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Criminal Law Referencer

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

Preface

Sri G.Shivaiah requires very less introduction, at least for the prosecutors of Telugu Speaking states, wherein he worked as prosecutor right from APP to Addl.PP Gr-I. Suffice it to say that he was termed as an UNIVERSITY by one of the senior academician and Prosecutor. Sir developed friends for his excellence in academics, at all the places where he worked, what with prestigious organisations and advocates from those places, still contacting him, whenever they are in a fix, for solutions, and they are not disappointed at any time.

I had the occasion of being in proximity with Sir, when sir was executing the responsibilities of Deputy Director of Prosecutions (Administration) Hyderabad, wherein I was fortunate to have had the opportunity of interacting with him on various academic pursuits.

I am also fortunate that Sir was kind enough to honor my request to share some of outstanding precedents compiled by him and this book is his long cherished dream, which in fact Sir wanted to bring it in hardcopy by Dushera for the assistance of all prosecutors, but due to some constraints, the following soft copy is being released on this Dushera,

I am confident that these precedents will pave way for easing the work of prosecutors all over.

Grateful acknowledgment is here made to Ms Rita Lalchand and Sri G.Raghavendra, and all those who helped me in giving a shape to the dream of Sir, as it stands in this book. This work would not have reached its present form without their invaluable help.

Hyderabad
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CODE OF CRIMINAL PROCEDURE

JUDGMENTS

1) **2000(2) ALT (CRI) 159 (KER) – BIJJU VS STATE OF KERALA**

The legal position that when an accused has been released on bail under Section 436 and later a non-bailable offence is added, even then the bail granted cannot be cancelled, unless there is misuse of liberty granted. Bail can be' cancelled only either under Section 439(2) or under Section 437(5) Code of Criminal Procedure. It is also the settled position of law that once bail is granted under Section 436 and a charge sheet for a non-bailable offence is also filed, bail cannot be cancelled unless there is misuse of liberty granted.

The Code of Criminal Procedure makes no express provision for cancellation of bail granted under Section 436 and if at any subsequent stage of the proceedings, it is found that any person accused of a bailable offence is intimidating, bribing or tampering with prosecution witnesses or is attempting to Abscond, High Court has power to cause him to be' arrested, and commit him to custody for such period as High Court thinks fit. This, Jurisdiction of High Court springs from the overriding inherent powers of High Court and can .be invoked in exceptional cases only, when the High Court is satisfied that the ends of justice will be defeated unless the accused is committed to custody. The person committed to custody under the orders of High Court cannot ask for his release on bail under Section 436 Code of Criminal Procedure. The High Court or Court of Session is conferred with power under Sub-section (2) of Section 439 Code of Criminal Procedure to cancel bail in regard to cases of persons accused of any offences where such persons were admitted to bail under Chapter XXXIII of Code of Criminal Procedure.

2) **1996(1) ALT (CRL) 622 (DB) AP – MRS. IQBAL KAUR KWATRA VS THE DGP, RAJASTHAN STATE, JAIPUR AND OTHERS**

Sec 57 CRPC – in appropriate cases the court can award compensation to the victim by awarding suitable monetary compensation moulding the relief in view of the changed circumstances in the larger interest of justice.

Forcibly taking away and illegal detention of petitioner's husband and not producing him before the Judicial Magistrate on the same day is in gross violation of fundamental rights. Such was an act of committing mental and psychological torture to the petitioner and her husband. Case observed to be fit for compensation

Police Custody also includes "some form of Police Surveillance and restriction on movements of the person concerned by the Police". The word custody does not necessarily mean detention or confinement. A person is said to be in custody as he comes in the hands of police officer.

3) **1984 CRLJ 1534 – KANAKLATHA SINHA VS NANI GOPAL SINGH BURMAN AND OTHERS**

Registrar of Firms is not a court within meaning of Section 195(1)(b) Cr.P.C. if therefore offences for which the opposite parties have been

arraigned have been committed in relation to the proceeding before the Registrar of Firms no complaint of Registrar was necessary.

4) **Dukhishyam Benupani, Asstt. Director, Enforcement Directorate (FERA) vs Arun Kumar Bajoria 1998(1) ALD (Cri) 86, [1998] 91 Comp Cas 413 (SC), 1998 CriLJ 841, JT 1997(9) SC 379, 1997(6) SCALE 351, 1997(7) SCALE 258, (1998)1SCC52, [1997]5 SuppSCR 566**
Considerations to be weighed with the court while dealing with a prayer for pre-arrest bail order are materially different from a post-arrest bail application.

5) **AIR 2008 SC 251 – INDER MOHAN GOSWAMI AND ANR VS STATE OF UTTARANCHAL AND ORS.**
Initiating Criminal Proceedings in a case of Civil Nature is mere abuse of process of Court.

6) **2013 (1) ALT (CRL) 17 AP – KOTLA HARI CHAKRAPANI REDDY & ANOTHER V/S THE STATE OF A.P. REP. BY ITS PUBLIC PROSECUTOR**
Name of the person cannot be deleted as accused unless there is a judicial decisions.

7) **2008 CRLJ 148 – DR. SHASHIKANT D. KARNIK VS THE STATE OF MAHARASTRA THROUGH ANTI CORRUPTION BUREAU**
Noncompliance to Section 102 of Cr.P.C renders the entire order totally illegal and perverse.

8) **1992 CRLJ 527 – STATE OF HARYANA AND OTHERS VS CH. BHAJAN LAL AND OTHERS**. Sec 154 – 155 - 156 CRPC explained in detailed
A noticeable feature of the scheme under Chapter XIV of the Code is that a Magistrate is kept in the picture at all stages of the police investigation but he is not authorised to interfere with the actual investigation or to direct the police how that investigation is to be conducted. But if a police officer transgresses the circumscribed limits and improperly and illegally exercises his investigatory powers in breach of any statutory provision causing serious prejudice to the personal liberty and also property of a citizen, then the Court, on being approached by the person aggrieved for the redress of any grievance has to consider the nature and extent of the breach and pass appropriate orders as may be called for without leaving the citizens to the mercy of police echelons since human dignity is a dear value of our Constitution. No one can demand absolute immunity even if he is wrong and claim unquestionable right and unlimited powers exercisable upto unfathomable cosmos.

9) **1992 CRLJ 561 – SMT. KAMALA BAI AND OTHERS VS THE STATE OF KARNATAKA**

Power of the High Court to grant bail under Section 439 CR.P.C is not limited by Section 37 of NDPS Act.

10) AIR 2004 SC 261 – BANTI @ GUDDU VS STATE OF MADHYA PRADESH

No ground to discard the evidence of witness because they relate to the deceased. It can be relied upon after careful scrutiny. Public Prosecutor is not obliged to examine all witnesses. Delayed examination of prosecution witnesses, not to render prosecution version suspect.

It is true, the evidence of defence witness is not to be ignored by the Courts. Like any other witnesses, his evidence has to be tested on the touchstone of reliability, credibility and trustworthiness particularly when he attempts to resile and speak against records and in derogation of his earlier conduct and behavior. If after doing so, the court finds it to be untruthful, there is no legal bar in discarding it. If the lack of motive as pleaded by the accused is a factor, at the same time, it cannot be lost sight of that there is no reason as to why PW1 would falsely implicate the accused persons.

If there are too many witnesses on the same point, the public prosecutor is at liberty to choose two or some among them alone so that the time of the Court can be saved from repetitious depositions on the same factual aspects. That principle applies when there are too many witnesses cited, if they all had sustained injuries at the occurrence. The public prosecutor, in such cases is not obliged to examine all the injured witnesses. If he is satisfied by examining any two or three of them, it is open to him to inform the Court that he does not propose to examine the remaining persons in that category. This will help not only the prosecution in relieving itself of the strain of adducing repetitive evidence on the same point but also help the Court considerably in lessening the workload.

It cannot be laid down as a rule of universal application that if there is any delay in examination of a particular witness, the prosecution version becomes suspect. It would depend upon several factors. If the explanation offered for the delayed examination is plausible and acceptable and the court accepts the same as plausible, there is no reason to interfere with the conclusion.

11) 2006(2) ALT (Cri) 355 AP – SADHU NARAYAN VS SHO

Held that the Court can direct further investigation at the time of cognizance and after cognizance is taken. But after appearance of the accused and after commencement of trial on charge being framed, the Court is not empowered to order further investigation. After appearance of the accused and after commencement of the trial, the Court can only look into the materials already on the record and either frame charge, if a prima facie case is made out or discharge the accused bearing in mind relevant provisions. Of course, the discharge of the accused would not prevent further investigation by police and submission of charge-sheet also thereafter, if a case for the same is made out. No doubt, police has got

independent power to make further investigation and file any number of additional charge-sheets but the Court cannot order further investigation after commencement of trial. A judge shall be impartial and he cannot be a party to the investigation.

12) 1973 CRLJ 869 – STATE OF KERALA VS M.K. PYLOTH

Before ordering remand or extension of remand, Court had to satisfy itself on an examination of materials placed before it that there were reasonable grounds for doing so

13) 1972 CRLJ 975 – VARINDER KUMAR AND ANOTHER VS STATE OF PUNJAB

Where the charge against the accused is under Section 420 in that he induced the complainant to part with his goods, on the understanding that the accused would pay for the same on delivery but did not pay, if the accused had at the time he promised to pay cash against delivery an intention to do so. the fact that he did not pay would not convert the transaction into one of cheating. But if on the other hand he had no intention whatsoever to pay but merely said that he would do so in order to induce the complainant to part with the goods then a case of cheating would be established.

14) AIR 2001 SC 2637 – T.T. ANTHONY VS STATE OF KERALA AND OTHERS

There can be no second F.I.R. and consequently there can be no fresh investigation on receipt of every subsequent information in respect of the same cognizable offence. It is quite possible and it happens not infrequently that more information than one are given to a police officer in charge of a police station in respect of the same incident involving one or more than one cognizable offences. In such a case he need not enter every one of them in the station house diary and this is implied in Section 154 of Code of Criminal Procedure Apart from a vague information by a phone call or a cryptic telegram the information first entered in the station house diary, kept for this purpose, by a police officer in charge of a police station is the First Information Report--F.I.R. postulated by Section 154 of Code of Criminal Procedure. All other information made orally or in writing after the commencement of the investigation in the cognizable offence disclosed from the facts mentioned in the First Information Report and entered in the station house diary by the police officer or such other cognizable offences as may come to his notice during the investigation, will be statements falling under Section 162 of Code of Criminal Procedure. No such information/statement can properly be treated as an F.I.R. and entered in the station house diary again, as it would in effect be a second F.I.R. and the same cannot be in conformity with the scheme of the Code of Criminal Procedure.

The report and findings of the Commission of Inquiry are meant for information of the Government. Acceptance of the report of the Commission by the Government would only suggest that being bound by the Rule of law and having duty to act fairly, it has endorsed to act upon it. The duty of the police investigating agency of the State is to act in accordance with the law of the land. Acting thus the investigating agency may with advantage make use of the report of the commission in its onerous task of investigation agency from forming a different opinion under Section 169/170 of Code of Criminal Procedure if the evidence obtained by it supports such a conclusion. In our view, the Courts civil or criminal are not bound by the report of findings of the Commission of Inquiry as they have to arrive at their own decision on the evidence placed before them in accordance with law.

15) 2000(4) Crimes 23 SC = 2001 CR.L.J 511 – HUKUM SINGH VS STATE OF RAJASTHAN

Public prosecutor can skip prosecution witness not likely to support the case. He has freedom to pick and choose witnesses. If the public prosecutor got reliable information that any one among that category would not support the prosecution version, he is free to state in Court about that fact and skip that witness being examined as a prosecution witness. It is open to the defence to cite him and examine as defence witness. The decision in this regard has to be taken by the public prosecutor in a fair manner. He can interview the witness beforehand to enable him to know well in advance the stand which the particular person would be adopting when examined as a witness in Court.

