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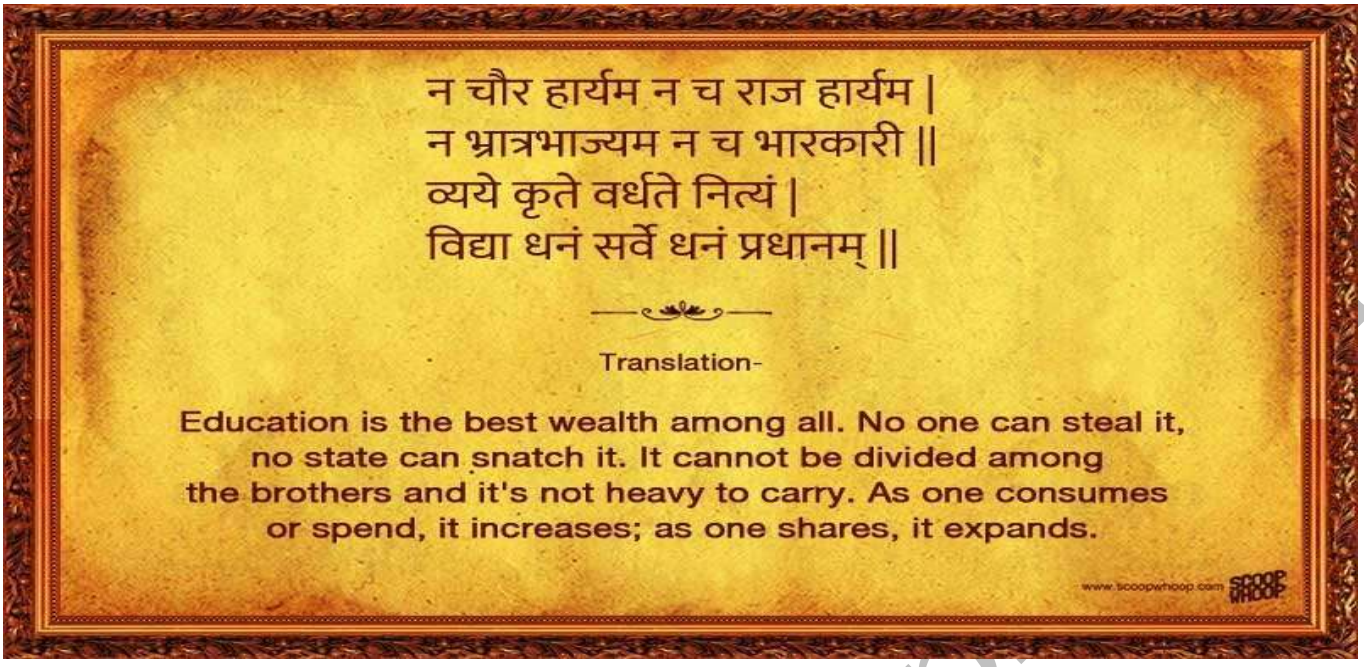
AanoBhadraKrtavoYantuVishwatah.(RIG VEDAM)
"Let Noble Thoughts Come To Me From All Directions"



General Principles pertaining to Appreciation of Oral Evidence

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Section 59 of the Indian Evidence Act envisages that all facts, except the contents of documents or electronic records, may be proved by oral evidence. Section 60 of the Evidence Act states that Oral evidence must, in all cases whatever, be direct. If it refers to a fact which could be seen, it must be the evidence of a witness who says who says he saw it. If it refers to a fact which could be heard, it must be the evidence of a witness who says he heard it. If it refers to a fact which could be perceived by any other sense or in any other manner, it must be the evidence of a witness who says he perceived it by that sense or in that manner. If it refers to an opinion or to the grounds on which that opinion is held, it must be the evidence of the person who holds that opinion on those grounds.

Insofar as the opinion of the experts is concerned, the opinions of experts expressed in any treatise commonly offered for sale, and the grounds on which such opinions are held, may be proved by the production of such treatises if the author is dead or cannot be found, or has become incapable of giving evidence, or cannot be called as a witness without an amount of delay or expense which the Court regards as unreasonable. If oral evidence refers to the existence to the existence or condition of any material thing other than a document, the Court may, if it thinks fit, require the production of such material thing for its inspection.

The requirement of the above mentioned Sections is that all facts are to be proved by oral evidence and the oral evidence must be direct. The rider contemplated is if the contents of a document or electronic record are to be proved in such case the contents cannot be proved by oral evidence.

In every criminal case it is the obligation of the prosecution to establish every material fact or facts in order to bring home the guilt of the accused. Fact is defined under Section 3 of the Evidence Act. A fact means and includes anything, state of things, or relation of things, capable of being perceived by the sense or any mental condition of which any person is

Fact or facts can be established either by oral evidence or documentary evidence. More often than not in criminal cases the guilt of the accused is established by the prosecution by way of oral evidence. While appreciating the evidence of a witness claiming to have witnessed the incident, the court should consider the following parameters appearing in the evidence/testimony of the witness. They are (i) Whether the witness was present on the spot (ii) Whether the witness had seen the incident (iii) Credibility of the witness – how far the testimony of the witness is credible.

Factors which are generally considered while appreciating oral testimony of witness are Contradictions, Inconsistencies, Exaggerations, Embellishments and Divergent statements by two or more witnesses on one and the same fact. The correct method of evaluation and assessing evidence of a witness is by scrutinizing it on its merits. The prosecution on whom burden of proof rests must prove the fact to the satisfaction of the Court. The Court shouls always apply the test of human probabilities.

