B at the same point of time; in the statement before the police the word "only" can be implied i. e., the witness saw A only stabbing B;

illustration for (4) (ii) : In the recorded statement before the police the witness says that a dark man stabbed B, but in the witness box he says that a fair man stabbed B; the earlier statement must be deemed to contain the recital not only that the culprit was a dark complexioned man but also that he was not of fair complexion;

illustration for (4) (iii) : The witness says in the recorded statement before the police that A after stabbing B ran away by a northern lane, but in the Court he says that immediately after stabbing he ran away towards the southern lane; as he could not have run away immediately after the stabbing i. e., at the same point of time, towards the northern lane as well as towards the southern lane, if one statement is true, the other must necessarily be false.

(Prosecution Replenish conveys its heartfelt thanks to **Sri D.V.R. Tejo Karthik,** Judicial Magistrate of First Class, Special Mobile Court, Mahabubnagar, for contributing this article for our leaflet**)**

CITATIONS

S. KASI VS STATE THROUGH THE INSPECTOR OF POLICE SAMAYNALLUR POLICE STATION MADURAI DISTRICT, 19 Jun 2020; 2020 2 ALD Crl 725 SC; 2020 3 KHC 600; 2020 4 KLT 174; 2020 0 Supreme(SC) 417;

The eclipse of limitation granted by Hon'ble Supreme Court by orders dated 23.03.2020 in Suo Motu Writ Petition (Civil) No.3 of 2020 will not apply to cases to which Sec 167 CrPC is applicable.

https://indiankanoon.org/doc/34992573/; Adi Mahipal vs The State Of Telangana on 12 November, 2020; http://tshcstatus.nic.in/hcorders/2020/crlp/crlp_5587_2020.pdf;
https://indiankanoon.org/doc/3897924/; Shaik Imthiyaz Ahmed vs The State Of Telangana on 10 November, 2020; http://tshcstatus.nic.in/hcorders/2020/crlp/crlp_5445_2020.pdf;

the police are incompetent to take cognizance of the offences punishable under Sections 54 and 59 (1) of the Food Safety and Standards (FSS) Act, 2006, investigating into the offences along with other offences under the provisions of the Indian Penal Code, 1860, and filing charge sheet is a grave illegality, as the Food Safety Officer alone is competent to investigate and to file

charge sheet following the Rules laid down under Sections 41 and 42 of FSS Act, whereas, in the present case, the police have registered the crime for the offences under Sections - 270 and 273 of IPC.

Chindam Raju vs The State Of Telangana on 19 November, 2020; https://indiankanoon.org/doc/191684527/;
http://tshcstatus.nic.in/hcorders/2020/crlp/crlp_5824_2020.pdf;
Mattaparthy Venkateshwar Rao And ... vs Sub Inspector Of Police And on 17 November, 2020; https://indiankanoon.org/doc/179697272/;
http://tshcstatus.nic.in/hcorders/2020/crlp/crlp_5656_2020.pdf;
Joshi Sachin Jagdish Sachin Joshi vs The State Of Telangana And Another on 17 November, 2020; https://indiankanoon.org/doc/15353814/;
http://tshcstatus.nic.in/hcorders/2020/crlp/crlp_5687_2020.pdf;
Musthyala Kiran Kumar vs Sub Inspector Of Police on 17 November, 2020
https://indiankanoon.org/doc/89567701/;
http://tshcstatus.nic.in/hcorders/2020/crlp/crlp_5657_2020.pdf;
CRIMINAL PETITION NO.4667 OF 2020; 27.10.2020; https://services.ecourts.gov.in/ecourtindiaHC/cases/display_pdf.php?filename=U%2BbhtlrLe2adAHN8Tz%2F1d9WhyoqSMIOIa%2FdrrAWgfmiDbW2uNepU4WcqDLw0GbYH&caseno=CRLP/4667/2020&cCode=1&appFlag=;
GUTKA- Sections 54 and 59 (1) of the Food Safety and Standards (FSS) Act, 2006, or Sections – 269/ 270 and 273 of IPC, are not attracted.

https://indiankanoon.org/doc/124753637/; G. Arvind vs The State Of Telangana on 12 November, 2020 ; http://tshcstatus.nic.in/hcorders/2020/wp/wp_19846_2020.pdf;
It has power to take cognizance of the crime reported under the Act 33 of 1989, examine the aspect of delay in completing the investigation and filing of charge sheet and whether such delay would amount to deliberate and wilful neglect of duties by the public servant. Further, if it is not satisfied with the conduct of public servant, it can order prosecution and to punish him.