16) 2002 CRLJ 2029 – CBI VS R.S. PAI AND ANOTHER

The word “SHALL” u/sec 173(5) and Sec 205 CRPC cannot be interpreted as mandatory but as directory. As such documents can be produced subsequent to the filing of Charge Sheet before the court.

17) 2001 CRLJ 1254 SC – BIPIN SHANTILAL PANCHAL VS STATE OF GUJRAT

Whenever an objection is raised during evidence taking stage regarding the admissibility of any material or item of oral evidence the trial Court can make a note of such objection and mark the objected document tentatively as an exhibit in the case (or record the objected part of the oral evidence) subject to such objections to be decided "at the last stage in the final judgment. If the Court finds at the final stage that the objection so raised is sustainable the Judge or Magistrate can keep such evidence excluded from consideration. In our view there is no illegality in adopting such a course. However, we make it-clear that if the objection relates to deficiency of stamp duty of a document the Court has to decide the objection before proceeding further.

18) **1979 CRLJ 1036 – HUSSAINARA KHATOON AND OTHERS VS HOME SECRETARY STATE OF BIHAR, PATNA**

Criminal - Under trials - The petition discloses shocking state of affairs in the jails where people charged for minor offences were languishing in jail for 5-10 years without initiation of trial - These prisoners keep on languishing in jail as they were not in position to furnish bail – the Courts by ignoring the differential capacity of the rich and the poor to furnish bail and treating them equally produce inequality between the rich and the poor; the rich who is charged with the same offence in the same circumstances is able to secure his release while the poor is unable to do so on account of his poverty - Another infirmity in the judicial system is the gross denial of justice to the under trial prisoners - Speedy trial is of the essence of criminal justice and delay in trial by itself constitutes denial of justice - Court directed State Government to look into the matter and set more Courts to speed up the trial, improve the conditions of service if they wanted to improve the system of administration of justice.

19) **2003 Cri.L.J 2028 :: 2003 (2) ALT (CRL) 60 SC – B.S. JOSHI VS STATE OF HARYANA**

If for the purpose of securing the ends of justice, quashing of F.I.R. becomes necessary, Section 320, Cr. P.C. would not be a bar to the exercise of power of quashing. It is however a different matter depending upon the facts and circumstances of each case whether to exercise or not such a power.

20) **1978 CRLJ 391 –SS CHOUDARY VS STATE OF UP**

Section 319 Cr.PC gives a discretion to a Court to proceed against a person, who is not an accused at the trial. It does not make it incumbent on the Court to postpone the trial and proceed against the person concerned in the same trial.

21) **1999 CRLJ 3534 – ABHOY PRADHAN VS STATE OF WEST BENGAL**

Sec 385 Cr.P.C - clearly provides that in an appeal from a case instituted on a police report, only the representative of the State and the accused/convict are entitled to notice and hearing. When such clear provision has been made in the statute in unambiguous terms, there is absolutely no justification for us to adhere to the "Settled practice" of this Court. "Settled practice" of the Court, however, hallowed and sanctified same may be, cannot prevail over clear legislative mandate.

22) **2008 CRLJ 1400 SC – RAMESHWAR DASS VS STATE OF PUNJAB**

Section 304B IPC - in terms of Section 113B of the Indian Evidence Act, onus of proof was upon the Appellant - As the defence taken by the Appellant had not been established, he could not be held to have discharged the said onus - 21 years passed, Appellant married a cousin of the deceased and an application had been filed for condoning the offence -

An offence under Section 304B of the Indian Penal Code, 1860 was not compoundable - Only because such a marriage with cousin had allegedly taken place, the same by itself could not be said to be a ground for rejecting the prosecution story.

23) 2002 (1) CRIMES 162 SC = 2002(1) ALT (Cri) 209 – STATE OF BIHAR AND ANOTHER VS MD. KHALIQUE AND ANOTHER

Power of quashing a criminal proceeding can be exercised sparingly and with circumspection that too in the rarest of the rare cases."

24) 1997(1) ALD (CRI) 415 SC= 1996 (6) SCC 435 – STATE OF ORISSA VA SHARAT CHANDRA SAHU AND ANOTHER

While investigating a cognizable offence and presenting a charge-sheet for it, the police are not debarred from investigating any non-cognizable offence arising out of the same facts and including them in the charge sheet.

25) 2002 (2) ALT (CRI) 193 AP = 2002 (1) ALD (CRI) 661 – P.KUMAR VS THE PUBLIC PROSECUTOR HIGH COURT OF AP, HYDERABAD

The contention that because of the delay in issuing the F.I.R. the case is to be taken as false, cannot be accepted, because it is well known that mere delay is not a ground for quashing the complaint, or the F.I.R. It is also well known that in cases where offences are against women, the victim woman would be slow in making a report to police, because her reputation would be at stake, and therefore would, in many cases, take considerable time to decide whether to give a police report about the incident or not.

26) 2005 CRLJ 100 SC – POONAM CHAND JAIN VS FAZRU

There is no statutory bar in filing a second complaint on the same facts. In a case where a previous complaint is dismissed without assigning any reason, the Magistrate under Section 204 Cr.P.C ay take cognizance of an offence and issue process if there is sufficient ground for proceeding. But the second complaint on the same facts could be entertained only in exceptional circumstances, namely, where the previous order was passed on an incomplete record or on a misunderstanding of the Nature of complaint or it was manifestly absurd, unjust or where new facts which could not, with reasonable diligence, have been brought on record in the previous proceedings have been adduced. The second complaint could be dismissed after a decision has been given against the complainant in previous Matter upon a full consideration of his case. Further second complaint on the same facts would be entertained only in exceptional circumstances, namely, where previous order was passed on an incomplete record or on misunderstanding of the complaint or it was manifestly absurd or unjust.

27) 1999 CRLJ 4305 SC – STATE OF MAHARASTRA VS TAPAS D. NEOGY

The bank account of the accused or any of his relation is 'property' within the meaning of Section 102 of the Criminal Procedure Code and a police officer in course of investigation can seize or prohibit the operation of the said account if such assets have direct links with the commission of the offence for which the police officer is investigating into.

28) 1998 (1) ALD (CRI) 415 AP – ANNIE KOSHY VS STATE OF AP AND ANOTHER

In a private complaint, the Magistrate may either take cognizance of the alleged offence under section 190, in which case, he has to follow the procedure under Chapter XV and examine the complainant and his witnesses if any under section 200, Cr.P.C. or order investigation and report by police into the alleged offence under section 156 of the Code in which case, he need not examine the complainant or his witnesses under Section 200, Cr.P.C. before passing an order. This power under section 156, Cr.P.C. can be exercised by a Magistrate only at pre-cognizance stage, but if he takes cognizance of the alleged offence as postulated under Chapter XV, he cannot refer it u/S. 156, Cr.P.C. He has to take recourse to Section 202, Cr.P.C. for post-cognizance investigation.

29) 2005(3) ALT (CRI) 285 AP – P.V.G.K.S. SASTRY VS THE STATE OF ANDHRA PRADESH THROUGH PUBLIC PROSECUTOR

Parties shall avail of remedies available in statutory provisions, before approaching Courts.

30) 1999 (1) ALD (Cri) 926 AP – MOGILI CHINNA BALAIAH VS K. SAMBA MURTHY AND OTHERS

The sub-registrar's appointing authority was the deputy inspector general of registration and stamps and not the State Government. Hence sanction u/sec 197 Cr.P.C. to prosecute the accused (sub – registrar) was not necessary even they committed offence in discharging their official functions.

31) AIR 2005 SC 3309 – SAMYA SETT VS SHAMBU SARKAR AND ANOTHER

Application for default bail was allowed in absence of PP on pretext that charge sheet was not filed. On same day at later stage Learned PP appeared and submitted that Charge Sheet was already filed and that the accused is not entitle for Default Bail. The Court recalled First Order of bail and dismissed the bail application in the absence of accused. Held that Once order was passed in favour of the accused releasing him on bail, it could not have been recalled without observing principles of natural justice, ie., without giving an opportunity to hear the accused.

Adverse remarks and strictures against judicial officers - justification explained.

32) 2008(1) SCC (Crl) 36= AIR 2008 SC 78 – DINESH DALMIA VS CBI

"Bail - Right to bail does not revive only because a further investigation remains pending." (Statutory Bail u/sec 167(2) Proviso)

when a charge sheet is not filed and investigation is kept pending, benefit of proviso appended to Sub-section (2) of Section 167 of the Code would be available to an offender; once, however, a charge sheet is filed, the said right ceases. Such a right does not revive only because a further investigation remains pending within the meaning of Sub-section (8) of Section 173 of the Code.

Law does not require that filing of the charge sheet must await the arrest of the accused.

33) 2005(1) ALD (CRI) 717 SC = AIR 2005 SC 2119 – IQBAL SINGH MARWAH VS MEENAKSHI MARWAH

Sec 195 CRPC - The principal controversy revolves round the interpretation of the expression "when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court" occurring in Clause (b)(ii) of Sub-section (1) of Section 195 Code of Criminal Procedure On a plain reading Clause (b)(ii) of Sub-section (1) of Section 195 is capable of two interpretations. One possible interpretation is that when an offence described in Section 463 or punishable under Section 471, Section 475 or Section 476 I.P.C. is alleged to have been committed in respect of a document which is subsequently produced or given in evidence in a proceeding in any Court, a complaint by the Court would be necessary. The other possible interpretation is that when a document has been produced or given in evidence in a proceeding in any Court and thereafter an offence described as aforesaid is committed in respect thereof, a complaint by the Court would be necessary. On this interpretation if the offence as described in the Section is committed prior to production or giving in evidence of the document in Court, no complaint by Court would be necessary and a private complaint would be maintainable. The correct view Section 195(1)(b)(ii) Code of Criminal Procedure would be attracted only when the offences enumerated in the said provision have been committed with respect to a document after it has been produced or given in evidence in a proceeding in any Court i.e. during the time when the document was in custodia legis.

34) 1997(2) ALT (Cri) 386 SC – A.A. MULLA VS STATE OF MAHARASTRA

No bar on retrial on same facts for distinct offences. If the ingredients of offences at first trial distinct from that of offence at second trial then the second trial is not barred u/sec 403 Cr.P.C

35) 1981 CRLJ 1553 (KERALA) – STATE VS MOHAMMAD ISMAIL

When there were specific provisions laying down the procedure to be followed when the Magistrate finds that an accused could not be served with summons (procedure contemplated u/Sec 82, 83, 299 proviso to be

followed) there was no justification for not following those provisions and granting permission to the Assistant Public Prosecutor to withdraw the case without prejudice to the Right to file fresh complaint when the accused becomes available

36) 1999 CRLJ 3479 – ARUN VYAS & ANR VS ANITHA VYAS

Discharge - if Magistrate finds that charge against accused do not make out prima facie case and not furnish basis for framing charge he has no option but to discharge accused

37) 2004(2) ALT (Crl) 532 AP – KOMMALAPLLI RAMA VENKATA DANDAPANI AND OTHERS VS STATE OF AP THROUGH SHO AND OTHERS

When both the complainant and the accused have entered into a compromise and are willing to compound to offence which is compoundable as per Section 320 Cr.P.C. merely because the charge sheet is not filed, the Court need not shirk the responsibility to compound the offence because there is Nothing in Section 320 Cr.P.C. to show that compounding can be done only after filing of charge sheet. If the offence which requires permission of the Court to do so is to be compounded, the Court can examine the case and decide whether or not to accord permissions to compound. If it feels that permission for compounding can be accorded, it can give the permission even when the charge sheet is not filed and the case is still under investigation. If the offence intended to be compounded does not required permission of the Court and if the Court finds that person with whose consent the offence compounded has actually give the consent for compounding, it can compound the offences even when it is at the stage of investigation.

