Prosecution Replenish

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Aano Bhadra Kratvo Yantu Viswatah (Rig Ved)

Let all Noble thoughts come to us from all directions

CITATIONS

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

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

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

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

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

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

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

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

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

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

the principles of law that emerge are as under:

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

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

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

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

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

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

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

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

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

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

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

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

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

Ingredients necessary to prove a charge under Section 409 IPC:

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

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

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

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

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

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

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

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

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

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

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

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

Ingredients necessary to prove a charge under Section 420 IPC:

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

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

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

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

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

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

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

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

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

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

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

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

The essential ingredients of Section 397 IPC are as follows:

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

(i) the accused used deadly weapon.

(ii) to cause grievous hurt to any person.

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

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

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

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

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

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

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

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

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

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

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

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

Minor omissions in the police statements are never considered to be fatal. The statements given by the witnesses before the police are meant to be brief statements and could not take place of evidence in the court. Small/Trivial omissions would not justify a finding by court that the witnesses concerned

are liars. The prosecution evidence may suffer from inconsistencies here and discrepancies there, but that is a shortcoming from which no criminal case is free. The main thing to be seen is whether those inconsistencies go to the root of the matter or pertain to insignificant aspects thereof. In the former case, the defence may be justified in seeking advantage of incongruities obtaining in the evidence. In the latter, however, no such benefit may be available to it.

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

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

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

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

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

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

Evidence of Prosecutrix in Rape Cases

In the case of Sham Singh v. State of Haryana, (2018) 18 SCC 34, it is observed that testimony of the victim is vital and unless there are compelling reasons which necessitate looking for corroboration of her statement, the courts should find no difficulty to act on the testimony of the victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. It is further observed that seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury. In paragraphs 6 and 7, it is observed and held as under:

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

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

It is also by now well settled that the courts must, while evaluating evidence, remain alive to the fact that in a case of rape, no self-respecting woman would come forward in a court just to make a humiliating statement against her honour such as is involved in the commission of rape on her. In cases involving sexual molestation, supposed considerations which have no material effect on the veracity of the prosecution case or even discrepancies in the statement of the prosecutrix should not, unless the discrepancies are such which are of fatal nature, be allowed to throw out an otherwise reliable prosecution case. The inherent bashfulness of the females and the tendency to conceal outrage of sexual aggression are factors which the courts should not overlook. The testimony of the victim in such cases is vital and unless there are compelling reasons which necessitate looking for corroboration of her statement, the courts should find no difficulty to act on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. Seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury. (See Ranjit Hazarika v. State of Assam [Ranjit Hazarika v. State of Assam, (1998) 8 SCC 635)."

The golden principle to be followed in criminal jurisprudence.

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

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

Same Set of Panchas in multiple Panchanamas

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

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

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

NEWS

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

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

ON A LIGHTER VEIN

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

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

Wife : "What's that experiment?"

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

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

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

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

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

Clarifications :

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

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

Ministry of Health & Family Welfare, Government of India

CLINICAL GUIDANCE FOR MANAGEMENT OF ADULT COVID-19 PATIENTS

23rd September 2021

COVID-19 patient

Mild disease

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

Home Isolation & Care

MUST DOs

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

Seek immediate medical attention if:

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

MAY DOs

Therapies based on low certainty of evidence

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

Moderate disease

Any one of:

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

ADMIT IN WARD

Oxygen Support:

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

Anti-inflammatory or immunomodulatory therapy

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

Anticoagulation

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

Monitoring

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

Severe disease

Any one of:

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

ADMIT IN ICU

Respiratory support

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

Anti-inflammatory or immunomodulatory therapy

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

Anticoagulation

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

Supportive measures

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

Monitoring

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

After clinical improvement, discharge as per revised discharge criteria.