Daravath Raju vs The State Of Telangana on 3 November, 2020; https://indiankanoon.org/doc/84770686/;
http://tshcstatus.nic.in/hcorders/2020/wp/wp_19327_2020.pdf;
Guguloth Pandu vs The State Of Telangana And 5 Others on 3 November, 2020;https://indiankanoon.org/doc/124042534/;
http://tshcstatus.nic.in/hcorders/2020/wp/wp_19286_2020.pdf;
Gandasiri Raju vs The State Of Telangana on 16 November, 2020
https://indiankanoon.org/doc/100113586/;
http://tshcstatus.nic.in/hcorders/2020/wp/wp_20453_2020.pdf;
EC Act: enquiry under Section 6-A of the Essential Commodities Act and the criminal prosecution before the criminal Court is yet to commence, pending enquiry of the proceedings, according to the petitioner's counsel, the petitioner was transporting the goods in a goods vehicle for hire, and there is no specification about the identification of PDS commodities either in the Essential Commodities Act or in the Control Orders, and there is no mechanism stipulated to identify whether it is PDS rice or not.

https://indiankanoon.org/doc/61904359/;
https://main.sci.gov.in/supremecourt/2019/14406/14406_2019_34_1501_24606_Judgement_03-Nov-2020.pdf; Rajesh @ Sarkari vs The State Of Haryana on 3 November, 2020; (Three Judge Bench);
The principles which have emerged from the precedents of this Court can be summarized as follows:
(i) The purpose of conducting a TIP is that persons who claim to have seen the offender at the time of the occurrence identify them from amongst the other individuals without tutoring or aid from any source. An identification parade, in other words, tests the memory of the witnesses, in order for the prosecution to determine whether any or all of them can be cited as eye- witness to the crime;
(ii) There is no specific provision either in the CrPC or the Indian Evidence Act, 1872 18 which lends statutory authority to an identification parade. Identification parades belong to the stage of the

investigation of crime and there is no provision which compels the investigating agency to hold or confers a right on the accused to claim a TIP;
(iii) Identification parades are governed in that context by the provision of Section 162 of the CrPC; Evidence Act
(iv) A TIP should ordinarily be conducted soon after the arrest of the accused, so as to preclude a possibility of the accused being shown to the witnesses before it is held;
(v) The identification of the accused in court constitutes substantive evidence;
(vi) Facts which establish the identity of the accused person are treated to be relevant under Section 9 of the Evidence Act;
(vii) A TIP may lend corroboration to the identification of the witness in court, if so required;
(viii) As a rule of prudence, the court would, generally speaking, look for corroboration of the witness' identification of the accused in court, in the form of earlier identification proceedings. The rule of prudence is subject to the exception when the court considers it safe to rely upon the evidence of a particular witness without such, or other corroboration;
(ix) Since a TIP does not constitute substantive evidence, the failure to hold it does not ipso facto make the evidence of identification inadmissible;
(x) The weight that is attached to such identification is a matter to be determined by the court in the circumstances of that particular case;
(xi) Identification of the accused in a TIP or in court is not essential in every case where guilt is established on the basis of circumstances which lend assurance to the nature and the quality of the evidence; and
(xii) The court of fact may, in the context and circumstances of each case, determine whether an adverse inference should be drawn against the accused for refusing to participate in a TIP. However, the court would look for corroborating material of a substantial nature before it enters a finding in regard to the guilt of the accused.
37 These principles have evolved over a period of time and emanate from the following decisions:
1. Matru v. State of U.P. [(1971) 2 SCC 75 : 1971 SCC (Cri) 391]
2. Santokh Singh v. Izhar Hussain [(1973) 2 SCC 406 : 1973 SCC (Cri) 828]
3. Malkhansingh v. State of M.P. [(2003) 5 SCC 746 : 2003 SCC (Cri) 1247]
4. Visveswaran v. State [(2003) 6 SCC 73]
5. Munshi Singh Gautam v. State of M.P. [(2005) 9 SCC 631]
6. Sidhartha Vashisht @ Manu Sharma v. State (NCT of Delhi) [(2010) 6 SCC 1],
7. Ashwani Kumar and Ors. v. State of Punjab (2015) 6 SCC 308.
8. Mukesh and Ors. v. State for NCT of Delhi and Ors. AIR 2017 SC 2161.