38) 1975 CRLJ 1091 BHAGWANDAS JAGDISH CHANDER VS DELHI ADMINISTRATION

Same Transaction in Sec 223 Crpc – where there is proximity of time or place or unity of purpose and design or continuity of action in respect of a series of acts, it may be possible to infer that they form part of the same transaction. It is, however not necessary that everyone of these elements should co-exist for a transaction to be regarded as the same. But if several acts committed by a person show a unity of purpose or design that would be a strong circumstance to indicate that those acts form part of same transaction.

39) 1997 CRLJ 3954 – HARKIRAT SINGH VS STATE OF PUNJAB

If there is material contradictions in evidence of eye witnesses then person is entitled to benefit of doubt.

40) 2006(2) ALT (Cri) 16 SC – STATE OF ORISSA AND ANOTHER VS SAROJ KUMAR SAHOO

The inherent powers u/sec 482 cr.p.c should not be exercised by the High Court to stifle a legitimate prosecution. The High Court being the highest Court of a State should normally refrain from giving a proma facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard and fast rule can be laid down in regard to cases in which the high court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage.

While exercising jurisdiction under Section 482 of the Cr. P.C., it is not permissible for the Court to act as if it was a trial court. Even when charge is framed at that stage, the Court has to only prima facie be satisfied about existence of sufficient ground for proceeding against the accused. For that limited purpose, the Court can evaluate material and documents on records but it cannot appreciate evidence. The Court is not required to appreciate evidence to conclude whether the materials produced are sufficient or not for convicting the accused.

41) 2008(10) SUPREME COURT CASES 394 – YOGESH @ SACHIN JAGDISH JOSHI VS STATE OF MAHARASHTRA

Existence of the conspiracy and its objective can be inferred from the surrounding circumstances and the conduct of the accused. But the incriminating circumstances must form a chain of events from which a conclusion about the guilt of the accused could be drawn.

42) 2006(3) CRIMES 203 SC – STATE OF KARNATAKA AND ANOTHER VS PASTOR P RAJU

Cognizance takes place when Magistrate first takes judicial notice of offence whether on complaint or police report or information. Taking cognizance not same thing as issuance of process. Issuance of process is stage subsequent to taking cognizance

43) AIR 2003 SC 2612 – UNION OF INDIA VS PRAKASH P. HINDUJA AND ANOTHER

The court would not interfere with the investigation or during the course of investigation which would mean from time of lodging FIR till the submission of the report by the officer in charge of police station in court u/sec 173(2) Cr.P.C this field being exclusively reserved for the investigating agency.

If cognizance is in fact taken on a police report initiated by the breach of a mandatory provision relating to investigation, there can be no doubt that the result of the trial, which follows it cannot be set aside unless the illegality in the investigation can be shown to have brought about a miscarriage of justice and that an illegality committed in the course of

investigation does not affect the competence and the jurisdiction of the Court for trial.

44) 2001(2) ALT (CRI) 287 SC = AIR 2001 SCC 3014 – M. KRISHNAN VS VIJAY SINGH AND ANOTHER

In all cases of cheating and fraud, in the whole transaction, there is generally some element of civil nature. However, in this case, the allegations were regarding the forging of the documents and acquiring gains on the basis of such forged documents. The proceedings could not be quashed only because the respondents had field a civil suit with respect to the aforesaid documents. In a criminal court the allegations made in the complaint have to be established independently, notwithstanding the adjudication by a civil court Had the complainant failed to prove the allegations made by him in the complaint, the respondent were entitled to discharge or acquittal but not otherwise. If mere pendency of a suit is made a ground for quashing the criminal proceedings, the unscrupulous litigants, apprehending criminal action against them, would be encouraged to frustrate the course of justice and law by filing suits with respect to the documents intended to be used against them after the initiation of criminal proceedings or in anticipation of such proceedings. Such a course cannot be the mandate of law. Civil proceedings, as distinguished from the criminal action, have to be adjudicated and concluded by adopting separate yardsticks. The onus of proving the allegations beyond reasonable doubt, in criminal case , is not applicable in the civil proceedings which can be decided merely on the basis of the probabilities with respect to the acts complained of.

revisional or inherent powers for quashing the proceedings at the initial stage can be exercised only where the allegations made in the complaint or the first information report, if taken at their face value and accepted in their entirety, do not prima facie disclose the commission of an offence or where the uncontroverted allegations made in the FIR or complaint and the evidence relied in support of the same do not disclose the commission of any offence against the accused, or the allegations are so absurd and inherently improper that on the basis of which no prudent, person could have reached a just conclusion that there were sufficient grounds in proceedings against the accused or where there is an express legal bar engrafted in any provisions of the Code or any other statute to the institution and continuance of the criminal proceeding or where a criminal proceeding is manifestly actuated with malafide and has been initiated maliciously with the ulterior motive for wrecking vengeance on the accused and with a view to spite him due to private and personal grudge.

45) 2011(2) SUPREME COURT CASES (CRI) 278 = 2011(4) SCC 426 –CBI VS ABU SALEM ANSARI AND ANOTHER

In the present case the accused person, was absconding and that his case was already split up and has to undergo the trial. Obviously, the evidence

adduced in the earlier trial cannot be used against the said accused except as provided in Sub-section (1) of Section 299 Cr.P.C. In the circumstances of the absconding accused appears again, the prosecution witnesses have to be examined afresh. But, if the deponent is dead or incapable of giving evidence or cannot be found or his presence cannot be procured without an amount of delay, expense or inconvenience, the prosecution would be justified in relying on the evidence already on record taken in the earlier trial in the absence of the absconding accused.

46) AIR 2006 SC 1892 = 2006 MADLJ (2) 173 LOK RAM VS NIHAL SINGH AND ANOTHER

Power under Section 319, Cr. P.C. is discretionary and should be exercised only to achieve criminal justice and that the Court should not turn against another person whenever it comes across evidence connecting that other person also with the offence. This Court further held that a judicial exercise is called for, keeping a conspectus of the case, including the stage at which the trial has proceeded already and the quantum, of evidence collected till then, and also the amount of time which the Court had spent for collecting such evidence. The Court, while examining an application under Section 319 of the Code, has also to bear in mind that there is no compelling duty on the court to proceed against other persons. In a nutshell, for exercise of discretion under Section 319 of the Code all relevant factors including those noticed above, have to be kept in view and an order is not required to be made mechanically merely on the ground that some evidence had come on record implicating the person sought to be added as an accused.

It is further evident that such person even though initially been named in the FIR as an accused, but not charge sheeted, can also be added to face the trial. Power u/sec 319 can be exercised by the Court suo moto or an application by someone including accused already before it, if it is satisfied that any person other than accused has committed an offence he is to be tried together with the accused.

47) (2011) 2 SCC (CRI) 272 = (2011)4 SCC 418 – CBI VS MUSTAFA AHMED DOSSA

The evidence adduced in the earlier trial cannot be used against the said accused except as provided in Sub-section (1) of Section 299 Cr.P.C. In the circumstances of the absconding accused appears again, the prosecution witnesses have to be examined afresh. But, if the deponent is dead or incapable of giving evidence or cannot be found or his presence cannot be procured without an amount of delay, expense or inconvenience, the prosecution would be justified in relying on the evidence already on record taken in the earlier trial in the absence of the absconding accused.

48) 2002 SCC (Cri) 1423 = AIR 2002 SC 2861 – RAJ KISHOR ROY VS KAMLESHWAR PANDEY AND ANOTHER

The legislative mandate engrafted in Sub-section (1) of Section 197 is a prohibition imposed by the statute from taking cognizance. It has been held that the offence alleged to have been committed must have something to do, or must be related in some manner, with the charge of official duty. It has been held that the only point for determination is whether the act was committed in discharge of official duty. It has been held that there must be a reasonable connection between the act and the official duty.

49) 1999(1) ALD (CRI) 468 SC = AIR 1999 SC 1765 – M. KRISHNA VS STATE OF KARNATAKA

Variety of reasons cannot be ground for quashing of FIR and for injuncting investigating authority to investigate into offence alleged.

50) 1984 LAW SUIT SC 349 = AIR 1985 SC 404 – HARJINDER SINGH VS STATE OF PUNJAB

It is not permissible for Court under Section 223 to club and associate case on police Challan and case on complaint where prosecution version in police challan case and complaint case are materially different, contradictory and mutually exclusive.

clubbing and consolidation of two cases, one instituted on police report and the other instituted on private complaint (when both were triable by the Sessions Court) is impermissible. It was directed that the two cases in such a situation should be tried by the same judge but not consolidated. The following direction was given in that case:

"The evidence should be recorded separately in both the cases, one after the other, except to the extent that the witnesses for the prosecution who are common to both the cases must be examined in one case and their evidence be read as evidence in the other. The Sessions Judge should after recording the evidence of the prosecution witnesses in one case, withhold his judgment and then proceed to record the evidence of the prosecution in the other case. Thereafter he will proceed to simultaneously dispose of the cases by two separate judgments, taking care mat the judgment in one case is not based on the evidence recorded in the other case,"

51) 2006(2) ALT (Cri) 224 SC = AIR 2006 SC 1599 - SANKARA MOITRA VS SADHNA DAS AND ANOTHER

Section 197 (1), Cr. P.C. its opening words and the object sought to be achieved by it, and the decisions of the Supreme Court, clearly indicate that a prosecution hit by that provision cannot be launched without the sanction contemplated. It is a condition precedent, as it were, for a successful prosecution of a public servant when the provision is attracted, though the question may arise necessarily not at the inception, but even at a subsequent stage.

52) 1993 CRLJ 547 – STATE OF HARYANA VS SHIV SINGH AND OTHERS

An offence u/Sec 471 IPC shall be punished in same manner as if he had forged that document and that Sec 468 Cr.P.C shall not be applicable to 471 IPC as the punishment is life or imprisonment which may extend to ten years.

53) 2000 CrLJ 169a SC = AIR 2000 SC 11 - BALBIR VS STATE OF HARYANA AND ANOTHER

The appellant did not make any contention that a joint trial of both cases must be ordered. Having not done so he cannot raise such a contention on that score at any later stage (Appeal stage).

54) 1996 CRLJ 2231 ASHUTOSH CHOWDARY VS STATE AND ANOTHER

Sec 406 IPC is not a continuing offence. The Magistrate can exercise the powers u/Sec 473 Cr.P.C independent of any application.

55) 1998 (2) ALD (Cri) 649 SC = AIR 1998 SC 3334 – LASHKARI RAM AND OTHERS VS MASTRAM TANTA AND ANOTHER

The High Court finding that the sentence imposed upon Respondent No. 1 was inadequate, in exercise of its suo moto powers, issued notice to him calling him to show cause why the sentence should not be enhanced. During those proceedings the High Court found that the whole trial was conducted in an unholy haste and there was plea bargaining. Therefore, instead of enhancing the sentence it thought it proper to quash the whole trial and remanded the case back to the trial court for conducting the trial afresh.

56) 1996 SCC (CRL) 730 = 1996 CR.L.J 2503 – BABU SINGH VS STATE OF PUNJAB

If witness found to be independent and reliable and believed to be present during occurrence then his evidence cannot be rejected on sole ground that his name had not been mentioned in FIR - non-mentioning of name of witness may be honest omission, inadvertent mistake or may be due to various other conceivable reasons.

57) 1996 (3) CRIMES 220 SC = AIR 1996 SC 2826 – YAMUNA SINGH AND OTHERS ETC VS STATE OF BIHAR

Evidence of approver in all material particulars finds corroboration from evidence of other witnesses. Approver's evidence apart from being reliable does not suffer from any omission or contradiction vis-a-vis his statement recorded under Section 164. Approver has given all minor details about conspiracy hatched by appellants to murder. Conviction upheld on the basis of statement of approver.