- ***How oral evidence is to be appreciated – Factors to be considered –***

The Hon'ble Supreme Court of India in ***State of Uttar Pradesh v. Krishna Master & Ors,(2010) 12 SCC 324*** had succinctly dealt as to how oral evidence is to be appreciated. The Court observed that:

- ✓ While appreciating the evidence of a witness, the approach must be whether the evidence of witness read as a whole appears to have a ring of truth.
- ✓ Once that impression is found, it is undoubtedly necessary for the Court to scrutinize the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief.
- ✓ Minor discrepancies on trivial matters not touching the core of the case, hyper-technical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole.
- ✓ If the court before whom the witness gives evidence had the opportunity to form the opinion about the general tenor of the evidence given by the witness, the appellate court which had not this benefit will have to attach due weight to the appreciation of evidence by the Trial Court and unless the reasons are weighty and formidable, it would not be proper for the appellate court to reject the evidence on the ground of variations or infirmities in the matter of trivial details.
- ✓ Minor omissions in the police statements are never considered to be fatal. The statements given by the witnesses before the Police are meant to be brief statements and could not take place of evidence in the court.
- ✓ Small/trivial omissions would not justify a finding by court that the witnesses concerned are liars.
- ✓ The prosecution evidence may suffer from inconsistencies here and discrepancies there, but that is a short-coming from which no criminal case is free. The main thing to be seen is whether those inconsistencies go to the root of the matter or pertain to insignificant aspects thereof. In the former case, the defence may be justified in seeking advantage of incongruities obtaining in the evidence. In the latter, however, no such benefit may be available to it. In the deposition of witnesses, there are always normal discrepancies, howsoever, honest and truthful they may be. These discrepancies are due to normal

errors of observation, normal errors of memory due to lapse of time, due to mental disposition, shock and horror at the time of occurrence and threat to the life.

- ✓ It is not un-often that improvements in earlier version are made at the trial in order to give a boost to the prosecution case albeit foolishly. Therefore, it is the duty of the Court to separate falsehood from the truth. In sifting the evidence, the Court has to attempt to separate the chaff from the grains in every case and this attempt cannot be abandoned on the ground that the case is baffling unless the evidence is really so confusing or conflicting that the process cannot reasonably be carried out.

In ***Vadivelu Thevar v. The State of Madras., AIR 1957 SC 614.,*** it was observed that oral testimony may be classified into three categories namely (1) wholly reliable (2) wholly unreliable (3) neither wholly reliable nor wholly unreliable. In the first category of proof, the court should have no difficulty in coming to its conclusion either way it may convict or may acquit on the testimony of a witness, if it is found to be above reproach or suspicion of interestedness, incompetence or subornation. In the second category, the court equally has no difficulty in coming to its conclusion. It is in the third category of cases, the court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial.

In the case of ***Leela Ram v. State of Haryana, (1999) 9 SCC 525,*** the Supreme Court held that it is indeed necessary to note that one hardly comes across a witness whose evidence does not contain some exaggeration or embellishment sometimes there could even be a deliberate attempt to offer embellishment and sometimes in their over anxiety they may give a slightly exaggerated account. The court can sift the chaff from the grain and find out the truth from the testimony of the witnesses. Total repulsion of the evidence is unnecessary. The evidence is to be considered from the point of view of trustworthiness. If this element is satisfied, it ought to inspire confidence in the mind of the court to accept the stated evidence though not however in the absence of the same.

While appreciating the evidence, the court has to take into consideration whether the contradictions/omissions had been of such magnitude that they may materially affect the trial. Minor contradictions, inconsistencies, embellishments or improvements on trivial matters without affecting the core of the prosecution case should not be made a ground to reject the evidence in its entirety. The Trial Court, after going through the entire evidence, must form an opinion about the credibility of the witnesses and the appellate Court in normal course would not be justified in reviewing the same again without justifiable reasons. ***(See: State Represented by Inspector of Police v. Saravanan & Anr., Inspector of Police v. Saravanan & Anr AIR 2009 SC 152).***

In ***State of Rajasthan v. Smt. Kalki & Anr.,AIR 1981 SC 1390,*** while dealing with similar issue, the Court observed that in the depositions of witnesses there are always normal discrepancies, however honest and truthful they may be. These discrepancies are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of the occurrence, and the like. Material discrepancies are those which are not normal, and not expected of a normal person.

In ***Bihari Nath Goswami v. Shiv Kumar Singh and Ors., (2004) 9 SCC 186,*** the Court held that exaggerations per se do not render the evidence brittle. But it can be one of the factors to test credibility of the prosecution version, when the entire evidence is put in a crucible for being tested on the touchstone of credibility.

In ***Sardul Singh v. State of Haryana., AIR 2002 SC 3462,*** it was held that there cannot be a prosecution case with a cast iron perfection in all respects and it is obligatory for the courts to analyse and sift and assess the evidence of record, with particular reference to its

trustworthiness and truthfulness, by a process of dispassionate judicial scrutiny adopting apt objective and reasonable appreciation of the same, without being obsessed by an air of total suspicion of the case of the prosecution. What is to be insisted upon is not implicit proof. Courts have a duty to undertake a complete and comprehensive appreciation of all vital features of the case and the entire evidence with reference to the broad and reasonable probabilities of the case also in their attempt to find out proof beyond reasonable doubt.

The Court in ***Ugar Ahir & Ors v. State of Bihar., AIR 1965 SC 277*** had observed, as to what should be the approach of a Court appreciating the testimony of a witness and held that the maxim falsus in uno, falsus in omnibus (false in one thing, false in everything) is neither a sound rule of law nor a rule of practice. Hardly one comes across a witness whose evidence does not contain a grain of untruth or at any rate exaggerations, embroideries or embellishments. It is, therefore, the duty of the court to scrutinize the evidence carefully and, in terms of the felicitous metaphor, separate the grain from the chaff. But, it cannot obviously disbelieve the substratum of the prosecution case or the material parts of the evidence and reconstruct a story of its own out of the rest.

In ***Jakki @ Selvaraj & Anr v. State represented by the Inspector of Police, Coimbatore, (2007) 9 SCC 589,*** the Court held that the maxim falsus in uno, falsus in omnibus has not received general acceptance nor has this maxim come to occupy the status of rule of law. It is merely a rule of caution. All that it amounts to is that in such cases testimony may be disregarded, and not that it must be discarded. The doctrine merely involves the question of weight of evidence which a court may apply in a given set of circumstances, but it is not what may be called a mandatory rule of evidence. It is well settled in law that the maxim falsus in uno, falsus in omnibus (false in one false in all) does not apply in criminal cases in India, as a witness may be partly truthful and partly false in the evidence he gives to the Court.

In ***Rizan & another v. State of Chhatisgarh through Chief Secretary Govt. of Chhatisgarh Raipur., AIR 2003 SC 976*** it was observed that witnesses just cannot help in giving embroidery to a story, however, true in the main. Therefore, it has to be appraised in each case as to what extent the evidence is worthy of acceptance, and merely because in some respects the Court considers the same to be insufficient for placing reliance on the testimony of a witness, it does not necessarily follow as a matter of law that it must be disregarded in all respects as well. The evidence has to be shifted with care.