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

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

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

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

Prosecution Replenish

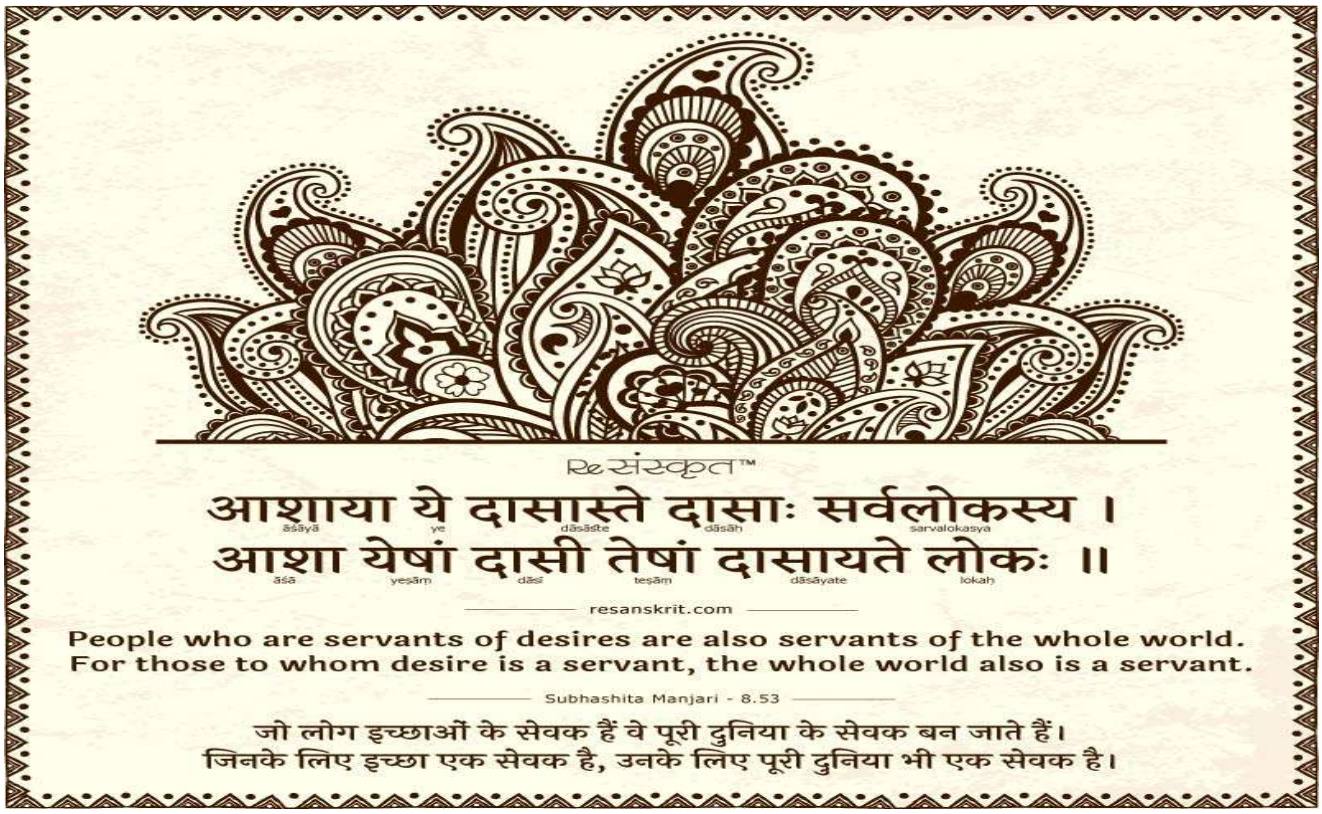
An Endeavor for Learning and Excellence

Vol- X Part – 2

Febuary,2022

Aano Bhadra Kratvo Yantu Viswatah (Rig Ved)

Let all Noble thoughts come to us from all directions



CITATIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Common Intention

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

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

304B IPC Dowy Death:-

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

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

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

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

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

Bail Order- Reasons

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

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

xxx xxx xxx

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

NEWS

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

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

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ON A LIGHTER VEIN

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

His friend asks, 'What kind is it?'

The braggart says, 'Half past four.'