58) 1996 (1) CRIMES 20 SC = AIR 1997 SC 331 – OMKAR NAMDEO JADHAO AND OTHERS VS SECOND ADDITIONAL SESSIONS JUDGE BULDANA AND ANOTHER.

Court should not come to conclusion on basis of statements which are not evidence

59) 1972 CRLJ 1317 = AIR 1972 SC 2077 – NIKA RAM VS STATE OF HIMACHAL PRADESH

Recording of confession requires compliance of provisions of Sec 164 cr.p.c.

60) 1967 CRLJ 248- STATE VS. LEKH RAJ FAQIR CHAND AND OTHERS

Section 351 Cr.P.C: The language of the section makes it clear that an order under the section can be made only after cognizance of the offence has been taken by a Magistrate and he is seized of the case. After cognizance of the offence has been taken by a Magistrate he cannot be deemed to get divested of that cognizance merely because of his passing an order under Section 351, and it would, in my opinion, be an erroneous approach to hold that after the making of an order under Section 351 by a Magistrate, he takes fresh cognizance of the offence. The initial act of taking cognizance of the offence is complete and cannot be undone by the mere arraignment of another person as an accused consequent upon the making of an order under Section 351 of the Code, and the reason for that is that when a Magistrate takes cognizance he takes cognizance of the offence as a whole and not merely in respect of the person who, for the time being, is put in the dock as an accused.

Section 351 is an independent section in a Chapter of the Code distinct and separate from the one in which Sections 190 and 191 find mention and there is nothing in Section 351 to indicate that resort to it would bring the case under Section 190 (1) (c) and thus make compliance with Section 191 imperative.

61) 1997 CRLJ 2989 = AIR 1997 SC 2494 – STATE THROUGH CBI VS. DAWOOD IBRAHIM KASKAR AND OTHERS

Section 73 of the Code gives a power to the Magistrate to issue warrant of arrest and that too during investigation is evident from the provisions of part 'C of Chapter VI of the Code. Needless to say the provisions of proclamation and attachment as envisaged therein is to compel the appearance of a person who is evading arrest. Now, the power of issuing a proclamation under Section 82 can be exercised by a Court only in respect of a person 'against whom a warrant has been issued by it'. In other words, unless the Court issues a warrant the provisions of Section 82, and the other Sections that follow in that part, cannot be invoked in a situation where inspite of its best efforts the police cannot arrest a person under Section 41. Resultantly, if it has to take the coercive measures for the apprehension of such a person it has to approach the Court to issue warrant of arrest under Section 73; and if need be to invoke the provisions of part 'C' of Chapter VI.

Section 73 of the Code is of general application and that in course of the investigation a Court can issue a warrant in exercise of power thereunder to apprehend, inter alia, a person who is accused of a non-bailable offence and is evading arrest. On such production, the Court may either release him on bail under Section 439 or authorise his detention in custody (either police or judicial) under Section 167 of the Code.

62) (2008) 2 SCC CRL 73= AIR 2008 SC 1528 - SOM MITTAL VS GOVERNMENT OF KARNATAKA

The expression "rarest of rare cases" is used to emphasize that the power under Section 482 Cr.P.C to quash the FIR or criminal proceedings should be used sparingly and with circumspection."

Judgments are not to be construed as Statutes. Nor words or phrases in judgment to be interpreted like provisions of statute.

63) 2006(1) ALT (CRI) 131 AP = 2005 CRLJ 3601 – UTTAM KUMAR JAIN VS STATE OF AP

Under hire purchase agreement financier has a right to seize vehicle and take possession, if there was a default in payment of one installment.

64) AIR 1994 SC 1349 – JOGINDER KUMAR VS STATE OF UP

The law of arrest is one of balancing individual rights, liberties and privileges, on the one hand, and individual duties, obligation and responsibilities on the other; of weighing and balancing the rights, liberties and privileges of the single individual and those of individuals collectively; of simply deciding what is wanted and where to put the weight and the emphasis; of deciding which comes first - the criminal or society, the law violator or the law abider; of meeting the challenge which Mr. Justice Cardozo so forthrightly met when he wrestled with a similar task of balancing individual rights against society's rights and wisely held that the exclusion rule was bad law, that society came first, and that the criminal should not go free because, the constable blundered.

65) 2010 (3) SCC CRL 1262 = 2010 (10) SCC 259 – ABDUL SAYED VS STATE OF MADHYA PRADESH

Commission of offence with motive in a pre-planned manner shall always justify conviction.

66) 2001 SUPREME APPEALS REPORT (CRL) 634 = AIR 2001 SC 2521 – RAKESH AND ANOTHER VS STATE OF HARYANA

A person named in F.I.R. but dropped in charge-sheet can be summoned under Section 319 (1) on evidence given by prosecution witness in examination-in-chief without cross-examining him.

67) 2000 (1) ALD (CRI) 384 AP = 2000 CRLJ 2048 – KANTIPUDI JAYASEELA VS STATE AND OTHERS

It is true that the sub-section (4) of Section 319 Cr.PC in letter may sound like contemplating 'de novo' trial. But this cannot be mechanically followed. The Court has to see whether there is any incriminating material against the newly added accused in the evidence of any one of the prosecution witnesses examined earlier. If any such material is there, certainly an opportunity should be given to the newly added accused to cross-examine that witness. it is not necessary to examine all the witnesses mechanically after impleadment of newly added accused. The object of the section is to give opportunity to the newly added accused to meet the incriminating material against him. It is futile to order re-examination of the witness who did not say anything against the newly added accused. It is true that the right of cross-examination is a valuable right, however slender it may be as was held in the above case. Still, such an opportunity cannot be mechanical.

68) 2002 SCC (Crl) 1203 = AIR 2002 SC 2031- SHASHIKANT SINGH VS TARKESHWAR SINGH AND ANOTHER

Sec 319 CRPC: The mandate of the law of fresh trial is mandatory whereas the mandate that newly added accused could be tried together with the accused, directory.

69) 2010 SUPREME APPEAL REPORTER 117 = 2010 (11) SCC 520 – HARINARAYANA G. BAJAJ VS STATE OF MAHARASTRA

"When an accused is summoned under Section 319 Cr.P.C. there has to be De-novo trial."

70) 1996 CRLJ 1127 SC = AIR 1996 SC 722 – STATE OF MAHARASTRA AND OTHERS VS ISHWAR PIRAJI KALPATRI AND OTHERS.

The emphasis of Section 197(1) of other similar provisions that "no court shall take cognizance of such offence except with the previous sanction" posits that before the taking cognizance of the offence alleged, there must be before the court the prior sanction given by the competent authority. Therefore, at any time before taking cognizance of the offence it is open to the competent authority to grant sanction and the prosecution is entitled to produce the order of sanction. Filing of charge-sheet before the court without sanction per se is not illegal, nor a condition precedent.

71) 2004 CRLJ 2855 – ZAHEERA HABEEBULA SHAIK VS STATE OF GUJRAT

The object of a criminal trial is to mete out justice and to convict the guilty and to protect the innocent and therefore the trial should be a search for truth and not about over technicalities, and must be conducted under such rules as will protect the innocent and punish the guilty. Failure to accord fair hearing either to accused or the prosecution violates even minimum standards of due process of law. The Court is not merely to act as tape recorder recording evidence, overloading the object of trial i.e. to

get at the truth. Courts have to ensure that the accused persons are punished and that the might or authority of the state is not used to shield themselves or their man. If the appellate court considers additional evidence to be necessary, the provisions inS.386 Cr.P.C and S.391 Cr.P.C. have to be harmoniously considered to enable the appeal to be considered and disposed of also in the light of additional evidence as well.

72) 2005 (2) ALT (CRI) 50 (AP) – M/S KVR ENTERPRISES PROP K. SUBRAHAMANYAM VS. M/S MADRAS CEMENTS LTD AND ANOTHER

In case of proprietary concern proprietor was always an affected person, who could either indict or to be indicted.

73) 2008(1) SCC (CRL) 571 = 2008 CR.L.J. 356 – RAJINDER SINGH KATOCH VS CHANDIGARH ADMINISTRATION AND OTHERS

Registration of FIR – FIR Could not be directed if allegations do not constitute an offence.

74) AIR 1996 SC 2452 CBI SPE SIU(X), NEWDELHI VS DUNCANS AGRA INDUSTRIES LTD, CALCUTTA

The Banks had already filed suits for recovery of the dues of the Banks on account of credit facility and the said suits have been compromised on receiving the payments from the concerned companies. Even if an offence of cheating is prima facie constituted, such offence is a compoundable offence and compromise decrees passed in the suits instituted by the Banks, for all intents and purposes, amount to compounding of the offence of cheating.

75) 1992 CRLJ 1558 HP – MUNNA LAL VS STATE OF HIMACHAL PRADESH AND OTHERS

The provision of law about the registration of FIR were very clear. When a prayer for registration of FIR is made detailing the facts, then the police had no option but to register it and thereafter start investigations. It was another thing that after making investigations as a result whereof the police may come to a conclusion that no offence was made out in which eventuality it has to submit a report to the court for cancellation of the FIR. Making an investigation and thereafter forming an opinion about the non-commission of an offence followed by refusal to register FIR was a procedure not known to law. It is in fact violative of the manner in which FIR is to be registered and thereafter investigated.

76) 1992 CRLJ 2377 GUJRAT – JAYANTIBHAI LALUBHAI PATEL VS STATE OF GUJRAT

FIR is a public document in view of Section 74 of the Evidence Act. It is a document to which Section 162 of the Code does not apply and is of considerable value as on that basis investigation commenced and that is the first version of the prosecution.

77) 2013 (3) SCC (CRL) 227 - VAJRESH VENKATRAY ANVEKAR VS STATE OF KARNATAKA

Sec 304B IPC - When a man looses his daughter due to cyanide poisoning, he is bound to break down. He would take time to recover from the shock. Six hours delay cannot make his case untrue. It is also not proper to expect him to give all minute details at that stage. The F.I.R. contains sufficient details. It is not expected to be a treatise.

It is one thing to say that every wear and tear of married life need not lead to suicide and it is another thing to put it so crudely and suggest that one or two assaults on a woman is an accepted social norm. Judges have to be sensitive to women's problems.

78) AIR 2009 SC 2513 - KIRENDER SARKAR AND ORS. VS. STATE OF ASSAM

FIR is not substantive piece of evidence. If material facts are disclosed therein it would be sufficient to set criminal law in motion. Mention of name of accused in FIR is material fact. But mere non-mentioning of names of some of accused persons would not render it totally inadmissible.

79) AIR 2011 SC 280 - BRAHM SWAROOP AND ANR. VS. STATE OF U.P.

If evidence of eyewitnesses is trustworthy and believed by Court, question of motive becomes totally irrelevant.

Delay in sending report can prove fatal for prosecution. But creditworthiness of the ocular evidence adduced by the prosecution cannot be ignored. If ocular evidence is worthy of acceptance, the element of delay in registering a complaint or sending the same to the Jurisdictional Magistrate by itself would not in any manner weaken the prosecution case. An Appellate Court has full power to review, re-appreciate and reconsider the evidence upon which the Order of acquittal is founded.

80) AIR 2009 SC 46 - STATE REP. BY D.S.P., S.B.C.I.D., CHENNAI VS. K.V. RAJENDRAN AND ORS.

In view of the expressed prohibition in Section 362, under the inherent powers of Section 482 of Cr. PC, an Order disposing of a criminal petition, refusing to grant any relief, could not be modified.