In ***A. Shankar v. State of Karnataka, AIR 2011 SC 2302.,*** it was held that in all criminal cases, normal discrepancies are bound to occur in the depositions of witnesses due to normal errors of observation, namely, errors of memory due to lapse of time or due to mental disposition such as shock and horror at the time of occurrence. Where the omissions amount to a contradiction, creating a serious doubt about the truthfulness of the witness and other witnesses also make material improvement while deposing in the court, such evidence cannot be safe to rely upon. However, minor contradictions, inconsistencies, embellishments or improvements on trivial matters which do not affect the core of the prosecution case, should not be made a ground on which the evidence can be rejected in its entirety. The court has to form its opinion about the credibility of the witness and record a finding as to whether his deposition inspires confidence. Exaggerations per se do not render the evidence brittle. But it can be one of the factors to test credibility of the prosecution version, when the entire evidence is put in a crucible for being tested on the touchstone of credibility. Therefore, mere marginal variations in the statements of a witness cannot be dubbed as improvements as the same may be elaborations of the statement made by the witness earlier. Irrelevant details which do not in any way corrode the credibility of a witness cannot be labelled as omissions or contradictions. The omissions

which amount to contradictions in material particulars, i.e., materially affect the trial or core of the prosecution's case; render the testimony of the witness liable to be discredited.

In ***C. Muniappan v. State of Tamil Nadu, AIR 2003 SC 3718*** it was held that it is settled proposition of law that even if there are some omissions, contradictions and discrepancies, the entire evidence cannot be disregarded. 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's witness. As the mental abilities of a human being cannot be expected to be attuned to absorb all the details of the incident, minor discrepancies are bound to occur in the statements of witnesses.

There is a marked differentia between an 'exaggerated version' and a 'false version'. An exaggerated statement contains both truth and falsity, whereas a false statement has no grain of truth in it (being the 'opposite' of 'true'). It is well said that to make a mountain out of a molehill, the molehill shall have to exist primarily. A Court of law, being mindful of such distinction is duty bound to disseminate 'truth' from 'falsehood' and sift the grain from the chaff in case of exaggerations. It is only in a case where the grain and the chaff are so inextricably intertwined that in their separation no real evidence survives, that the whole evidence can be discarded. ***(See: Achhar Singh Vs State of Himachal Pradesh, (2021) 5 SCC 543)***

- ***Whether a Court is entitled to reject the evidence of a witness merely because the witness happens to be a government servant or a investigating officer***

This issue came up for consideration before Hon'ble Supreme Court of India in ***State of Gujarat v. Raghunath Vamanrao Bax, AIR 1985 SC 1092.*** The Supreme Court held that a Court is not entitled to reject the evidence of a witness merely because they are government servants , who , in the course of their duties or even otherwise might have come into contact with investigating officers and who might have been requested to assist investigating agencies. If their association with the investigating agencies is unusual, frequent designed; there may be occasion to view their evidence with suspicion. But merely because they are called in to associate themselves with the investigation as they happened to be available or it is convenient to call them, it is no ground to view their evidence with suspicion. Even in cases where officers who in the course of their duties, generally assist the investigation agencies, there is no need to view their evidence h suspicion as an invariable rule. For example, in rural areas, investigating officers would ordinarily think of calling in the village officers, such as, the Headman, the Patel or Patwari to act as punch witnesses, as they are expected to be respectable persons of the locality. It does not mean that their evidence should be viewed with suspicion because they are government servants or because they are generally associated with investigating agencies whenever there is a crime in the village. For that matter it would be wrong to reject the evidence of police officers either on the mere ground that they are interested in the success of the prosecution. The court may be justified in looking with suspicion upon the evidence of officers who have been demonstrated to have displayed excess of zeal in the conduct and success of the prosecution. The Court also observed that in appreciating oral evidence, the question in each case is whether the witness is a truthful witness and whether there is anything to doubt his veracity in any particular matter about which he deposes. Where the witness is found to be untruthful on material facts that is an end of the matter. Where the witness is found to be partly truthful or spring from tainted sources, the court may take the precaution of seeking some corroboration, adequate and reasonable to meet the demands of the situation.

- ***Where the major portion of evidence is found to be deficient, can the residue evidence is sufficient to prove guilt of an accused***

The Court in ***Sucha Singh v. State of Rajasthan., AIR 2003 SC 3617*** observed that even if major portion of evidence is found to be deficient, in case residue is sufficient to prove guilt of an accused, notwithstanding acquittal of number of other co-accused persons, his conviction can be maintained. It is the duty of Court to separate grain from chaff. Where chaff can be separated from grain, it would be open to the Court to convict an accused notwithstanding the fact that evidence has been found to be deficient to prove guilt of other accused persons. Falsity of particular material witness or material particular would not ruin it from the beginning to end.

- ***Oral evidence vis-à-vis medical evidence - evidentiary value***

It is a settled legal proposition that the ocular evidence would have primacy unless it is established that oral evidence is totally irreconcilable with the medical evidence. More so, the ocular testimony of a witness has a greater evidentiary value vis-à-vis medical evidence; when medical evidence makes the ocular testimony improbable, that becomes a relevant factor in the process of the evaluation of evidence. However, where the medical evidence goes so far that it completely rules out all possibility of the ocular evidence if proved, the ocular evidence may be disbelieved. ***(See., State Of U.P v. Hari Chand., (2009) 13 SCC 542.)***

In ***State of Haryana v. Bhagirath and Ors.(1999) 5 SCC 96,*** it was held that the opinion given by a medical witness need not be the last word on the subject. Such an opinion shall be tested by the court. If the opinion is bereft of logic or objectivity, the court is not obliged to go by that opinion. After all opinion is what is formed in the mind of a person regarding a fact situation. If one doctor forms one opinion and another doctor form a different opinion on the same facts it is open to the Judge to adopt the view which is more objective or probable. Similarly if the opinion given by one doctor is not consistent with probability, the court has no liability to go by that opinion merely because it is said by the doctor. Of course, due weight must be given to opinions given by persons who are experts in the particular subject.