https://main.sci.gov.in/supremecourt/2020/16256/16256_2020_35_1503_24580_Judgement_05-Nov-2020.pdf; Hitesh Verma vs The State Of Uttarakhand on 5 November, 2020; https://indiankanoon.org/doc/111507500/;
Therefore, offence under the Act is not established merely on the fact that the informant is a member of Scheduled Caste unless there is an intention to humiliate a member of Scheduled Caste or Scheduled Tribe for the reason that the victim belongs to such caste.

Panjala Suresh Goud vs The State Of Telangana And 6 Others on 19 November, 2020; https://indiankanoon.org/doc/85643208/;
http://tshcstatus.nic.in/hcorders/2020/wp/wp_20470_2020.pdf;
District Collector is not competent to grant gun license in commissionerate areas. The CP alone is entitled to grant the license.

Kandikanti Srikanth vs The State Of Telangana on 18 November, 2020; http://tshcstatus.nic.in/hcorders/2020/crlp/crlp_5686_2020.pdf;
https://indiankanoon.org/doc/116180484/;
Offence u/Sections 307, 338 r/w 120(B) IPC are compounded, in view of the compromise entered into between the parties.

Muddasani Kiran Reddy vs The State Of Telangana on 18 November, 2020; https://indiankanoon.org/doc/134456462/;
http://tshcstatus.nic.in/hcorders/2020/crlp/crlp_5458_2020.pdf;
Offence u/Sections 143, 353, 504, 506 r/w 149, 342 IPC, 3(1)(r)(s), 3(2) (va) SC-ST POA Act are compounded, in view of the compromise entered into between the parties.

Banoth Narender vs The State Of Telangana And 3 Others on 17 November, 2020; https://indiankanoon.org/doc/100703499/;
http://tshcstatus.nic.in/hcorders/2020/wp/wp_20499_2020.pdf;
there is no specification about the identification of PDS commodities either in the Essential Commodities Act or in the Control Orders, and there is no mechanism stipulated to identify whether it is PDS rice or not,

https://indiankanoon.org/doc/19614735/; Reddymalla Muttamma R Muthyalu vs The State Rep. By Its Principle ... on 17 November, 2020;
http://tshcstatus.nic.in/hcorders/2020/wp/wp_19198_2020.pdf;
SC & ST POA Act, 1989- If there is delay in the investigation and filing of charge sheet, the Investigating Officer has to satisfy the Special Court the reasons for delay in investigation. According to sub-section (3) of Section 4, the Special Court can take cognizance on dereliction of duty and can give directions to initiate penal proceedings against public servant. According to sub-section (1) of Section 4, if there is wilful neglect of duties required to be performed by the investigating officer under the Act and the Rules made there under, he is punishable with imprisonment for a term which shall not be less than six months. Section 14 of the Act 1989 vests power in the Special Court to take cognizance of the offences reported under the Act.

2020 4 Supreme 314; 2020 0 Supreme(SC) 484; 2020 2 ALD Crl 707(SC); Preet Pal Singh Vs The State of Uttar Pradesh And Another; Criminal Appeal No. 520 of 2020 [Arising out of SLP (Crl) No. 2102 of 2019]; Decided On : 14-08-2020
There is a difference between grant of bail under Section 439 of the CrPC in case of pre-trial arrest and suspension of sentence under Section 389 of the CrPC and grant of bail, post conviction. In the earlier case there may be presumption of innocence, which is a fundamental postulate of criminal jurisprudence, and the courts may be liberal, depending on the facts and circumstances of the case, on the principle that bail is the rule and jail is an exception, as held by this Court in Dataram Singh vs. State of U.P. and Anr. (2018) 3 SCC 22). However, in case of post conviction bail, by suspension of operation of the sentence, there is a finding of guilt and the question of presumption of innocence does not arise. Nor is the principle of bail being the rule and jail an exception attracted, once there is conviction upon trial. Rather, the Court considering an application for suspension of sentence and grant of bail, is to consider the prima facie merits of the appeal, coupled with other factors. There should be strong compelling reasons for grant of bail, notwithstanding an order of conviction, by suspension of sentence, and this strong and compelling reason must be recorded in the order granting bail, as mandated in Section 389(1) of the Cr.P.C.