81) AIR 2012 SC 364 – STATE OF PUNJAB VS DEVINDER PAL SINGH BHULLAR JUDICIAL BIAS:

The allegations of judicial bias are required to be scrutinised taking into consideration the factual matrix of the case in hand. The court must bear in mind that a mere ground of appearance of bias and not actual bias is enough to vitiate the judgment/order. Actual proof of prejudice in such a case may make the case of the party concerned stronger, but such a proof is not required. In fact, what is relevant is the reasonableness of the

apprehension in that regard in the mind of the party. However, once such an apprehension exists, the trial/judgment/order etc. stands vitiated for want of impartiality. Such judgment/order is a nullity and the trial "coram non-judice".

DOCTRINE OF WAIVER: Doctrine of waiver cannot be invoked against a person who was not party to case.

ALTERATION: The prohibition contained in Section 362 Cr.P.C. is absolute; after the judgment is signed, even the High Court in exercise of its inherent power under Section 482 Cr.P.C. has no authority or jurisdiction to alter/review the same.

Consequential proceedings Legality - Where initial action is not in consonance with law, held, all subsequent and consequential proceedings stand vitiated.

82) AIR 2011 SC 1232 – VISHNU AGARWAL VS STATE OF UP AND ANOTHER

While in a review petition, the Court considers on merits whether there is an error apparent on the face of the record, in a recall petition the Court does not go into the merits but simply recalls an order which was passed without giving an opportunity of hearing to an affected party. Hence Sec 362 Cr.P.C. not applicable.

83) AIR 2011 SC 1863 – BHAGWAN DASS VS STATE (NCT) OF DELHI

Person can be convicted on circumstantial evidence provided, links in chain of circumstances connects the accused with crime beyond reasonable doubt.

84) (2015) SUPREME SC 699 CHANDRA BABU @ MOSES VS STATE THROUGH INSPECTOR OF POLICE & ORS

The Magistrate has the jurisdiction to ignore the opinion expressed by the investigating officer and independently apply his mind to the facts that have emerged from the investigation.

The magistrate does not have the jurisdiction to direct reinvestigation by another agency.

85) AIR 2008 SC 1414 – SURESH NANDA VS CBI

Where there is a special Act dealing with specific subject, resort should be had to that Act instead of general Act providing for the matter connected with the specific Act.

86) AIR 2007 AP 40 - NORMAN SWAROOP ISSAC VS STATE BANK OF INDIA AND ANR.

Passport could be seized only where reasonable suspicion exists that holder of passport had committed an offence relating to passport or travel document.

87) ANTHRU & ANOTHER V/S THE SUB INSPECTOR OF POLICE, PANAMARAM POLICE STATION, WAYANAD & ANOTHER, 2015 0 Supreme(Ker) 793;

The statement of the learned Sessions Judge that the investigating officer has no authority to grant bail for a non-bailable offence and that is the prerogative of the judicial magistrate alone is a startling one. Section 437 of the Code relates to granting of bail in cases of non-bailable offences. Sub-section (1) provides that when any person accused of or suspected of the commission of any non-bailable offence is arrested or detained without warrant by an officer-in-charge of a police station or appears or is brought before the court other than the High Court or court of session, he may be released on bail. Two situations are contemplated by this provision: (1) accused is arrested or detained without warrant by a police officer and (2) accused appears or is brought before the magistrate. No doubt, in both these situations the accused may be released on bail. The question is who has been empowered to grant bail in the first situation. In that situation the only authority concerned is the Station House Officer. It is crystal clear that it is to him the power to release the accused on bail is given in the first situation. So, 8 when a person accused of or suspected of having committed a non-bailable offence is arrested or detained without a warrant, the station house officer has the power to release him on bail, but the power is subject to the two exceptions given in sub-section 1 of Section 437 of the Code. At the same it may be noted that so far the magistrate is concerned in the first and second provisos to the said Sub Section two exceptions have been carved out of the above two exceptions and those two exceptions given in the provisos are not applicable to a station house officer.

88) DATLA ASHWINI SWETHA VS. STATE OF A P 2015 1 ALT(Cri) 164; 2014 0 Supreme(AP) 1217;

the bail now granted is since a anticipatory one, till end of trial (without prejudice to the right to cancel meanwhile in case of need and/or for non-compliance of conditions supra) any absence of petitioner/s as accused for hearing/enquiry or trial, issuance of non-bailable warrant-NBW (unless cancelled before execution) and even its execution and production of accused as per the NBW; that does not tantamount to cancellation of bail including from the wording of Section 439(2) Cr.P.C. and as such in such an event no fresh bail application can be entertained. As it tantamounts to only cancellation of bail bonds earlier executed, (leave about the power of the court to issue surety notices by forfeiting bonds and for imposing penalty on the bonds forfeited); the proper course it to direct the accused to work out the remedy to pay penalty on the previous forfeited bonds as per Sections 441 to 446 Cr.P.C. and to submit fresh solvency with self bond for enlarging him by release from custody on payment of penalty of the earlier bonds forfeited without need of enforcing against earlier sureties again.

89) 2011(2) SCC (CRL) 618 CBI, HYDERABAD VS SUBRAMANI GOPALKRISHNAN AND ANOTHER

Reliance on earlier orders of Apex Court in context of bail plea of A5, not comparable because after grant of said order, entire scenario in trial changed, hence said order cannot be cited as precedent. In view of magnitude of scam, cancellation of bail of all other main accused, High Court not justified in granting bail of Respondent Nos. A4 and A10 who were auditors of company having paramount role in inflating assets and bank balances of Company.

90) 1984 CriLJ 1056 RAMESH KUMAR VS STATE OF HIMACHAL PRADESH

Cancellation of bail: The prosecution had to make out a case for cancellation of that order based on some subsequent developments which could show that the petitioner had abused his liberty.

91) 2004 CriLJ 924 - GORLE S. NAIDU VS. STATE OF A.P. AND ORS.

Mere acquittal of large number of co-accused does not per se entitle others to acquittal

92) AIR 2003 SC 4259 - HEM RAJ AND ANR. VS. STATE OF PUNJAB

Report which discloses the commission of the cognizable offence must be treated as the F.I.R. and does not matter whether the person lodging the report had witnessed the commission of the offence or not.

93) 2007 CriLJ 1174 - RAJ KUMAR PRASAD TAMARKAR VS STATE OF BIHAR AND ANR.

In case where High Court failed to take into consideration the relevant facts and misapplied the legal principles, then Supreme Court can exercise jurisdiction under Article 136 of the Constitution of India as otherwise there would be serious miscarriage of justice.

94) 2009 (1) ALD(Cri) 887 - KILARI MALAKONDIAAH @ MALAYADRI AND ORS. VS STATE OF ANDHRA PRADESH

To bring the charge of common intention, the prosecution has to establish by evidence, whether direct or circumstantial, that there was plan or meeting of mind of all the accused persons to commit the offence for which they are charged with the aid of section 34, be it pre-arranged or on the spur of moment but it must necessarily before the commission of the crime.

95) 2003 CRILJ 1640 - KATURI SREENIVASA RAO VS STATE OF A.P. AND ORS

Section 350 of Cr. P.C. when a witness fails to attend Court in obedience to the summons issued to him, if after a summary enquiry it is found that

he absented himself without a just cause, the maximum punishment that can be imposed on him is a fine of Rs.100 and nothing more. This is not applicable to witness. No other provision in Cr. P.C. also empowers a Magistrate to remand a witness to judicial custody, if he fails to attend Court.

96) AIR 2007 SC 1729 - RAVI @ RAVICHANDRAN VS. STATE REP. BY INSPECTOR OF POLICE

Conviction of accused cannot be based on vague identification. In this case identification of accused conducted after 8 days of publication of photos of accused in newspaper. Held vague identification.

97) AIR 2008 SC 178 - : RAJINDER SINGH KATOCH VS. CHANDIGARH ADMINISTRATION AND ORS.

Registration of FIR - FIR could not be directed to be registered if allegations do not constitute an offence

98) 2004 CriLJ 4229 = (2004) 7 SCC 487 - STATE OF KARNATAKA VS. BHASKAR KUSHALI KOTHARKAR AND ORS. ALSO HELD IN 2000 SCC (CRL) 1186 BAHADUR NAIK VS STATE OF BIHAR

It is true that as part of fair trial investigating officer should be examined in trial cases especially when a serious sessions trial was being held against accused. If any of the prosecution witnesses give any evidence contrary to their previous statement recorded under Section 161 CR.P.C. or if there is any omission of certain material particulars, the previous statement of witnesses could be proved only by examining the investigating officer who must have recorded the statement of these witnesses under Section 161 CR.P.C. if no serious contradiction appears in respect of evidence of important eyewitnesses non examination of investigating officer not fatal to prosecution.

99) AIR 1996 SC 2905 - BEHARI PRASAD ETC. VS. STATE OF BIHAR

Case of prejudice likely to be suffered by accused must depend on facts of case and no universal straight jacket formula should be laid down that non-examination of Investigating Officer per se vitiates criminal Trial.

100) STATE VS P. SESHAGIRI RAO AND ANOTHER 2002(1) ALD (CRL) 1 AP

Section 164 Cr.P.C. – The magistrate cannot directly record the statement of a person unsponsored by the Investigating agency. Such statement cannot be allowed to remain on record.

101) SHAIK BASHA VS STATE OF AP 2002 (1) ALD (CRL) 116 AP

Granting police custody after the expiry of 15 days prescribed u/Sec 167 stands illegal. The investigating agency ought to file application before court seeking its assistance to send blood samples for DNA test.

102) BHAGWAN SINGH AND OTHERS VS STATE OF MP 2002 (1) ALD (CRL) 710 SC

A miscarriage of justice which may arise from the acquittal of guilty is no less than from conviction of an innocent. In a case where the trial court has taken a view ignoring the admissible evidence a duty is cast upon High Court to reappreciate the evidence in acquittal appeal for ascertaining as to whether all or any of the accused has committed any offence or not.

103) K. UMA MAHESWARI VS ADDITIONAL DIRECTOR GENERAL OF POLICE, CID SAIFABAD HYDERABAD AND OTHERS 2002 (2) ALD (CRL) 582 AP

Sec 173(8) Cr.P.C does not entitle the officers in charge of police station to file a memo and seek to stop of all further proceedings in a case, until further report is filed in pursuance of further investigation.

104) 2002 (2) ALD (CRL) 354 AP – RAVIKRINDI RAMASWAMY AND ANOTHER VS STATE OF AP.

Case originally investigated by Renigutta police and charge sheet filed and the same taken cognizance by the magistrate. Further investigation done by CID into the same offence and a fresh charge sheet filed by it, without permission of the magistrate. Held ILLEGAL. Further investigation cannot be done without formal order by the concerned magistrate. The further investigation can be done only by original Investigating Agency and not by any other Investigating Agency.

105) 2002 (2) ALD (CRL) 358 AP – K. KRISHNA RAO VS STATE OF AP

Magistrate is to issue notice to Complainant before accepting closure report and closing the proceedings. Magistrate has no power to review its earlier order of closing the proceedings and assume the power of recording sworn statement under the guise of review.

106) 2002 (2) ALD (CRL) 711 AP – KATURI SREENIVASA RAO VS STATE OF AP AND OTHERS

Witness brought to the court on execution of warrant cannot be remanded to Judicial Custody.

107) 2002 (2) ALT (Crl) 44 AP – MAKKENA SUBBA NAIDU VS STATE OF AP AND OTHERS

Sec 452 Cr.P.C - Criminal Court is mainly concerned with right of possession of property but not right over the property. The right over the property can only be adjudicated by competent civil court having jurisdiction.

108) 2004(2) ALT (CRL) 44 AP – ADUSMITHI RAJA RAO VS STATE OF AP REP BY ITS PP, HIGH COURT OF AP, HYD AND OTHERS

Sec 156(3) – There is no provision in Cr.P.C or any other statute which confers powers on Magistrate to direct any officer other than officer in charge of police station to conduct investigation.