Where the medical evidence is at variance with ocular evidence, it has to be noted that it would be erroneous to accord undue primacy to the hypothetical answers of medical witnesses to exclude the eyewitnesses' account which had to be tested independently and not treated as the "variable" keeping the medical evidence as the "constant". Where the eyewitnesses' account is found credible and trustworthy, a medical opinion pointing to alternative possibilities cannot be accepted as conclusive. The eyewitnesses' account requires a careful independent assessment and evaluation for its credibility, which should not be adversely prejudged on the basis of any other evidence, including medical evidence, as the sole touchstone for the test of such credibility. The evidence must be tested for its inherent consistency and the inherent probability of the story; consistency with the account of other witnesses held to be creditworthy; consistency with the undisputed facts, the "credit" of the witnesses; their performance in the witness box; their power of observation etc. Then the probative value of such evidence becomes eligible to be put into the scales for a cumulative evaluation. ***(Vide: Thaman Kumar v. State of Union Territory of Chandigarh.,(2003) 6 SCC 380*** and ***Krishnan & Anr v. State Rep. By Inspector of Police., (2003) 7 SCC 56).***

When the medical evidence is in consonance with the principal part of the oral/ocular evidence thereby supporting the prosecution story, there is no question of ruling out the ocular evidence merely on the ground that there are some inconsistencies or contradictions in the oral evidence***.(See., Kathi Bharat Vajsur & Anr v. State of Gujarat., AIR 1970 SC 219)***

In conclusion it can be said that the approach of the Courts in appreciating oral evidence of a witness is to see whether the evidence of witness read as a whole appears to have a ring of truth. If once the Courts have come to a conclusion that the evidence if read as a whole appears to be truthful then that Courts must analyze the evidence principally keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and assess them to find out whether it is against the general theme of the evidence and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief without attaching much significance to minor discrepancies.

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CITATIONS

2021 0 Supreme(Sc) 718; Criminal Appeal No. 2373 Of 2010 Surinder Singh Vs State (Union Territory Of Chandigarh)

illegal use of a licensed or sanctioned weapon per se does not constitute an offence under Section 27, without proving the misdemeanour under Section 5 or 7 of the Arms Act.

It is by now a lucid dictum that for the purpose of constituting an offence under Section 307 IPC, there are two ingredients that a Court must consider, first, whether there was any intention or knowledge on the part of accused to cause death of the victim, and, second, such intent or knowledge was followed by some overt actus rea in execution thereof, irrespective of the consequential result as to whether or not any injury is inflicted upon the victim. The Courts may deduce such intent from the conduct of the accused and surrounding circumstances of the offence, including the nature of weapon used or the nature of injury, if any. The manner in which occurrence took place may enlighten more than the prudential escape of a victim. It is thus not necessary that a victim shall have to suffer an injury dangerous to his life, for attracting Section 307 IPC.

It would also be fruitful at this stage, to appraise whether the requirement of 'motive' is indispensable for proving the charge of attempt to murder under Section 307 IPC.

It is significant to note that 'motive' is distinct from 'object and means' which innervates or provokes an action. Unlike 'intention', 'motive' is not the yardstick of a crime. A lawful act with an ill motive would not constitute an offence but it may not be true when an unlawful act is committed with best of the motive. Unearthing 'motive' is akin to an exercise of manual brain-mapping. At times, it becomes herculean task to ascertain the traces of a 'motive'.

This Court has time and again ruled:

> "that in case the prosecution is not able to discover an impelling motive, that could not reflect upon the credibility of a witness proved to be a reliable eyewitness. Evidence as to motive would, no doubt, go a long way in cases wholly dependent on circumstantial evidence. Such evidence would form one of the links in the chain of circumstantial evidence in such a case. But that would not be so in cases where there are eyewitnesses of credibility, though even in such cases if a motive is properly proved, such proof would strengthen the prosecution case and fortify the court in its ultimate conclusion. But that does not mean that if motive is not established, the evidence of an eyewitness is rendered untrustworthy. Shivaji Genu Mohite vs. State of Maharashtra, (1973) 3 SCC 219 and Bipin Kumar Mondal vs. State of West Bengal, (2010) 12 SCC 91."

2021 0 Supreme(SC) 719; Mofil Khan & Anr. Vs. The State of Jharkhand ; Review Petition (Criminal) No.641 of 2015 In Criminal Appeal No. 1795 of 2009; Decided on : 26-11-2021

Article 137 of the Constitution empowers the Supreme Court to review any judgment pronounced by it, subject to the provisions of any law made by Parliament or any rules made under Article 145 of the Constitution of India. Order XLVII, Rule 1 of the Supreme Court Rules, 2013 provides that the Court may review its own judgment or order, but no application for review will be entertained in a civil proceeding except on the ground mentioned in Order XLVII, Rule 1 of the Code of Civil Procedure, 1908 and in a criminal proceeding except on the ground of an error apparent on the face of the record. Needless to mention that the Supreme Court Rules, 2013 are framed under Article 145 of the Constitution. Order XLVII, Rule 1 of the Supreme Court Rules, 2013 is materially the same as Order XL, Rule 1 of the Supreme Court Rules, 1966. In P.N. Eswara Iyar v. Registrar, Supreme Court of India, (1980) 4 SCC 680, this Court observed that Order XL, Rule 1 of the Supreme Court Rules, 1966 limits the grounds for review in criminal proceedings to "errors apparent on the face of the record". Review is not rehearing of the appeal all over again and to maintain a review petition, it has to be shown that there has been a miscarriage of justice (See: Suthendraraja v. State, (1999) 9 SCC 323). An error which is not self-evident and has to be detected by a process of reasoning can hardly be said to be an error apparent on the face of the record justifying the Court to exercise its power of review (See: Kamlesh Verma v. Mayavati, (2013) 8 SCC 320). An applicant cannot be allowed to reargue the appeal in an application for review on the grounds that were urged at the time of hearing of the appeal. Even if the applicant succeeds in establishing that there may be another view possible on the conviction or sentence of the accused that is not a sufficient ground for review. This Court shall exercise its jurisdiction to review only when a glaring omission or patent mistake has crept in the earlier decision due to judicial fallibility. There has to be an error apparent on the face of the record leading to miscarriage of justice (See: Vikram Singh v. State of Punjab, (2017) 8 SCC 518). Justice Mohan M. Shantanagoudar in Sudam v. State of Maharashtra, (2019) 9 SCC 388 held that review petitioners cannot seek re-appreciation of the evidence on record while hearing review petitions.