2020 5 Supreme 120; 2020 0 Supreme(SC) 532; 2020 2 ALD Crl 716 (SC); Stalin Vs. State represented by the Inspector of Police; Criminal Appeal No. 577 of 2020 [Arising out of SLP (Crl.) No. 3171 of 2019]; Decided on : 09-09-2020
As observed and held by this Court in the case of Jafel Biswas vs. State of West Bengal (2019) 12 SCC 560, the absence of motive does not disperse a prosecution case if the prosecution succeed in proving the same. The motive is always in the mind of person authoring the incident. Motive not being apparent or not being proved only requires deeper scrutiny of the evidence by the courts while coming to a conclusion. When there are definite evidence proving an incident and eye-witness account prove the role of accused, absence in proving of the motive by prosecution does not affect the prosecution case.

https://indiankanoon.org/doc/154828714/; 2020 2 ALD Crl 739 SC; https://main.sci.gov.in/supremecourt/2016/13080/13080_2016_9_6_19821_Order_23-Jan-

2020.pdf; Gurmail Chand vs State Of Punjab on 23 January, 2020 CRIMINAL APPEAL NO.149 OF 2020; (Arising out of SLP(Criminal) No.9226 of 2016)

NDPS ACT: The mere fact that the witness of seizure Hari Krishan has appeared as DW1 does not led to the conclusion that the entire prosecution story has to be disbelieved. There are signatures of Hari Krishan in the seizure memo along with other police officers. The Trial Court as well as the High Court has rightly accepted the seizure, which was held to be in accordance with law. DW1 has not denied his signatures on the seizure memo rather his excuse was that it was taken on the blank paper which was rightly disbelieved by the Courts below. In so far as production of the case property, the Judicial Magistrate himself has appeared in the witness box and deposed that it was produced in the Court. The mere fact that one seal was illegible does not vitiate the proceeding. In so far as submissions on the basis of Section 57 of NDPS Act is concerned, it has been held that the said provision is not to be interpreted to mean that in event the report is not sent within two days, the entire proceeding shall be vitiated. The provision has been held to be directory and to be complied with but mere not sending the report within the said period cannot have such consequence as to vitiate the entire proceeding.

2020 2 ALD Crl 750 AP; http://tshcstatus.nic.in/hcaporders/2014/201900010542014_1.pdf; kuruva muliniti lakshmamma Vs State of A.P.; Criminal Appeal No.1054 of 2014; Dt:14.09.2020;

argument that no independent witnesses were examined also has no legs to stand 16 because the accused has not elicited from PWs 1, 2 & 4 about the presence of independent witnesses at the time of incident.

it would be dangerous to admit the defence of insanity upon arguments derived merely from the character of the crime. It is only unsoundness of mind which naturally impairs the cognitive faculties of the mind that can form a ground of: exemption from criminal responsibility.

Sri Jaganath Enterprises, Vs. State of Andhra Pradesh; Date : 18.12.2019; http://tshcstatus.nic.in/hcaporders/2019/202100054212019_1.pdf;

GUTKA- None of the sections of the IPC or the FSS Act, or the COTPA act, which are pressed into service are applicable to the facts and circumstances of the case.

The offences under the NDPS Act can be pursued. The offences under the COTPA Act, can only be launched if the police find that the sections 5, 6 7 and 10 are not complied with. Except on these very limited grounds genuine/legitimate traders cannot be prosecuted.

http://tshcstatus.nic.in/hcorders/2020/202100039802020_1.pdf; 2020 2 ALD Crl 821 TS; CRIMINAL PETITION NOS: 3980, 3976,3977 AND 3990 OF 2020 CRLP. No. 3980 of 2020 Sri Kancharla Sriharibabu @ K. Babji, Vs .State of Telangana, dt.18th September,2020;

the contention of the learned Special Counsel for ACB that the charge levelled against the petitioners is under Section 13 of P.C. Act and, therefore, Section 41A of Cr.P.C. is not applicable is not sustainable

http://tshcstatus.nic.in/hcorders/2019/wp/wp_12849_2019.pdf; Allu Srinivas Vs State of Telangana; dated 11th May,2020; WRIT PETITION NO.12849 of 2019

Concept of ZERO FIR applicable to cases of offences against woman only.