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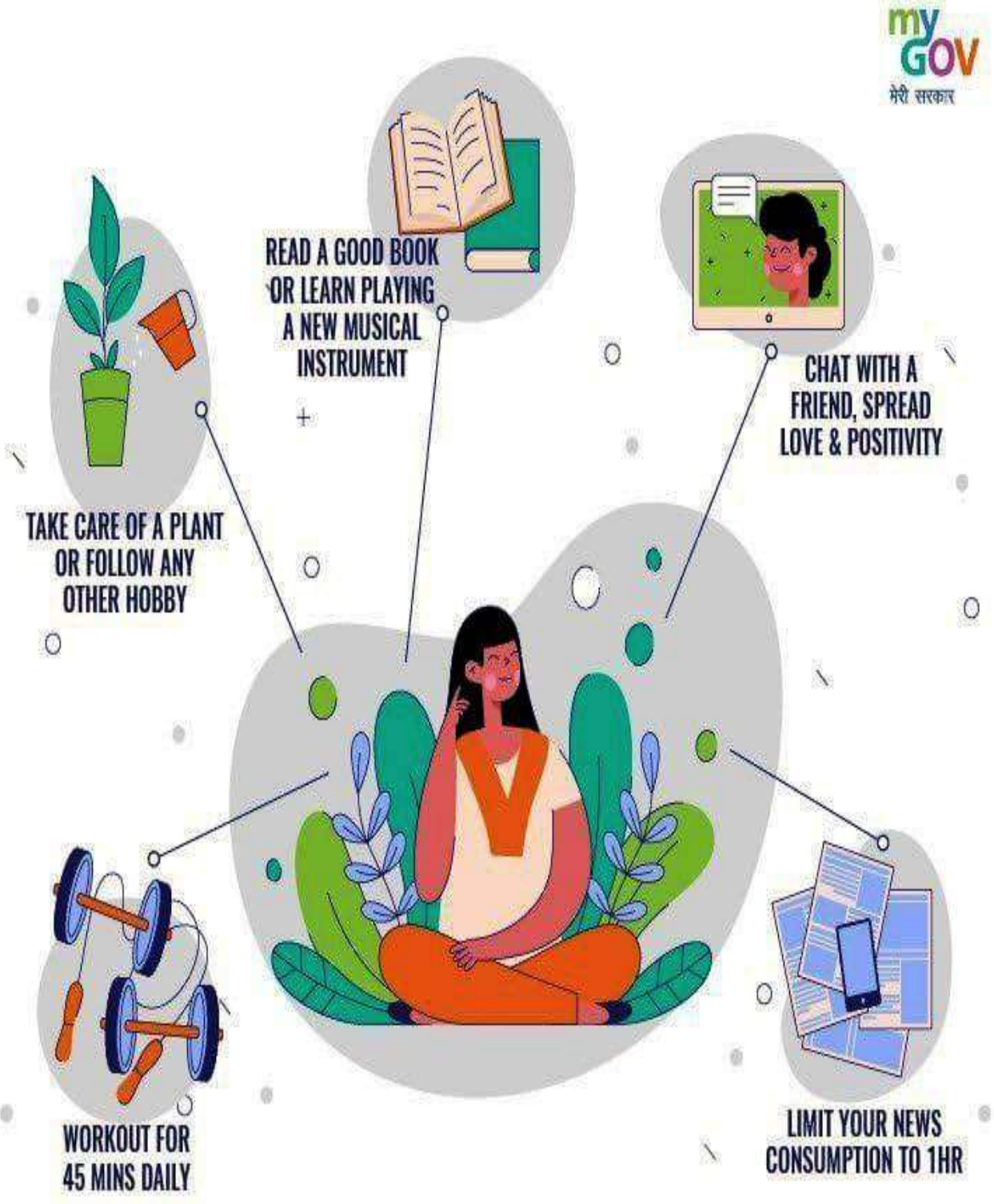