Criminal Appeal No. 186 of 2018 Hari & Anr.Vs.The State of Uttar Pradesh

It is well settled that the evidence of prosecution witnesses cannot be rejected in toto merely because the prosecution chose to treat them as hostile and crossexamined them. 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 a careful scrutiny thereof. It is for the Judge of fact to consider in each case whether as a result of such cross-examination and contradiction, the witness stands thoroughly discredited or can still be believed in regard to a part of his testimony. If the Judge finds that in the process, the credit of the witness has not been completely shaken, he may, after reading and considering the evidence of the witness, as a whole, with due caution and care, accept, in the light of the other evidence on the record, that part of testimony which he finds to be creditworthy and act upon it.

The High Court followed the suggestion given by this Court in Masalti's case and held that conviction with the aid of Section 149 IPC can be only in case where at least two witnesses speak about the involvement of person.

Common object is different from common intention as it does not require a prior concert and a common meeting of minds before the attack. It is enough if each has the same object in view and their number is five or more and that they act as an assembly to achieve that object. The common object of an assembly is to be ascertained from the acts and language of the members composing it, and from a consideration of all the surrounding circumstances. It may be gathered from the course of conduct adopted by the members of the assembly

These episodes of caste motivated violence in the country demonstrate the fact that casteism has not been annihilated even after 75 years of independence.

2021 0 Supreme(SC) 665; Bijender @ Mandar Vs State Of Haryana; Criminal Appeal No.2438 Of 2010, Decided On : 08-11-2021

It may be true that at times the Court can convict an accused exclusively on the basis of his disclosure statement and the resultant recovery of inculpatory material. However, in order to sustain the guilt of such accused, the recovery should be unimpeachable and not be shrouded with elements of doubt. [1][Vijay Thakur vs. State of Himachal Pradesh, (2014) 14 SCC 609] We may hasten to add that circumstances such as (i) the period of interval between the malfeasance and the disclosure; (ii) commonality of the recovered object and its availability in the market; (iii) nature of the object and its relevance to the crime; (iv) ease of transferability of the object; (v) the testimony and trustworthiness of the attesting witness before the Court and/or other like factors, are weighty considerations that aid in gauging the intrinsic evidentiary value and credibility of the recovery. (See: Tulsiram Kanu vs. The State, AIR 1954 SC 1; Pancho vs. State of Haryana, (2011) 10 SCC 165; State of Rajasthan vs. Talevar & Anr, (2011) 11 SCC 666 and Bharama Parasram Kudhachkar vs. State of Karnataka, (2014) 14 SCC 431)

Incontrovertibly, where the prosecution fails to inspire confidence in the manner and/or contents of the recovery with regard to its nexus to the alleged offence, the Court ought to stretch the benefit of doubt to the accused. Its nearly three centuries old cardinal principle of criminal jurisprudence that “it is better that ten guilty persons escape, than that one innocent suffer”. The doctrine of extending benefit of doubt to an accused, notwithstanding the proof of a strong suspicion, holds its fort on the premise that “the acquittal of a guilty person constitutes a miscarriage of justice just as much as the conviction of the innocent”.

18. It may not be wise or prudent to convict a person only because there is rampant increase in heinous crimes and victims are oftenly reluctant to speak truth due to fear or other extraneous reasons. The burden to prove the guilt beyond doubt does not shift on the suspect save where the law casts duty on the accused to prove his/her innocence. It is the bounden duty of the prosecution in cases where material witnesses are likely to be slippery, either to get their statements recorded at the earliest under Section 164 Cr.P.C. or collect such other cogent evidence that its case does not entirely depend upon oral testimonies.

2021 0 Supreme(Sc) 667; Irappa Siddappa Murgannavar Vs. State Of Karnataka; Criminal Appeal Nos. 1473-1474 Of 2017; Decided On : 08-11-2021

The witnesses are village residents and as their evidence was recorded nearly a year after the occurrence, they may not have possibly remembered the date of sighting, for

the reason that dates, especially those in the Gregorian calendar, may not be of much relevance or consequence in the rural areas.

2021 0 Supreme(SC) 675; Jitul Jentilal Kotecha Vs. State of Gujarat & Ors.; Criminal Appeal Nos. 1328-1333 of 2021; Decided On : 12-11-2021

The allegations in the FIR prima facie indicate that the sixth and seventh respondents entered into champertous agreements with the legal heirs of Shamjibhai and were alleged to be involved in the extortion of money from the appellant. In the impugned judgment, the High Court has held that the allegations on their face disclose that the fourth and fifth respondents committed the offence of extortion under Section 385 of the IPC and directed that the investigation be continued against them. However, the High Court completely failed to examine the allegation of criminal conspiracy qua the other accused where it has been alleged that they were also privy to such extortion.

2021 0 Supreme(Sc) 676; Sadakat Kotwar And Anr.Vs. The State Of Jharkhand; Criminal Appeal No.1316 Of 2021; Decided On : 12-11-2021

As observed and held by this Court in catena of decisions nobody can enter into the mind of the accused and his intention has to be ascertained from the weapon used, part of the body chosen for assault and the nature of the injury caused. Considering the case on hand on the aforesaid principles, when the deadly weapon – dagger has been used, there was a stab injury on the stomach and near the chest which can be said to be on the vital part of the body and the nature of injuries caused, it is rightly held that the appellants have committed the offence under Section 307 IPC.

2021 0 Supreme(Sc) 692; Sagar Lolienkar Vs. The State Of Goa & Anr.; Criminal Appeal No(S). 1415 Of 2021 (Arising Out Of Slp(Crl.) No(S). 931 Of 2021); Decided On : 18-11-2021

the appellant has been found to be guilty of offences punishable under Sections 279 and 304A IPC for driving rashly and negligently on a public street and his act unfortunately resulted in the loss of the precious human life. But it is pertinent to note that there was no allegation against the appellant that at the time of accident, he was under the influence of liquor or any other substance impairing his driving skills. It was a rash and negligent act simplicitor and not a case of driving in an inebriated condition which is, undoubtedly despicable aggravated offence warranting stricter and harsher punishment.

2021 0 Supreme(SC) 698; Rishipal Singh Solanki Vs. State of Uttar Pradesh and Others; Criminal Appeal No. 1240 of 2021, SLP (Crl.) No. 6223 of 2021; Decided On : 18-11-2021

What emerges on a cumulative consideration of the aforesaid catena of judgments is as follows:

(i) A claim of juvenility may be raised at any stage of a criminal proceeding, even after a final disposal of the case. A delay in raising the claim of juvenility cannot be a ground for rejection of such claim. It can also be raised for the first time before this Court.