ARJUN PANDITRAO KHOTKAR VS KAILASH KUSHANRAO GORANTYAL, 14 Jul 2020; 2020 0 Supreme(SC) 446; 2020 3 SCC Cri 1; 2020 7 SCC 1;(Three Judge Bench)

Anvar P.V. (supra), as clarified by us hereinabove, is the law declared by this Court on Section 65B of the Evidence Act. The judgment in Tomaso Bruno (supra), being per incuriam, does not lay down the law correctly. Also, the judgment in SLP (Crl.) No. 9431 of 2011 reported as Shafhi Mohammad (supra) and the judgment dated 03.04.2018 reported as (2018) 5 SCC 311, do not lay down the law correctly and are therefore overruled.

Depending on the facts of each case, and the Court exercising discretion after seeing that the accused is not prejudiced by want of a fair trial, the Court may in appropriate cases allow the prosecution to produce such certificate at a later point in time.

the person who gives this certificate can be anyone out of several persons who occupy a 'responsible official position' in relation to the operation of the relevant device, as also the person who may otherwise be in the 'management of relevant activities' spoken of in Sub-section (4) of Section 65B.
the certificate required under Section 65B(4) is a condition precedent to the admissibility of evidence by way of electronic record,

https://indiankanoon.org/doc/93147676/; Mohd.Anwar vs State (Nct Of Delhi); 19 August, 2020; https://main.sci.gov.in/supremecourt/2010/9400/9400_2010_32_1501_23468_Judgement_19-Aug-2020.pdf; 2020 3 SCC Cri 145; 2020 7 SCC 391;
Mere production of photocopy of an OPD card and statement of mother on affidavit have little, if any, evidentiary value. In order to successfully claim defence of mental unsoundness under Section 84 of IPC, the accused must show by preponderance of probabilities that he/she suffered from a serious-enough mental disease or infirmity which would affect the individual's ability to distinguish right from wrong. 2 Further, it must be established that the accused was afflicted by such disability particularly at the time of the crime and that but for such impairment, the crime would not have been committed. The reasons given by the High Court for disbelieving these defences are thus well reasoned and unimpeachable.
The unreasoned refusal of the accused to take part in the TIP proceedings was found to be highly incriminating and substantiating their guilt.

Paramvir Singh Saini Vs Baljit Singh and others; 2020 3 SCC cri 150; 2020 7 SCC 397;
Notice issued on the question of audio-video recordings of 161 CrPC statements as is provided by Sec 161(3) CrPC proviso as well as the larger question as to the installation of CCTV Cameras in Police Stations.

Samta Naidu Vs State of M.P.; on 2 March, 2020; 2020 3 SCC Cri 171; 2020 5 SCC 378; https://main.sci.gov.in/supremecourt/2019/16800/16800_2019_6_1502_21072_Judgement_02-Mar-2020.pdf; https://indiankanoon.org/doc/136092640/;
it is evident that the law does not prohibit filing or entertaining of the second complaint even on the same facts provided the earlier complaint has been decided on the basis of insufficient material or the order has been passed without understanding the nature of the complaint or the complete facts could not be placed before the court or where the complainant came to know certain facts after disposal of the first complaint which could have tilted the balance in his favour. However, second complaint would not be maintainable wherein the earlier complaint has been disposed of on full consideration of the case of the complainant on merit." it is equally true that chagrined and frustrated litigants should not be permitted to give vent to their frustration by enabling them to invoke the jurisdiction of criminal courts in a cheap manner. It is the duty of the courts to protect such persons being targeted by repeated cases.
The protest petition is treated as Private complaint, so if earlier protest petition was not decided on merits the second protest petition is maintainable, on same facts or on fresh facts which were not known earlier.

OMBIR SINGH VS STATE OF UTTAR PRADESH, 26 May 2020: 2020 0 Supreme(SC) 379; 2020 3 SCC Cri 433; 2020 6 SCC 378;
unless serious prejudice was demonstrated to have been suffered as against the accused, mere delay in sending the FIR to the Magistrate by itself will not have any deteriorating (sic) effect on the case of the prosecution.