MANAGING **COVID STRESS**

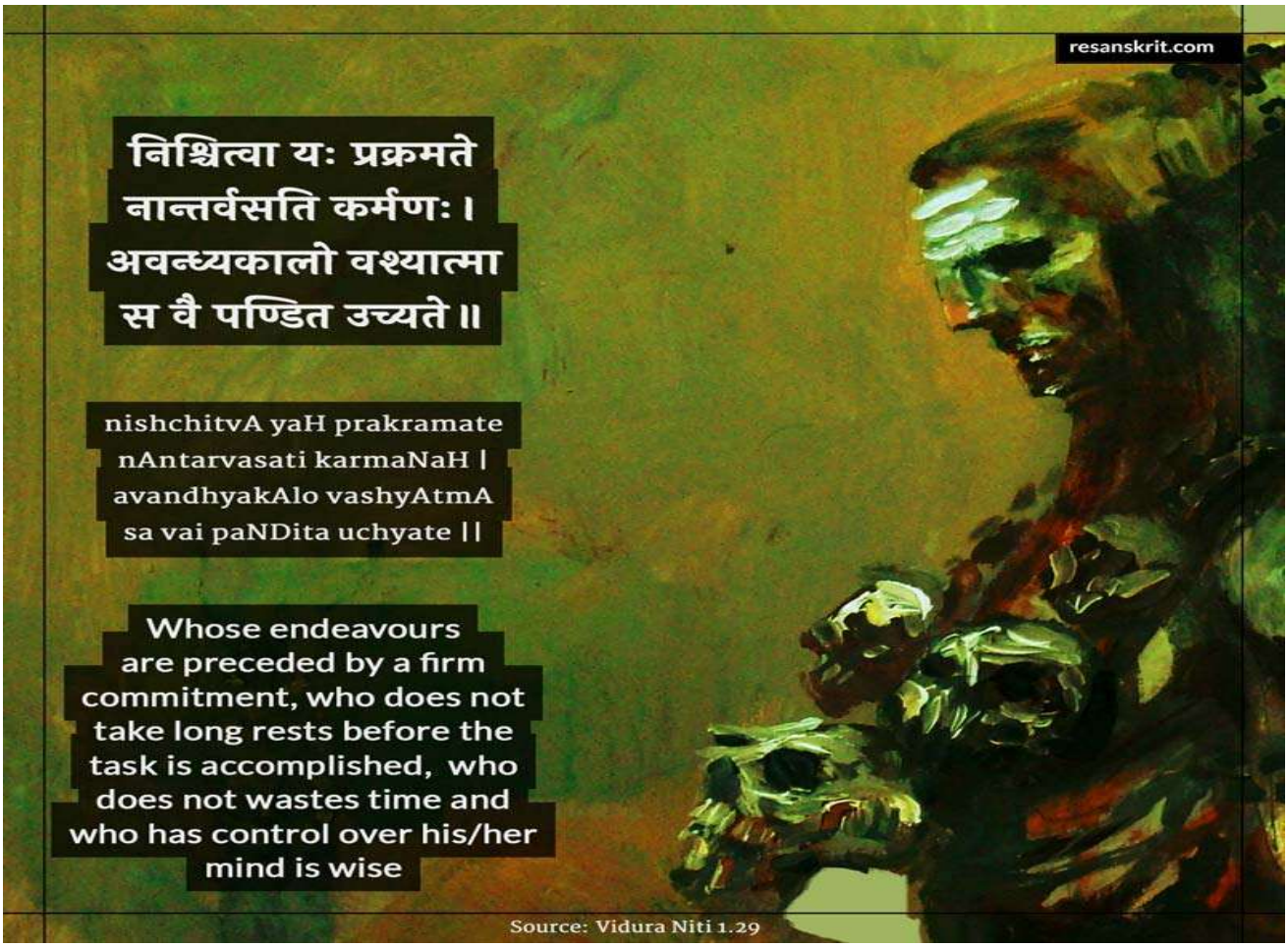
Prosecution Replenish

Vol- X Part – 3

March,2022

Aano Bhadra Kratvo Yantu Viswatah (Rig Ved)

Let all Noble thoughts come to us from all directions



CITATIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

NOSTALGIA

498A- charging the relatives:

in K. Subba Rao vs. State of Telangana, (2018) 14 SCC 452 it was also observed that"6. The Courts should be careful in proceeding against the distant relatives in crimes pertaining to matrimonial disputes and dowry deaths. The relatives of the husband should not be roped in on the basis of omnibus allegations unless specific instances of their involvement in the crime are made out."

Preventive detention:

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

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

Acquittal of co-Accused:

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

NEWS

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

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ON A LIGHTER VEIN

My neice calls me "Ankle"

I call her "Knees"

.

Ours is a Joint family

(very Ortho-docs family)