(ii) An application claiming juvenility could be made either before the Court or the JJ Board.

(ii-a) When the issue of juvenility arises before a Court, it would be under sub-section (2) and (3) of section 9 of the JJ Act, 2015 but when a person is brought before a Committee or JJ Board, section 94 of the JJ Act, 2015 applies.

(ii-b) If an application is filed before the Court claiming juvenility, the provision of sub-section (2) of section 94 of the JJ Act, 2015 would have to be applied or read along with sub-section (2) of section 9 so as to seek evidence for the purpose of recording a finding stating the age of the person as nearly as may be.

(ii-c) When an application claiming juvenility is made under section 94 of the JJ Act, 2015 before the JJ Board when the matter regarding the alleged commission of offence is pending before a Court, then the procedure contemplated under section 94 of the JJ Act, 2015 would apply. Under the said provision if the JJ Board has reasonable grounds for doubt regarding whether the person brought before it is a child or not, the Board shall undertake the process of age determination by seeking evidence and the age recorded by the JJ Board to be the age of the person so brought before it shall, for the purpose of the JJ Act, 2015, be deemed to be true age of that person. Hence the degree of proof required in such a proceeding before the JJ Board, when an application is filed seeking a claim of juvenility when the trial is before the concerned criminal court, is higher than when an inquiry is made by a court before which the case regarding the commission of the offence is pending (vide section 9 of the JJ Act, 2015).

(iii) That when a claim for juvenility is raised, the burden is on the person raising the claim to satisfy the Court to discharge the initial burden. However, the documents mentioned in Rule 12(3)(a)(i), (ii) and (iii) of the JJ Rules 2007 made under the JJ Act, 2000 or sub-section (2) of section 94 of JJ Act, 2015, shall be sufficient for prima-facie satisfaction of the Court. On the basis of the aforesaid documents a presumption of juvenility may be raised.

(iv) The said presumption is however not conclusive proof of the age of juvenility and the same may be rebutted by contra evidence let in by the opposite side.

(v) That the procedure of an inquiry by a Court is not the same thing as declaring the age of the person as a juvenile sought before the JJ Board when the case is pending for trial before the concerned criminal court. In case of an inquiry, the Court records a prima-facie conclusion but when there is a determination of age as per sub-section (2) of section 94 of 2015 Act, a declaration is made on the basis of evidence. Also the age recorded by the JJ Board shall be deemed to be the true age of the person brought before it. Thus, the standard of proof in an inquiry is different from that required in a proceeding where the determination and declaration of the age of a person has to be made on the basis of evidence scrutinised and accepted only if worthy of such acceptance.

(vi) That it is neither feasible nor desirable to lay down an abstract formula to determine the age of a person. It has to be on the basis of the material on record and on appreciation of evidence adduced by the parties in each case.

(vii) This Court has observed that a hyper-technical approach should not be adopted when evidence is adduced on behalf of the accused in support of the plea that he was a juvenile.

(viii) If two views are possible on the same evidence, the court should lean in favour of holding the accused to be a juvenile in borderline cases. This is in order to ensure that the benefit of the JJ Act, 2015 is made applicable to the juvenile in conflict with

law. At the same time, the Court should ensure that the JJ Act, 2015 is not misused by persons to escape punishment after having committed serious offences.

(ix) That when the determination of age is on the basis of evidence such as school records, it is necessary that the same would have to be considered as per Section 35 of the Indian Evidence Act, inasmuch as any public or official document maintained in the discharge of official duty would have greater credibility than private documents.

(x) Any document which is in consonance with public documents, such as matriculation certificate, could be accepted by the Court or the JJ Board provided such public document is credible and authentic as per the provisions of the Indian Evidence Act viz. section 35 and other provisions.

(xi) Ossification Test cannot be the sole criterion for age determination and a mechanical view regarding the age of a person cannot be adopted solely on the basis of medical opinion by radiological examination. Such evidence is not conclusive evidence but only a very useful guiding factor to be considered in the absence of documents mentioned in Section 94(2) of the JJ Act, 2015.

Section 94 of the JJ Act, 2015 raises a presumption regarding juvenility of the age of the child brought before the JJ board or the Committee. But in case the Board or Committee has reasonable grounds for doubt about the person brought before it is a child or not, it can undertake the process of determination of age by seeking evidence. Thus, in the initial stage a presumption that the child brought before the Committee or the JJ Board is a juvenile has to be drawn by the said authorities. The said presumption has to be drawn on observation of the child. However, the said presumption may not be drawn when the Committee or the Board has reasonable grounds for doubt regarding the person brought before it is a child or not. In such a case, it can undertake the process of age determination by the evidence which can be in the form of:

(i) Date of birth certificate from the school or the matriculation certificate from the concerned board, if available or in the absence thereof.

(ii) The birth certificate given by a corporation or by a municipal authority or a panchayat and in the absence of the above.

(iii) Age has to be determined by an ossification test or any other medical age determination test conducted on the orders of the committee or the board.

The age recorded by the Committee or the Board to be the age of the person so brought before it shall for the purpose of the JJ Act, 2015 be deemed to be the true age of the person. The deeming provision in sub-section (3) of section 94 of the JJ Act, 2015 is also significant inasmuch as the controversy or the doubt regarding the age of the child brought before the Committee or the JJ Board is sought to be set at rest at the level of the JJ Board or the Committee itself.

2021 0 Supreme(Sc) 701; Attorney General For India Vs. Satish And Another; Criminal Appeal No.1410 Of 2021 (@ Special Leave Petition (Crl) No. 925 Of 2021) With

National Commission For Women Vs The State Of Maharashtra And Another ; Criminal Appeal No.1411 Of 2021 (@ Special Leave Petition (Crl) No. 1339 Of 2021)With