D. DEVARAJA VS OWAIS SABEER HUSSAIN, 18 Jun 2020; 2020 0 Supreme(SC) 413; 2020 3 SCC Cri 442; 2020 7 SCC 695;
The protection is available only when the alleged act done by the public servant is reasonably connected with the discharge of his official duty and official duty is not merely a cloak for the objectionable act.
An offence committed entirely outside the scope of the duty of the police officer, would certainly not require sanction. To cite an example, a police man assaulting a domestic help or indulging in

domestic violence would certainly not be entitled to protection. However if an act is connected to the discharge of official duty of investigation of a recorded criminal case, the act is certainly under colour of duty, no matter how illegal the act may be.
If in doing an official duty a policeman has acted in excess of duty, but there is a reasonable connection between the act and the performance of the official duty, the fact that the act alleged is in excess of duty will not be ground enough to deprive the policeman of the protection of government sanction for initiation of criminal action against him.
The language and tenor of Section 197 of the Code of Criminal Procedure and Section 170 of the Karnataka Police Act makes it absolutely clear that sanction is required not only for acts done in discharge of official duty, it is also required for an act purported to be done in discharge of official duty and/or act done under colour of or in excess of such duty or authority.
To decide whether sanction is necessary, the test is whether the act is totally unconnected with official duty or whether there is a reasonable connection with the official duty. In the case of an act of a policeman or any other public servant unconnected with the official duty there can be no question of sanction. However, if the act alleged against a policeman is reasonably connected with discharge of his official duty, it does not matter if the policeman has exceeded the scope of his powers and/or acted beyond the four corners of law.

SOMASUNDARAM @ SOMU VS STATE REP. BY THE DEPUTY COMMISSIONER OF POLICE, 03 Jun 2020; 2020 0 Supreme(SC) 388; 2020 3 SCC Cri 465; 2020 7 SCC 722:
An accomplice or an approver are competent witnesses. An approver is an accomplice, who has received pardon within the meaning of Section 306. We would hold, that as between an accomplice and an approver, the latter would be more beholden to the version he has given having regard to the adverse consequences which await him as spelt out in Section 308 of the CrPC. as explained by us. It is also settled principle that the competency of an accomplice is not impaired, though, he could have been tried jointly with the accused and instead of so being tried, he has been made a witness for the prosecution.
The substantive evidence is the evidence rendered in the Court. Should there be no other evidence against the accused, it would be impermissible to convict the accused on the basis of the statement under Section 164.
We are mindful of what is frequently happening during these days. Persons are kidnapped in the sight of others and are forcibly taken out of the sight of all others and later the kidnapped are killed. If a legal principle is to be laid down that for the murder of such kidnapped there should necessarily be independent evidence apart from the circumstances enumerated above, we would be providing a safe jurisprudence for protecting such criminal activities. India cannot now afford to lay down any such legal principle insulating the marauders of their activities of killing kidnapped innocents outside the ken of others

CRIMINAL PETITION No.5355 OF 2020; SHAIK MOULALI Vs State of A.P; 26.11.2020; https://services.ecourts.gov.in/ecourtindiaHC/cases/display_pdf.php?filename=U%2BbhtlrLe2adAHN8Tz%2F1d2w%2BDGU8Tb9XrRiBVyotyjaDE%2Fp0k6UV8dszTl9xODZd&caseno=CRLP/5355/2020&cCode=1&appFlag=;
Dismissal of petition for interim custody of vehicle is a revisable order amenable to revisional jurisdiction under Section 397(1) of Cr.P.C.

2020 0 Supreme(SC) 675; SKODA AUTO VOLKSWAGEN INDIA PRIVATE LIMITED Vs. THE STATE OF UTTAR PRADESH & ORS. –SPECIAL LEAVE PETITION (CRIMINAL) NO. 4931 of 2020; Decided on : 26-11-2020
Courts would not thwart any investigation. Quashing of a complaint should rather be an exception and a rarity than an ordinary rule.
In a petition for quashing FIR, Court cannot go into disputed questions of fact. Mere delay on part of complainant in lodging complaint, cannot by itself be a ground to quash FIR.

2020 0 Supreme(SC) 678; ARNAB MANORANJAN GOSWAMI Vs. THE STATE OF MAHARASHTRA & ORS.; CRIMINAL APPEAL NO. 742 TO 744 OF 2020 (ARISING OUT OF SLP (CRL) NO. 5598-5600 OF 2020); Decided on : 27-11-2020;

The Court noted that before a person may be said to have abetted the commission of suicide, they "must have played an active role by an act of instigation or by doing certain act to facilitate the commission of suicide".