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Prosecution Replenish

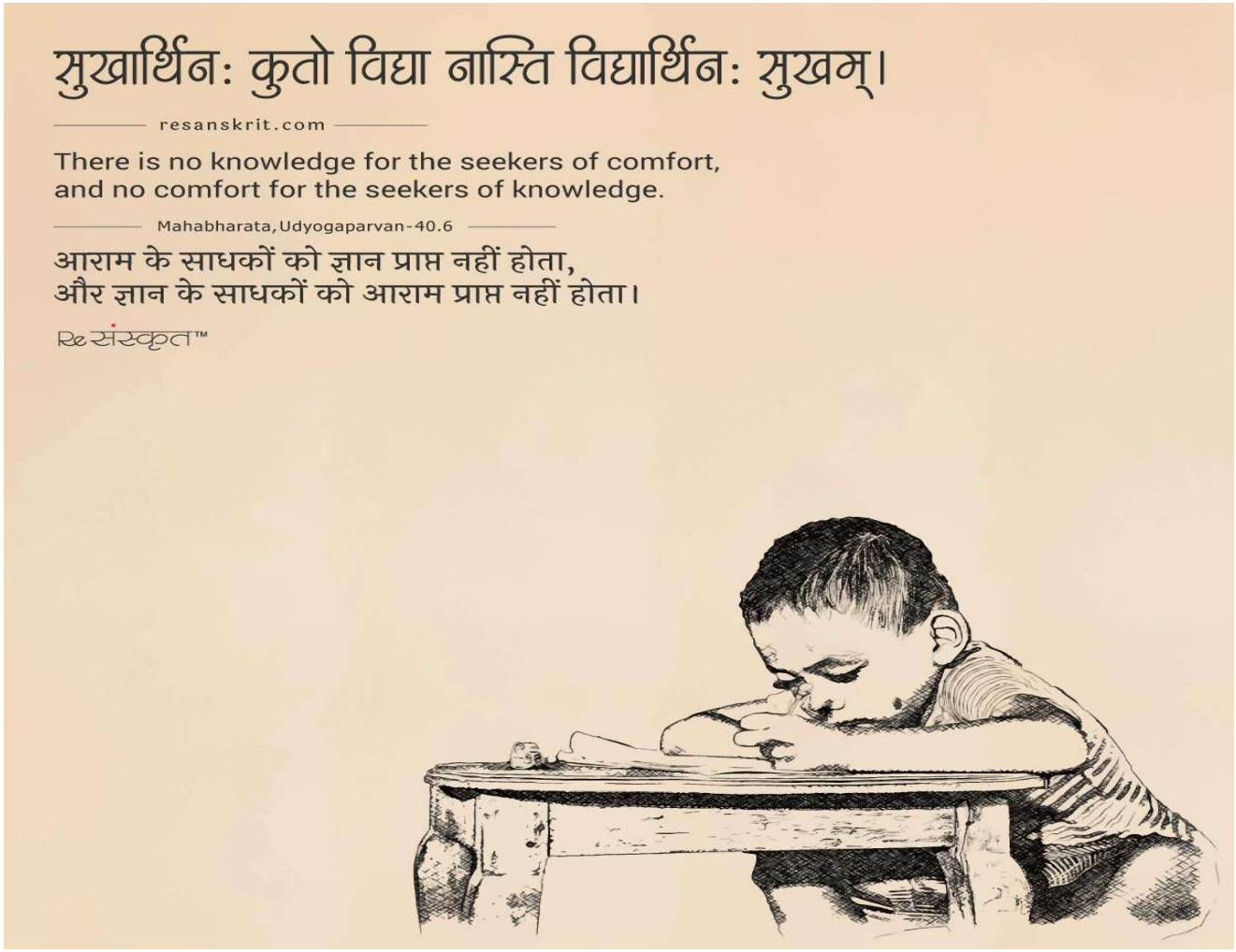
Vol- X

Part – 4

April,2022

Aano Bhadra Kratvo Yantu Viswatah (Rig Ved)

Let all Noble thoughts come to us from all directions



CITATIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Civil and Criminal remedies:

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

Considerations for bail:

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

Cross examination- Rules

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

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

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

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

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

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

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

NEWS

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

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ON A LIGHTER VEIN

I asked my grandfather for 20 bucks

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

"To buy groceries", I told him.

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

He shrugged and paused.

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

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Vol- X

Part – 5

May,2022

Aano Bhadra Kratvo Yantu Viswatah (Rig Ved)

Let all Noble thoughts come to us from all directions

CITATIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Cancellation of Bail

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

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

Multiple 161 CrPC statements

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

Sec 162 CrPC

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

Attempt Vs Preparation:

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

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

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

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

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

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

Extra-Judicial confession:

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

"The principles

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

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

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

Testimonial Compulsion:

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

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

LIMITATION

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

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

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

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

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

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

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

Bail-order cannot be cryptic

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

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

NEWS

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

After Exam Result

If pass

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

If Fail

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

True Friends never change

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Part – 6

June, 2022

Aano Bhadra Kratvo Yantu Viswatah (Rig Ved)

Let all Noble thoughts come to us from all directions

CITATIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

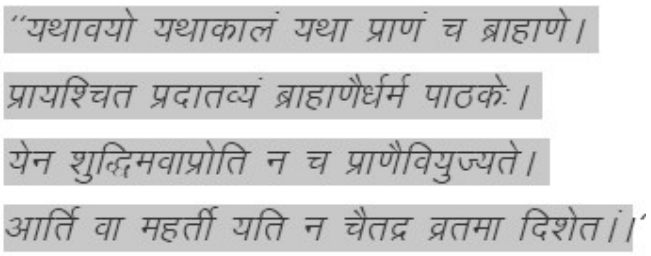
2022 0 Supreme(SC) 475; Mohammad Azam Khan Vs. The State Of Uttar Pradesh; I.A. No.71580 of 2022 in/and M.A. No.766 of 2022 In Writ Petition (Criminal) No.39, 188 of 2022; Decided on : 19-05-2022 (THREE JUDGE BENCH)

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CIVIL REVISION PETITION No.67 of 2022;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(Order in the nature of anticipatory bail without conditions)

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

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

NOSTALGIA

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

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

Difference between Bail on sureties and on Bond

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

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

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

Burden of proof on accused

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

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

Defective Investigation:

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

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

ON A LIGHTER VEIN

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

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