109) 1998 (1) ALT (CRL) 282 (KARN) – N. SHIVAKUMAR AND ANOTHER VS N. RAMANA ADYANTHAYA

Police Officer disobeys law, fabricates official records and wrongfully confines a citizen in police custody held to be acting in his official capacity. Public Servant acting in discharge of official duties requires sanction for prosecution.

110) 1999 (2) ALD (Crl) 951 AP – DARLA SRINIVAS VS DARLA SRIDEVI AND OTHERS

Magistrate taking cognizance of offence u/Sec 494 on charge sheet filed by the Police is illegal. As Sec 198 Cr.P.C prohibits the magistrate from taking cognizance of said offences except on complaint filed by the aggrieved party.

111) 1998(1) ALT (CRL) 286 AP – CHADALAVADA VENKATA NARAYANA PRASAD VS STATE OF AP.

Sec 451 Cr.P.C – Petition of interim Custody for release of cash dismissed on grounds of not furnishing the denomination and number of currency notes seized. Held the decision of magistrate as improper.

112) PEDDA MAREPPA, S/O SHANMUKAPPA AND ORS V/S STATE OF ANDHRA PRADESH - 2012 (3) ALT(Cri) 101, 2012 (8) RCR(Cri) 2

The High Court or Court of Sessions cannot exercise the jurisdiction under Section 437 Cr.P.C. in granting or rejecting the bail. When a person is detained in judicial custody, Section 439 bestows judicial discretion on the High Court or Court of Sessions in the matter of granting or rejecting the bail

113) GURVAIL SINGH @ GALA & ANOTHER V/S STATE OF Punjab – AIR 2013 SC 1177

The probability that the accused persons could be reformed and rehabilitated is also a factor to be borne in mind. To award death sentence, the aggravating circumstances (crime test) have to be fully satisfied and there should be no mitigating circumstance (criminal test) favouring the accused. Even if both the tests are satisfied as against the accused, even then the Court has to finally apply the Rarest of Rare Cases test (R-R Test), which depends on the perception of the society and not "judge-centric", that is whether the society will approve the awarding of death sentence to certain types of crime or not. While applying this test, the Court has to look into variety of factors like society's abhorrence,

extreme indignation and antipathy to certain types of crimes like rape and murder of minor girls, especially intellectually challenged minor girls, minor girls with physical disability, old and infirm women with those disabilities etc. examples are only illustrative and not exhaustive. Courts award death sentence, because situation demands, due to constitutional compulsion, reflected by the will of the people, and not Judge centric.

114) MANDAGIRI KESHAVA RAO V/S STATE OF ANDHRA PRADESH - 2000 (2) ALD(Cri) 772, 2000 (2) ALT(Cri) 477, 2001 CrLJ 13

The rule for relying on confession of an accused for the purpose of conviction of another accused is that the confession should be used as a piece of corroborative evidence which would mean that, if there is any evidence against an accused person then that evidence may be corroborated by the confession of another accused person. Courts should not begin the process of dealing with conviction of a person on the basis of a confession made by co-accused.

115) Our endeavour in this judgment is to ensure that police officers do not arrest accused unnecessarily and Magistrate do not authorise detention casually and mechanically. In order to ensure what we have observed above, we give the following direction:

(1) All the State Governments to instruct its police officers not to automatically arrest when a case under Section 498-A of the IPC is registered but to satisfy themselves about the necessity for arrest under the parameters laid down above flowing from Section 41, Cr.PC;

(2) All police officers be provided with a check list containing specified sub-clauses under Section 41(1)(b)(ii);

(3) The police officer shall forward the check list duly filed and furnish the reasons and materials which necessitated the arrest, while forwarding/producing the accused before the Magistrate for further detention;

(4) The Magistrate while authorising detention of the accused shall peruse the report furnished by the police officer in terms aforesaid and only after recording its satisfaction, the Magistrate will authorise detention;

(5) The decision not to arrest an accused, be forwarded to the Magistrate within two weeks from the date of the institution of the case with a copy to the Magistrate which may be extended by the Superintendent of police of the district for the reasons to be recorded in writing;

(6) Notice of appearance in terms of Section 41A of Cr.PC be served on the accused within two weeks from the date of institution of the case, which may be extended by the Superintendent of Police of the District for the reasons to be recorded in writing;

(7) Failure to comply with the directions aforesaid shall apart from rendering the police officers concerned liable for departmental action, they shall also be liable to be punished for contempt of court to be instituted before High Court having territorial jurisdiction.

(8) Authorising detention without recording reasons as aforesaid by the judicial Magistrate concerned shall be liable for departmental action by the appropriate High Court.

14. We hasten to add that the directions aforesaid shall not only apply to the cases under Section 498-A of the I.P.C. or Section 4 of the Dowry Prohibition Act, the case in hand, but also such cases where offence is punishable with imprisonment for a term which may be less than seven years or which may extend to seven years; whether with or without fine.

2014 0 AIR(SC) 2756; 2014 0 CrLJ 3707; 2014 3 EastCrC(SC) 379; 2014 3 JLJR(SC) 313; 2014 3 PLJR(SC) 314; 2014 8 SCC 273; 2014 3 SCC(Cri) 449; 2014 5 Supreme 324; 2014 0 Supreme(SC) 489; Arnesh Kumar Vs State of Bihar.

116) (A) Criminal Trial – Circumstantial Evidence – Conviction can be based on circumstantial evidence provided the links in the chain of circumstances connects the accused with the crime beyond reasonable doubt. (Para 5)

(2010) 2 SCC 353; (2010) 2 SCC 583 – Relied upon

(b) Criminal Trial – Circumstantial Evidence – Motive assumes importance in case of circumstantial evidence. (Para 6)

(2011) 3 SCC 306; Cr. Appeal 958/2011; (2006) 5 SCC 475 – Relied upon

(c) Honour Killing – Wholly illegal. (Para 8)

(2006) 5 SCC 475 – Relied upon

(d) Indian Penal Code, 1860 – Section 302 – Apart from the appellant and the deceased only two persons present in the house at relevant time – Mother too old – There is no suggestion of the brother having committed the crime – Deceased deserting her husband and living with her uncle – Appellant having both motive and opportunity Clear motive – Appellant not reporting death of his daughter even after ten hours – The entire circumstances point to the guilt of the accused. (Para 8)

(e) Code of Criminal Procedure, 1973 – Section 162(1), Proviso – Statement before Police may be treated as extra-judicial confession and can be taken into consideration – Denial on confrontation may be an afterthought. (Para 8)

2011 0 AIR(SC) 1863; 2011 4 BBCJ(SC) 44; 2011 0 CrLJ 2903; 2011 3 JLJR(SC) 192; 2011 6 JT 345; 2011 2 RCR(Cri) 920; 2011 6 SCC 396; 2011 2 SCC(Cri) 985; 2011 3 Supreme 729; 2011 0 Supreme(SC) 502; Bhagwan Das Vs State NCT Delhi.

117) the charges levelled against the petitioners herein cannot be said to be vague and in a routine manner the petitioners are entitled for bail merely because the entire investigation is over and charge sheet is filed.

2002 2 ALT(Cri) 204; 2002 0 Supreme(AP) 647; Syed Mohd.Raza Abbass Vs State.

118) In S. 190, a distinction is made between the classes of persons who can start a criminal prosecution. Under the three clauses of Section 190(1) to which we have already referred, criminal prosecution can be initiated (i) by a police officer by a report in writing, (ii) upon information received from any person other than a police officer or upon the Magistrate s own knowledge or suspicion, and (iii) upon receiving a complaint of facts. If the report in this case falls within (i) above, then the procedure under Section 251A, Criminal Procedure Code, must be followed. If it falls in (ii) or (iii) then, the procedure under Section 252, Criminal Procedure Code, must be followed.

In our opinion, the position is clear that such reports, if they are regarded as made under S.190(1) (b), must attract the provisions of S. 251 A of the Code, because if the fiction is given full effect they cannot be regarded as falling within complaints under S. 190(1)(a) or within S. 190(1)(c). In any case, the Divisional Bench also said that S. 251 A is applicable to the trial of a case which is initiated on a police report under S. 173 if the investigation is one to which S. 173, Criminal Procedure Code may be applied, and both the cohnditions are fulfilled in this case.

1965 0 AIR(SC) 1185; 1965 0 CrLJ 250; 1965 1 SCR 269; 1964 0 Supreme(SC) 219; Pravin Chandra Mody Vs State

119) At the stage of investigation, the material collected by an investigating officer cannot be judicially scrutinized for arriving at a conclusion that police station officer of particular police station would not have territorial jurisdiction.

After investigation is over, if the Investigating Officer arrives at the conclusion that the cause of action for lodging the F.I.R. has not arisen within his territorial jurisdiction, then he is required to submit a report accordingly under Section 170 of the Criminal Procedure Code and to forward the case to the Magistrate empowered to take cognizance of the offence.

1999 0 AIR(SC) 3596; 1999 0 AIR(SCW) 3607; 1999 3 Crimes(SC) 157; 1999 0 CrLJ 4566; 1999 8 JT 25; 1999 4 RCR(Cri) 503; 1999 6 Scale 323; 1999 8 SCC 728; 1999 8 Supreme 447; 1999 0 Supreme(SC) 1155; Satvinder Kaur Vs State Govt NCT DELHI

120) (i) Evidence - First Information Report Any telephonic information about commission of a cognizable offence irrespective of the nature and details of such information cannot be treated as First Information Report. (Criminal Procedure Code, 1973 - Sections 2(h) and 154)

1994 1 Crimes(SC) 729; 1994 0 CrLJ 3067; 1994 0 SCC(Cri) 609; Ramsinh Bavaji Jadeja Vs State of Gujarat.

121) Merely because an FIR and investigation for alleged offence u/s 13(1)(e) r/w 13(2) of Prevention of Corruption Act for a particular check period

culminated in acceptance of 'B' form by Court, fresh FIR and investigation which covered earlier check period also cannot be quashed.
1999 0 AIR(SC) 1765; 1999 0 AIR(SCW) 1500; 1999 1 CCR(SC) 99; 1999 1 Crimes(SC) 109; 1999 0 CrLJ 2583; 1999 1 JCC 159; 1999 1 JT 540; 1999 2 RCR(Cri) 20; 1999 1 Scale 561; 1999 3 SCC 247; 1999 0 SCC(Cri) 397; 1999 2 SCT 165; 1999 2 Supreme 222; 1999 0 Supreme(SC) 225; M.Krishna Vs State of Karnataka.

122) the prosecution has failed to prove on record the writing of F. I. R. at the time at which it is claimed to have been recorded. She also submitted that there has not been any evidence on the record to prove motive of the appellant forth commission of the offence and the witnesses examined by the prosecution have, in fact, been introduced subsequently. She has also submitted that the material witness Ram Avtar has been withheld by the prosecution without any valid ground and the references have also been planted upon the appellant.
1990 0 CrLJ 255; 1989 0 Supreme(Del) 421; Ramesh Kumar Vs. State Delhi Admn

123) In both the messages, it was conveyed that cognizable offence of murder had been committed. In the wireless message Ex. D-11, names of some of the victims were also mentioned. Limiting ourselves to the requirement of the present case, we are of the opinion that where messages are transmitted between Police Officers inter se, the object and purpose in transmitting the message must be ascertained before any message is labelled as FIR. It is only if the object was to narrate the circumstances of a crime, with a view that the receiving Police Officer might proceed to investigate thereon, that the message would be FIR. But if the message sent was cryptic because the object was merely to seek instructions from higher Police Officers or because the object was to send direction for the police force to reach the place of occurrence immediately or to merely give information to superior Police Officers about the situation of law and order, the message would not be FIR. The principle deducible from the Supreme Court decision in Somabhai v. State of Madhya Pradesh AIR 1975 SC 1453 : 1975 Cri LJ 1201, is quite apposite here. In that case, the complainant orally informed about the occurrence to Police Officer of Police Station Olpad. The Police Officer instead of immediately reducing the information into writing made a telephone call to the main Police Station (Surat Police Station) with a view to seek further instructions. Immediately thereafter the Police Officer of Olpad Police Station reduced into writing the information given to him by the complainant. The Supreme Court held that the information reduced, into writing at the Police Station Olpad, though later in point of time to the telephonic message recorded at Surat Police Station, was the real FIR. The telephonic message recorded at Surat Police Station conveyed the information that one Somabhai (the appellant in that case) had killed two persons by firing

at them. The Supreme Court held that the telephonic information although conveying the commission of a cognizable offence was too cryptic and was meant only for the purpose of seeking further instructions. It had not been made to the Police Officer of Surat Police Station for taking any action thereon and was therefore not FIR.