In order to bring out an offence under Section 306 IPC specific abetment as contemplated by Section 107 IPC on the part of the accused with an intention to bring about the suicide of the person concerned as a result of that abetment is required.

The FIR recites that the deceased had called at the office of the appellant and spoken to his accountant for the payment of money. Apart from the above statements, it has been stated that the deceased left behind a suicide note stating that his "money is stuck and following owners of respective companies are not paying our legitimate dues". Prima facie, on the application of the test which has been laid down by this Court in a consistent line of authority which has been noted above, it cannot be said that the appellant was guilty of having abetted the suicide within the meaning of Section 306 of the IPC.

the basic rule of our criminal justice system is 'bail, not jail'. The High Courts and Courts in the district judiciary of India must enforce this principle in practice, and not forego that duty, leaving this Court to intervene at all times. We must in particular also emphasise the role of the district judiciary, which provides the first point of interface to the citizen. Our district judiciary is wrongly referred to as the 'subordinate judiciary'. It may be subordinate in hierarchy but it is not subordinate in terms of its importance in the lives of citizens or in terms of the duty to render justice to them. High Courts get burdened when courts of first instance decline to grant anticipatory bail or bail in deserving cases. This continues in the Supreme Court as well, when High Courts do not grant bail or anticipatory bail in cases falling within the parameters of the law. The consequence for those who suffer incarceration are serious. Common citizens without the means or resources to move the High Courts or this Court languish as undertrials. Courts must be alive to the situation as it prevails on the ground – in the jails and police stations where human dignity has no protector. As judges, we would do well to remind ourselves that it is through the instrumentality of bail that our criminal justice system's primordial interest in preserving the presumption of innocence finds its most eloquent expression. The remedy of bail is the "solemn expression of the humaneness of the justice system"

SEC 3(2)V OF POA ACT APPLICABLE ONLY IF THE OFFENCE HAS BEEN COMMITTED BECAUSE THE VICTIM BELONGS TO SC OR ST COMMUNITY:

In Khuman Singh v. State of Madhya Pradesh (2019 SCC OnLine SC 1104); the Court held that in a case for applicability of Section 3(2)(v) of the Act, the fact that the deceased belonged to Scheduled Caste would not be enough to inflict enhanced punishment. This Court held that there was nothing to suggest that the offence was committed by the appellant only because the deceased belonged to Scheduled Caste. The Court held as under:

"15. As held by the Supreme Court, the offence must be such so as to attract the offence under Section 3(2)(v) of the Act. The offence must have been committed against the person on the ground that such person is a member of Scheduled Caste and Scheduled Tribe. In the present case, the fact that the deceased was belonging to "Khangar"-Scheduled Caste is not disputed. There is no evidence to show that the offence was committed only on the ground that the victim was a member of the Scheduled Caste and therefore, the conviction of the appellant-accused under Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act is not sustainable."

IN CRIMINAL PROCEEDINGS THE CORRECTNESS OR OTHERWISE OF THE SAID ALLEGATIONS HAS TO BE DECIDED ONLY IN THE TRIAL:

The Hon'ble Apex Court in Kamal Shivaji Pokarnekar vs. The State of Maharashtra and Ors {AIR 2019 SC 847} categorically held that in criminal proceedings the correctness or otherwise of the said allegations has to be decided only in the trial. At the initial stage of issuance of process it is not open to the Courts to stifle the proceedings by entering into the merits of the contentions made on behalf of the accused. Criminal complaints cannot be quashed only on the ground that the allegations made

therein appear to be of a civil nature. If the ingredients of the offence alleged against the accused are prima facie made out in the complaint, the criminal proceedings shall not be interdicted.

INTENTION TO CAUSE DEATH- HOW INFERRED.

In Singapagu Anjaiah vs. State of A.P. (2010) 9 SCC 799, this Court while deciding the question whether a blow on the skull of the deceased with a crowbar would attract Section 302 IPC, held thus, (SCC p. 803, para 16):

"16. In our opinion, as nobody can enter into the mind of the accused, his intention has to be gathered from the weapon used, the part of the body chosen for the assault and the nature of the injuries caused. Here, the appellant had chosen a crowbar as the weapon of offence. He has further chosen a vital part of the body i.e. the head for causing the injury which had caused multiple fractures of skull. This clearly shows the force with which the appellant had used the weapon. The cumulative effect of all these factors irresistibly leads to one and the only conclusion that the appellant intended to cause death of the deceased."