The State Of Maharashtravs Satish; Criminal Appeal No.1412 Of 2021 (@ Special Leave Petition (Crl) No. 1159 Of 2021) With

the expression “sexual intent” having not been explained in Section 7, it cannot be confined to any predetermined format or structure and that it would be a question of fact, however, the submission of Mr. Luthra that the expression ‘physical contact’ used in Section 7 has to be construed as ‘skin to skin’ contact cannot be accepted. As per the rule of construction contained in the maxim “Ut Res Magis Valeat Quam Pereat”, the construction of a rule should give effect to the rule rather than destroying it. Any narrow and pedantic interpretation of the provision which would defeat the object of the provision, cannot be accepted. It is also needless to say that where the intention of the Legislature cannot be given effect to, the courts would accept the bolder construction for the purpose of bringing about an effective result. Restricting the interpretation of the words “touch” or “physical contact” to “skin to skin contact” would not only be a narrow and pedantic interpretation of the provision contained in Section 7 of the POCSO Act, but it would lead to an absurd interpretation of the said provision. “skin to skin contact” for constituting an offence of “sexual assault” could not have been intended or contemplated by the Legislature. The very object of enacting the POCSO Act is to protect the children from sexual abuse, and if such a narrow interpretation is accepted, it would lead to a very detrimental situation, frustrating the very object of the Act, inasmuch as in that case touching the sexual or non sexual parts of the body of a child with gloves, condoms, sheets or with cloth, though done with sexual intent would not amount to an offence of sexual assault under Section 7 of the POCSO Act. The most important ingredient for constituting the offence of sexual assault under Section 7 of the Act is the “sexual intent” and not the “skin to skin” contact with the child.

It may also be pertinent to note that having regard to the seriousness of the offences under the POCSO Act, the Legislature has incorporated certain statutory presumptions. Section 29 permits the Special Court to presume, when a person is prosecuted for committing or abetting or attempting to commit any offence under Section 3, 5, 7 and Section 9 of the Act, that such person has committed or abetted or attempted to commit the offence, as the case may be, unless the contrary is proved. Similarly, Section 30 thereof permits the Special Court to presume for any offence under the Act which requires a culpable mental state on the part of the accused, the existence of such mental state. Of course, the accused can take a defence and prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution. It may further be noted that though as per sub section (2) of Section 30, for the purposes of the said section, a fact is said to be proved only when the Special Court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability, the Explanation to Section 30 clarifies that “culpable mental state” includes intention, motive, knowledge of a fact and the belief in, or reason to believe, a fact. Thus, on the conjoint reading of Section 7, 11, 29 and 30, there remains no shadow of doubt that though as per the Explanation to Section 11, “sexual intent” would be a question of fact, the Special Court, when it believes the existence of a fact beyond reasonable doubt, can raise a presumption under Section 30 as regards the existence of “culpable mental state” on the part of the accused.

the statutory ambiguity should be invoked as a last resort of interpretation. Where the Legislature has manifested its intention, courts may not manufacture ambiguity in order to defeat that intent.
In plain English, to touch is to engage in one of the most basic of human sensory perceptions. The receptors on the surface of the human body are acutely sensitive to the subtleties of a whole range of tactile experiences. The use of a spoon, for instance, to consume food -without touching it with the hand -in no way diminishes the sense of touch that is experienced by the lips and the mouth. Similarly, when a stick, or other object is pressed onto a person, even when clothed, their sense of touch is keen enough to feel it.
In the end, I cannot resist quoting Benjamin Cardozo that "the great tides and currents which engulf the rest of men do not turn aside in their course and pass the judges by." It is, therefore, no part of any judge's duty to strain the plain words of a statute, beyond recognition and to the point of its destruction, thereby denying the cry of the times that children desperately need the assurance of a law designed to protect their autonomy and dignity, as POCSO does.

2021 0 Supreme(SC) 711; State of Rajasthan Vs Bablu @ Om Prakash; Criminal Appeal No. 1475 of 2021(Arising out of Special Leave Petition (Crl.) No.8676 of 2019); Decided on : 24-11-2021
In the backdrop of the principles set out in the decisions of this Court, even the version of a single witness, if his testimony is found reliable by the Court, can be the foundation of the order of conviction.
The fact that one of these witnesses had suffered injuries in the transaction and the rest of them had taken the deceased as well as the injured to medical center immediately after the occurrence lends credibility to the case of the prosecution unfolded through these eyewitnesses. Nothing has been brought on record in their cross-examinations to dislodge the credibility of these witnesses.
In the face of such clear, consistent and cogent evidence on record, the High Court was not justified in proceeding on the basis that the eyewitnesses had not named other accused in specific terms or entertaining any doubt and then recording order of acquittal.

2021 0 Supreme(Sc) 712; Arvind Kumar @ Nemichand & Ors.Vs. State Of Rajasthan; Criminal Appeal No. 753 To 756 Of 2017; Decided On : 22-11-2021
Findings of fact rendered by both the courts below shall not be interfered with insofar as the conviction rendered and merely because the witnesses are either family members or relatives their evidence cannot be disbelieved.
Specific and clear overt act has been attributed against some of the accused. The multiple injuries suffered would lead to an inference. A defective investigation would not enure to the benefit of the accused. A mere delay per se can never be a ground for acquittal when there is adequate evidence both oral and documentary in support of the prosecution version. The plea of private defence and sudden fight are intrinsically opposed to each other. The presence of the other accused would be sufficient enough to attract Section 149 IPC. Mere discrepancies in the evidence would not make the prosecution version as false. The delay in sending an FIR is not substantial.
An Investigating Officer being a public servant is expected to conduct the investigation fairly. While doing so, he is expected to look for materials available for coming to a

correct conclusion. He is concerned with the offense as against an offender. It is the offense that he investigates. Whenever a homicide happens, an investigating officer is expected to cover all the aspects and, in the process, shall always keep in mind as to whether the offence would come under Section 299 IPC sans Section 300 IPC. In other words, it is his primary duty to satisfy that a case would fall under culpable homicide not amounting to murder and then a murder. When there are adequate materials available, he shall not be overzealous in preparing a case for an offense punishable under Section 302 IPC. We believe that a pliable change is required in the mind of the Investigating Officer. After all, such an officer is an officer of the court also and his duty is to find out the truth and help the court in coming to the correct conclusion. He does not know sides, either of the victim or the accused but shall only be guided by law and be an epitome of fairness in his investigation.

There is a subtle difference between a defective investigation, and one brought forth by a calculated and deliberate action or inaction. A defective investigation per se would not enure to the benefit of the accused, unless it goes into the root of the very case of the prosecution being fundamental in nature. While dealing with a defective investigation, a court of law is expected to sift the evidence available and find out the truth on the principle that every case involves a journey towards truth. There shall not be any pedantic approach either by the prosecution or by the court as a case involves an element of law rather than morality.