1992 0 CrLJ 981; 1992 0 ILR(MP) 931; 1991 0 MPLJ 890; 1991 0 Supreme(MP) 34;Jagdish Vs State of Madhya Pradesh.

124) The provisions of law about the registration of F 1 R. are very clear. When the petitioner approached the police on February 9, 1991 and brought the facts which are given in this petition to their notice and prayed for the registration of RI.R the police had no option but to register it and thereafter start investigations It is another thing that after making investigations as a result whereof the police may come to a conclusion that no offence is made out in which eventuality it has to submit a report to the Court for cancellation of the F.I.R. Making an investigation and thereafter forming an opinion about the non-commission of an offence followed by refusal to register F.I.R. is a procedure not known to law. It is in fact violative of the manner in which F. I. R. is to be registered and thereafter investigated. Cumulatively, we are, therefore, of the opinion that a direction should issue to the State for the registration of the F. 1 R. forthwith and, in the facts and circumstances of this case, for entrusting the investigation of this case to a Police Officer not below the rank of Inspector Police.

1992 0 CrLJ 1558; 1992 2 RCR(Cri) 254; 1991 0 Supreme(HP) 71; MANNA LAL VS STATE OF HIMACHAL PRADESH

125) Whenever there is a bonafide requirement the court (to which FIR is forwarded by Police) can grant certified copy of FIR or payment of legal fee by the accused as it is a certified copy of a public document.

F.I.R. is a document to which Sec. 162 of the Code does not apply and is of considerable value as on that basis investigation commenced and that is the first version of the prosecution, as and when application is made by accused for a certified copy of the complaint, the Court to which it is forwarded should give certified copy of the F.I.R., if the application and legal fees thereof have been tendered for the same in the Court of law.

JAYANTIBHAI LALUBHAI PATEL VS STATE 1992 2 Crimes(HC) 252; 1992 0 CrLJ 2377;

126) Constitution of India - Article 226 — Petitioner alleging beating inside the prison by prison authorities — directions by Court to ADJ to enquire — object of such enquiry is to form prima facie opinion — detailed objections to report uncalled for. (Para 21 & 36)

Criminal Procedure Code 1973 - Section 157 — effect of — receipt of information of commission of cognizable offence by police — it is bound to

register the FIR unless the information is vague incomplete or does not disclose cognizable offence. (Para 23 to 35)
Section 154 & 157 — allegations of beating causing injury to inmates of prison out of vengeance — denial of animosity by prison officials — use of fofce stated to be to control riot in prison — complicated questions of fact — police directed to register F.I.R. and investigate the matter. (Para 1 to 24, 36 & 37)
1994 2 AD(Del) 445; 1994 2 CCR 1005; 1994 3 CCrC 44; 1994 0 CrLJ 2502; 1994 54 DLT 380; 1994 29 DRJ 407; 1995 1 ILR(Del) 352; 1994 0 JCC(Del) 414; 1994 2 RCR(Cri) 498; 1994 0 RLR 114; 1994 0 Supreme(Del) 266; KULDIP SINGH VS STATE OF DELHI

127) Code of Criminal Procedure, 1973-Section 154, 156 and 197-Coginzable offence committed by public servant can be investigated into sanction of Government.
The Superme Court has also held in State of Andhra Pradesh v. Venugopal, 1964 AIR(SC) 33, 1964 (70) CRLJ 16, 1964 (3) SCR 742, 1965 (2) MLJ(SC) 87, 1965 (2) MLJ 87 that this police Standing Order No. 145 is nothing more than administrative instructions by the Government and has no force of law.
1995 0 CrLJ 2754; 1995 1 MLJ(Cri) 522; 1995 0 Supreme(Mad) 240; A. Nallasivan Vs State of Tamilnadu

128) When the deceased became unconscious they put the deceased on a cot with a view to take him away somewhere - Thereafter dead body of the deceased was never traced - No explanation given by the Police accused - The injured witnesses were left on a by-pass road - Prosecution case cannot be disbelieved merely because the dead body is not traced - Under these circumstances the only inference that can be drawn is that the deceased expired because of the injuries caused by the accused - Convictions recorded are legally sustainable.
Held: It may be legitimate right of any police officer to interrogate or arrest any suspect on some, credible material but it is needless to say that such an arrest must be in accordance with the law and the interrogation does not mean inflicting injuries. It should be in its true sense and purposeful namely to make the investigation effective. Torturing a person and using third degree methods are of medieval nature and they are barbaric and contrary to law. The police would be accomplishing behind their closed doors precisely what the demands of our legal order forbid.
It is a pity that some of the police officers, as it has happened in this case, have not shed such methods even in the modem age. They must adopt some scientific methods than resorting to physical torture. If the custodians of law themselves indulge in committing crimes then no member of the society is safe and secure. If police officers who have to provide security and protection to the citizens indulge in such methods

they are creating a sense of insecurity in the minds of the citizens. It is more heinous than a game-keeper becoming a poacher. (para 7)
1992 0 AIR(SC) 1689; 1992 0 AIR(SCW) 1921; 1992 2 Crimes(SC) 329; 1992 0 CrLJ 3144; 1992 3 JT 216; 1992 2 RCR(Cri) 98; 1992 1 Scale 1274; 1992 3 SCC 249; 1992 0 SCC(Cri) 629; 1992 3 SCR 180; 1992 0 Supreme(SC) 397; Bhagwan Singh and another Vs State of Punjab.

129) The Investigating Officers, no doubt, suffer from a disadvantage as such crimes are committed in secrecy and at odd hours of the night. The intelligence on the basis of which the Investigating Officers act may furnish accurate information and the interception of the contraband may have been honest. But the intelligence on the basis of which the Investigating Officers act, has to be transformed into legally valid statements of the accused. There is no substatute for this legal requirement. However honestly the Intelligence Officers believe that the applicants are guilty of the crime, the subjective conviction of the Investigating Officers about the guilt of the accused cannot be a substitute for legally admissible evidence. The statements of the applicants procured in their oppressed state of mind resulting from assault, fears denial of access to the family, should be viewed with great caution. This is especially so, at the state of granting ball, for the prospect conviction on the basis of such material becomes poor.
"The Court" referred to in section 37 of the N.D.P.S. Act, being a legislative substitute for the "Magistrate of the First Class" occurring in the repealed section 36 is not intended to include the High Court Secondly, the Parliament has identified the Special Court with the Court of the Magistrate whose power to grant bail is restricted under section 437 of the Code of Criminal Procedure. The restriction of the power of release on bail created by section 37 of the N.D.P.S. Act being similar to that under section 437 of the Code of Criminal Procedure, the Parliament did not intend to include High Court within the words "Special Court". Thirdly, section 37(2) of the N.D.P.S. Act has conceived the limitations on granting bail specified in section 37(1)(b), as "in addition to the limitations under the Code of Criminal Procedure". Therefore, in the Parliament's conception, "the Court" is the Court whose power to grant bail is limited by the Code of Criminal Procedure. The High Court, not being a Court of such restricted power to grant bail, is not "the Court" conceived by section 37 of the N.D.P.S. Act. Fourthly, the construction of the words "the Court" used in section 37 of the N.D.P.S. Act deprives the High Court of its established jurisdiction. There are no words in the N.D.P.S. Act which bring out the intention to take away the jurisdiction of the High Court under section 439 of Code of Criminal Procedure.
1990 1 BomCR 451; 1990 0 CrLJ 2201; 1990 0 Supreme(Mah) 2; Ashak Hussain Allah Detha @ Siddique & another VS Assistant Collector of Customs (P) Bombay & another

130) Section 4 is comprehensive and that Section 5 is not in derogation of Section 4(2) and it only relates to the extent of application of the Code in the matter of territorial and other jurisdiction but does not nullify the effect of Section 4(2). In short, the provisions of this Code would be applicable to the extent in the absence of any contrary provision in the Special Act or any special provision excluding the jurisdiction or applicability of the Code. In fact" the second limb of Section 4(2) itself limits the application of the provisions of the Code reading, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences." (Para 76)

1994 0 AIR(SC) 1775; 1994 0 AIR(SCW) 1656; 1994 1 Crimes(SC) 892; 1994 0 CrLJ 2269; 1994 70 ELT 12; 1994 1 JT 290; 1994 1 RCR(Cri) 690; 1994 1 Scale 294; 1994 3 SCC 440; 1994 0 SCC(Cri) 785; 1994 0 Supreme(SC) 147; Directorate of Enforcement Vs Deepak Mahajan and another

131) thus from a reading of sub-section (1) of Section 46 of the Cr. P. C. it is clear that a police officer while making arrest even if he actually touches the body of the person to be arrested, he can be said to have arrested the person. If a person is confined or kept in the police station or his movements are restricted within the precincts of a police station, it would undoubtedly be a case of arrest. In the instant case, the FIR specifically states that Hardeep Singh was kept in the police station from the morning of 27-9-1990. Section 57 of the Cr. P. C. provides that no police officer shall detain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable and such period shall not, in the absence of a special order, of a Magistrate under Section 167, exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's court. Thus respondents 1 and 2 were required to produce Haerdeep Singh within 24 hours from the time he was kept in the police station at Savanur.

1992 0 CrLJ 1173; 1991 0 ILR(Kar) 3198; 1991 4 KarLJ 358; 1990 0 Supreme(Kar) 662; Kultej Singh Vs Inspector of Police.

132) Direction issued to ensure that ladles not be arrested by male policemen, nor between sunset and sun-rise for separate lock-up for ladies.

The State Government is further directed to provide a complaint box duly locked in every police lock-up and the keys of the complaint box should be kept by the Officer in-charge of the Police Station. The Officer in-charge of the concerned Police Station should provide paper and pen to the detainee if so demanded for writing complaint and the Officer in charge of the concerned Police Station should open the complaint box every day in the morning and if any complaint is found in the complaint box, the officer in-charge of the Police Station should produce such complaining detainee to

the Magistrate immediately along with his complaint and the concerned Magistrate would pass appropriate orders in the light of the complaint made for medical examination, treatment, aid of assistance, as the case may warrant;

1996 1 BomCR 70; 1995 0 CrLJ 4223; 1994 2 MhLJ 1769; 1994 0 Supreme(Mah) 449; Christian Community Welfare Council of India (regd.) Vs. Government of Maharashtra and another.

133) In these affidavits the deponents have stated that no decision of this was cited before the contemner on that date regarding handcuffing of undertrial prisoners and that the contemner did not say that the decision of this Court has no application and the police has the right to transport the accused as they want, with or without handcuffs.

1996 0 CrLJ 1670; 1996 0 Supreme(SC) 78;RE : M. P. DWIVEDI AND OTHERS,

134) (16) WE declare, direct and lay down as a rule that handcuffs or other fetters shall not be forced on a prisoner _- convicted or undertrial - while lodged in a jail anywhere in the country or while transporting or in transit from one jail to another or from jail to court and back. The police and the jail authorities, on their own, shall have no authority to direct the handcuffing of any inmate of a jail in the country or during transport from one jail to another or from jail to court and back.