KINDS OF WITNESSES- RELATED, INTERESTED, NATURAL AND CHANCE

In State of Rajasthan v. Smt. Kalki { AIR 1981 SC 1390} the Apex Court distinguished between 'interested' and 'related' witnesses as follows: "Related' is not equivalent to 'interested'. A witness may be called 'interested' only when he or she derives some benefit from the result of a litigation; in the decree in a civil case, or in seeing an accused person punished. A witness who is a natural one and is the only possible eye witness in the circumstances of a case cannot be said to be 'interested'."

in Rana Pratap v. State of Haryana {AIR 1983 SC 680} wherein the distinction between 'natural witness' and 'chance witness' was delineated as follows: 3. xxxx Murders are not committed with previous notice to witnesses; soliciting their presence. If murder is committed in a dwelling house, the inmates of the house are natural witnesses. If murder is committed in a brothel, prostitutes and paramours are natural witnesses. If murder is committed in a street, only passersby will be witnesses. Their evidence cannot be brushed aside or viewed with suspicion on the ground that that they are mere chance witnesses'. The expression 'chance witnesses' is borrowed from countries where every man's home is considered his castle and every one must have an explanation for his presence elsewhere or in another man's castle. It is a most unsuitable expression in a country whose people are less formal and more casual. To discard the evidence of street hawkers and street vendors on the ground that they are 'chance witnesses' even where murder is committed in a street is to abandon good sense and take too shallow a view of the evidence.

NEWS

- Prosecution Replenish congratulates Sri K.Venkateswarlu, Sr.APP on his promotion as Additional Public Prosecutor Grade-II.
- GOVERNMENT OF ANDHRA PRADESH- Public Services – Prosecutions Department - Promotions – Senior Assistant Public Prosecutors - Promotion to the post of Additional Public Prosecutor Grade-II on temporary basis – Orders – Issued- G.O.MS.No. 144 HOME (COURTS.A) DEPARTMENT Dated: 26-11-2020- On promotion, Sri K.Venkateswarlu, is posted as Additional Public Prosecutor Grade-II, at Principal Assistant Sessions Judge Court, Vijayawada, Krishna District in the existing vacancy
- GOVERNMENT OF ANDHRA PRADESH- Public Services - Prosecution Department – Sri. M.V. Durga Prasad, Public Prosecutor, Principal District and Sessions Judge Court, Srikakulam – Transfer to the Anti Corruption Bureau to work as Legal advisor-cum-Special Public Prosecutor – on deputation basis - Orders – Issued- G.O.RT.No. 1063 HOME(COURTS.A) DEPARTMENT Dated: 03-11-2020.
- GOVERNMENT OF ANDHRA PRADESH- Public Services - Prosecution Department – Sri K. Srikrishna, Assistant Public Prosecutor, Special Judicial First Class Magistrate (Excise) Court, Eluru, West Godavari District – Transfer to the Intelligence Department, Andhra Pradesh, Vijayawada, to work as Legal advisor-cum-Public Prosecutor on deputation basis - in supersession of orders issued vide G.O.Rt.No. 769, Home (Courts.A) Department, dated 07.08.2020 – Revised Orders - Issued.- G.O.RT.No. 1139 HOME (COURTS.A) DEPARTMENT Dated: 16-11-2020

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ON A LIGHTER VEIN

Two engineering students are waiting to give their oral viva test. The first student's turn comes, and he goes inside
External :- Suppose you are travelling by a train, and suddenly it gets hot, what will you do?
Student :- I will open the window.
External:- Great, now suppose that the area of the window is1.5 sq.m and the volume of the compartment is 12 m3, the train is travelling at 80 km/hr in a Westerly direction and the speed of the wind is 5 m/s from the South, then how much time will it take for the compartment to get cold?
The student can't answer, so he is marked as failed and he comes out. After coming out he tells that question to the second student.
The second student goes in and his viva starts.
External :- Suppose you are travelling by a train, and suddenly it gets hot, what will you do?
2nd Student :- I will remove my coat.
External :- It still is hot, then what?
Student :- I will remove my shirt.
External (angrily) :- If it still is hot, then what will you do?
Student :- I will remove my pant.
External (Fuming) :- And what if you die due to the heat?
Student :- Mar jaaonga sir...but I will not open that window

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