A fair investigation would become a colourable one when there involves a suppression. Suppressing the motive, injuries and other existing factors which will have the effect of modifying or altering the charge would amount to a perfunctory investigation and, therefore, become a false narrative. If the courts find that the foundation of the prosecution case is false and would not conform to the doctrine of fairness as against a conscious suppression, then the very case of the prosecution falls to the ground unless there are unimpeachable evidence to come to a conclusion for awarding a punishment on a different charge.

The omission on the part of the prosecution to explain the injuries on the person of the accused assumes much greater importance where the evidence consists of interested or inimical witnesses or where the defence gives a version which competes in probability with that of the prosecution one.

The principle that when a witness deposes falsehood, the evidence in its entirety has to be eschewed may not have strict application to the criminal jurisprudence in our country. The principle governing sifting the chaff from the grain has to be applied. However, when the evidence is inseparable and such an attempt would either be impossible or would make the evidence unacceptable, the natural consequence would be one of avoidance. The said principle has not assumed the status of law but continues only as a rule of caution. One has to see the nature of discrepancy in a given case. When the discrepancies are very material shaking the very credibility of the witness leading to a conclusion in the mind of the court that it is neither possible to separate it nor to rely upon, it is for the said court to either accept or reject.

Motive might lose its significance when adequate evidence in the form of eyewitnesses are available to the acceptance of the court. But, when a motive might have the impact of introducing a perceptible change to the very case projected by the prosecution, in favour of the accused, it cannot be brushed aside. It becomes more relevant when an accused sets up the plea of private defence. A common object and a motive may get

interconnected. Thus, a deliberate and intentional avoidance of unimpeachable evidence qua motive would make the version of the prosecution a serious suspect.
The view that the evidence of an injured witness has to be placed at a higher pedestal may not apply to a case of private defence with the accused also injured.
When the plea of private defence is taken, the quality of material evidence will have to be a bit higher than that of the one required in a normal circumstance.

2021 0 Supreme(SC) 706; Viram @ Virma Vs. The State of Madhya Pradesh: Criminal Appeal No. 31 of 2019 With Criminal Appeal No.32 of 2019; Decided On : 23-11-2021
The oral evidence discloses that there was an indiscriminate attack by the accused on the deceased and the other injured eye-witnesses. As found by the Courts below, there is a contradiction between the oral testimony of the witnesses and the medical evidence. In Amar Singh v. State of Punjab (supra), this Court examined the point relating to inconsistencies between the oral evidence and the medical opinion. The medical report submitted therein established that there were only contusions, abrasions and fractures, but there was no incised wound on the left knee of the deceased as alleged by a witness. Therefore, the evidence of the witness was found to be totally inconsistent with the medical evidence and that would be sufficient to discredit the entire prosecution case.

Criminal Appeal No(S). 1444/2021 (Arising Out Of Special Leave Petition (Crl.) No(S). 5362/2021) Xxx Appellant(S) Versus The State Of Kerala & Ors.
in view of Section 362 Cr.P.C. the Court does not have the power to alter the judgment and order once passed, except to correct the clerical or arithmetical error. In the present case, by a judgment and order dated 20.04.2021 FIR had been quashed by the High Court by a detailed reasoned order, which has been recalled by the impugned order dated 28.04.2021. There is no power, except under Section 362 Cr.P.C., which only provides for correction of any clerical or arithmetical error. The same does not empower the court to recall the earlier order passed after contest and that too suo moto.

NOSTALGIA

In State of Madhya Pradesh vs. Saleem @ Chamaru & Anr (2005) 5 SCC 554, this Court, while re-appreciating the true import of Section 307 IPC held as follows:
12.To justify a conviction under this section, it is not essential that bodily injury capable of causing death should have been inflicted. Although the nature of injury actually caused may often give considerable assistance in coming to a finding as to the intention of the accused, such intention may also be deduced from other circumstances, and may even, in some cases, be ascertained without any reference at all to actual wounds. The section makes a distinction between an act of the accused and its result, if any. Such an act may not be attended by any result so far as the person assaulted is concerned, but still there may be cases in which the culprit would be liable under this section. It is not necessary that the injury actually caused to the victim of the assault should

be sufficient under ordinary circumstances to cause the death of the person assaulted. What the court has to see is whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section. An attempt in order to be criminal need not be the penultimate act. It is sufficient in law, if there is present an intent coupled with some overt act in execution thereof.

13. It is sufficient to justify a conviction under Section 307 if there is present an intent coupled with some overt act in execution thereof. It is not essential that bodily injury capable of causing death should have been inflicted. The section makes a distinction between the act of the accused and its result, if any. The court has to see whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section. Therefore, an accused charged under Section 307 IPC cannot be acquitted merely because the injuries inflicted on the victim were in the nature of a simple hurt."

NEWS

- Ministry Of Law & Justice Department Of Legal Affairs) New Delhi, the 13th October 2021 No. A-35017/8/2012-Admn.I(LA)—The President is pleased to appoint Ms. Sudha Rani Relangi, Joint Secretary and Legislative Counsel, Legislative Department to the post of Director of Prosecution in Central Bureau of Investigation (CBI) for a further period of two years beyond 19.08.2021 or until further orders, whichever is earlier.

- the Registration of Foreigners (Amendment) Rules, 2021dtd. 12th November, 2021 G.S.R. 801(E).

- Delhi Special Police Establishment (Amendment) Ordinance, 2021, notified, dt. 14.11.2021

- Corrigendum The Delhi Special Police Establishment (Amendment) Ordinance, 2021 Dt. 15.11.2021

- IRF declared as an unlawful association, dt 15.11.2021.

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ON A LIGHTER VEIN

A young boy enters a barber shop...and the barber whispers to his customer, "This is the dumbest kid in the world. Watch while I prove it to you."

The barber puts a dollar bill in one hand and two quarters in the other, then calls the boy over and asks, "Which do you want, son?" The boy takes the quarters and leaves.

"What did I tell you?" said the barber. "That kid never learns!"

Later, when the customer leaves, he sees the same young boy coming out of the ice cream store.

"Hey, son! May I ask you a question?
Why did you take the quarters instead of the dollar bill?"

The boy licked his cone and replied,
"Because the day I take the dollar, the game is over!"

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

may good befall all, may there be peace for all, may all be fit for perfection, and may all experience that which is auspicious. may all be happy. may all be healthy. may all experience what is good and let no one suffer.

best wishes for new year

Rajeshwer Rao
Prosecutionreplenish