(17) WHERE the police or the jail authorities have well-grounded basis for drawing a strong inference that a particular prisoner is likely to jump jail or break out of the custody then the said prisoner be produced before the Magistrate concerned and a prayer for permission to handcuff the prisoner be made before the said Magistrate. Save in rare cases of concrete proof regarding proneness of the prisoner to violence, his tendency to escape, he being so dangerous/desperate and the finding that no other practical way of forbidding escape is available, the Magistrate may grant permission to handcuff the prisoner.

(18) IN all the cases where a person arrested by police, is produced before the Magistrate and remand - judicial or non-judicial - is given by the Magistrate the person concerned shall not be handcuffed unless special orders in that respect are obtained from the Magistrate at the time of the grant of the remand.

(19) WHEN the police arrests a person in execution of a warrant of arrest obtained from a Magistrate, the person so arrested shall not be handcuffed unless the police has also obtained orders from the Magistrate for the handcuffing of the person to be so arrested.

(20) WHERE a person is arrested by the police without warrant the police officer concerned may if he is satisfied, on the basis of the guidelines given by us in para above, that it is necessary to handcuff such a person, he may do so till the time he is taken to the police station and thereafter his

production before the Magistrate. Further use of fetters thereafter can only be under the orders of the Magistrate as already indicated by us.

(21) WE direct all ranks of police and the prison authorities to meticulously obey the above-mentioned directions. Any violation of any of the directions issued by us by any rank of police in the country or member of the jail establishment shall be summarily punishable under the Contempt of courts Act apart from other penal consequences under law. The writ petition is allowed in the above terms. No costs

1996 0 AIR(SC) 2193; 1995 3 CCR(SC) 7; 1996 0 CrLJ 3247; 1995 0 JCC 378; 1995 4 JT 475; 1995 3 Scale 98; 1995 3 SCC 743; 1995 0 SCC(Cri) 600; 1995 2 SCJ 38; 1995 0 Supreme(SC) 621; Citizens For Democracy Through Its President Versus State Of Assam

135) "1. The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designations. The particulars of all such police personne who handle interrogation of the arrestee must be recorded in a register.

2. That the police officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest and such memo shall be attested by at least one witness, who may either be a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be countersigned by the arrestee and shall contained the time and date of arrest.

3. A person who has been arrested or detained and in being held in custody in a police station or interrogation centre or other lock-up, shall be entitled to have one friend or relative or other person known to him of having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place, unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee.

4. The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or town through the Legal Aid Organisation in the District and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.

5. The person arrested must be made aware of this right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained.

6. An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed of the arrest and the names and particulars of the police officials in whose custody the arrestee is.

7. The arrestee should, where he so requests, be also examined at the time of his arrest and major and minor injuries, if any present on his/her body, must be recorded at that time. The "Inspection Memo" must be signed

both by the arrestee and the police officer effecting the arrest and its copy provided to the arrestee and the police officer effecting the arrest and its copy provided to the arrestee.

8. The arrestee should be subjected to medical examination by a trained doctor every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by Director, Health Services of the State or Union Territory concerned. Director, Health Services should prepare such a peanel for all tehsils and districts as well.

9. Copies of all the documents including the memo of arrest, referred to above, should be sent to the Illaqa Magistrate for his record.

10. The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation.

11. A police control room should be provided at all district and State headquarters, where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest, within 12 hours of effecting the arrest and at the police control room it should be displayed on a conspicuous notice board."

D.K. Basu v. State of W.B., 1997(1) SCC 416 : 1996(8) Supreme 581 : 1996(4) Crimes 233 (SC).

136) SO far as the recovery memo is concerned it is undoubtedly not signed by the accused nor there is an endorsement at the foot of it that its copy was given to the accused. It is disputed that the search of the person of the accused-revisionist was taken under S. 51, Cr. P. C. It does not require that when search of arrested person is made signature of the person searched shall be taken on the memo of recovery and its copy should be given to him. It simply requires that when any article is seized from the arrested person a receipt showing the articles taken in possession by the Police Officer shall be given to such person.

THE argument advanced by the learned counsel for the revisionist against the credibility of the prosecution evidence is that only police witnesses have been examined, no independent witness has been produced, copy of recovery memo was neither signed by nor given to the accused and the memo could not be prepared on the spot. In my opinion this criticism has no force and does not lead to the inference that the finding arrived at is perverse.

1989 2 AWC 1219; 1990 0 CrLJ 858; 1988 0 Supreme(All) 633; MAHADEO VS STATE

137) Practice & Procedure - Criminal Procedure Code, 1973 - Section 167 - Applicability - There cannot be any detention in the police custody after the expiry or First fifteen days even in a case where some more offences either serious or otherwise committed by the accused in the same transaction. come to light at a later stage - But such custody cannot further held to be a bar for invoking a fresh remand to such custody like police custody in respect of an altogether different case involving the same

accused - The first period of fifteen days mentioned in Section 167(2) has to be computed from the date of detention as per the orders of the Magistrate and not from the date of arrest by the police - After the expiry of the period of first fifteen days it should be only judicial custody.
1992 0 AIR(SC) 1768; 1992 2 Crimes(SC) 310; 1992 0 CrLJ 2768; 1992 3 JT 366; 1992 2 RCR(Cri) 147; 1992 1 Scale 1024; 1992 3 SCC 141; 1992 0 SCC(Cri) 554; 1992 3 SCR 158; 1992 0 Supreme(SC) 396; Central Bureau of Investigation, Special Investigation Cell-I, New Delhi Vs Anupam J. Kulkarni.

138) Inordinate delay in completing the investigation ipso facto is not a ground for quashing the First Information Report or the proceedings arising therefrom.
1990 0 AIR(SC) 1266; 1990 2 Crimes(SC) 40; 1990 0 CrLJ 1306; 1990 2 JT 43; 1990 3 RCR(Cri) 350; 1990 1 Scale 418; 1990 2 SCC 340; 1991 0 SCC(Cri) 7; 1990 1 SCR 746; 1990 0 Supreme(SC) 123; State of A.P. Vs P.V. Pavithran.

139) THE framers of the Constitution had visualized the higher echelons of the judiciary as comprised of men of strong moral and ethical fibre who would provide moral leadership in the society of free India and function as the sentinel of the other wings of the State not needing scrutiny themselves. Our Constitution provides for separation of powers of the three wings of the State with judicial review as one of the essential tenets of the basic structure of the Constitution. It is thus the judiciary which is entrusted with the task of interpretation of the Constitution and ensuring that the other two wings do not overstep the limit delineated for them by the Constitution. With this duty entrusted to the higher judiciary, it was natural to expect that the higher judiciary would nol require any other agency to keep a watch over it and the internal discipline flowing rrom the moral sanction of the community itself will be sufficient to keep it on the right track without the requirement of any external check which may have the tendency to interfere with the independence of the judiciary, a necessary concomitant of the proper exel-cise of its constitutional obligation. It is for this reason that the higher judiciary was treated dillcrent'ly in the Constitution indicating the great care and attention bestowed in prescribing the machinery for making the appointments. It was expected that any deviation from the path of rectitude at that level would be a rare phenomenon and for the exceptional situation the provision for removal in accordance with clause (4 of Article 124 was made, the difficulty in adopting that course being itself indicative of the rarity with which it was expected to be invoked. It appears that for a rare aberrant at that level, unless he resigned when faced with such a situation, removal from office in accordance with Article 124(4 was envisaged as the only legal sanction. If this was the expectation of the framers of the Constitution and their vision of the moral fibre in the higher

echelons of the judiciary in free India, there is nothing surprising in t he omission to bring them within the purview of the Prevention of Corruption Act, 1947, or absence of a similar legislation for them alone. Obviously, this position continued even during the deliberations of the Santhanam Committee which clearly mentioned in its Report submitted in 1964 that it has considered the judiciary outside the ambit of its deliberations. Clearly, it was expected that the higher judiciary whose word would be final in the interpretation of all laws including the Constitution, will he comprised of men leading in the spirit of self-sacrifice concerned more with their obligations than rights, so that there would be no occasion for anyone else to sit in judgment over them. If it is considered that the situation has altered requiring scrutiny of the conduct of even Judges at the highest level, and that it is a matter for the Parliament to decide, then the remedy lies in enacting suitable legislation for that purpose providing for safeguards to ensure independence of judiciary since the existing law does not provide for that situation. Any attempt to bring the Judges of the High courts and the Supreme court within the purview of the Prevention of Corruption Act by a seemingly constructional exercise of the enactment, appears to me, in all humility, an exercise to fit a square peg in a round hole when the two were never intended to match.

1991 3 JT 198; 1992 2 LLJ 53; 1991 2 RCR(Cri) 559; 1991 2 Scale 150; 1994 Supp1 SCC 274; 1991 0 SCC(Cri) 734; 1994 0 SCC(Cri) 577; 1991 3 SCR 189; 1991 0 Supreme(SC) 338; K.Veeraswami Versus Union Of India

140) That takes us to the next question whether the Special Court can, besides directing stoppage of investigation, entertain and act on a charge-sheet or a police report submitted under section 173(2) of the Code in such cases. The expression police report has been defined under the Code to mean a report forwarded by a police officer to a Magistrate under sub-section (2) of section 173 [section 2(r)]. Section 173 lays down that every investigation under Chapter XII shall be completed without unnecessary delay and as soon as it is completed, the officer-in-charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government. It will thus be seen that the police report under section 173(2) has to be-submitted as soon as the investigation is completed. Now, if the investigation has been stopped on the expiry of six months of the extended period if any, by the Magistrate in exercise of power conferred by sub-section (5) of section 167 of the Code, the investigation comes to an end and, therefore, on the completion of the investigation section 173(2) enjoins upon the officer-in-charge of the police station to forward a report in the prescribed form. There is nothing in sub-section (5) of section 167 to suggest that if the investigation has not been completed within the period allowed by that subsection, the officer-in-charge of the police station will

be absolved from the responsibility of filing the police report under section 173(2) of the Code on the stoppage of the investigation. (para 7)
1993 2 Crimes(SC) 321; 1993 3 JT 288; 1993 2 RCR(Cri) 431; 1993 2 Scale 743; 1993 3 SCC 288; 1993 3 SCR 570; 1993 0 Supreme(SC) 484; State of West Bengal Vs. Falguni Dutta & Anr

141) Sections 173 (2) (8),190 (1) (b) "2 (r)-There is no question of sending up of a police report within meaning of Section 173 (2) until investigation is completed-Report sent before investigation is completed will not be police report within meaning of Section 173 read with Section 2 (r) and there Is no question of Magistrate taking cognizance of-Offence within meaning of Section 190 (1) (b) on basis of Incomplete charge-sheet.
1991 0 CrLJ 3329; 1991 1 MhLJ 656; 1991 0 MhLJ 656; 1991 0 MhLJ 666; 1991 0 Supreme(Mah) 85;Sharadchandra Vinayak Dongre & others VS State of Maharashtra

142) A Magistrate is not entitled in the event of a police report, being a negative report, to direct the police to file a charge sheet. All that he is authorised to do is to direct a further investigation in the case. Similarly, once a report under section 173 is submitted, taking of cognizance is the exclusive province of the Magistrate. The police has no role to play in this behalf.
1997 0 AllMR(Cri) 204; 1997 2 BomCR 51; 1997 0 CrLJ 617; 1997 1 MhLJ 412; 1996 0 Supreme(Mah) 526; Shravan Baburao Dinkar and another VS N. B. Hirve and others

143) Whenever a Magistrates directs an investigation on a complaint the police has to register a cognizable case on that complaint treating the same as the FIR and comply with the requirements of the above Rules
1997 0 AIR(SC) 3104; 1997 0 AIR(SCW) 3146; 1997 2 CHN(SC) 78; 1997 3 Crimes(SC) 162; 1997 0 CrLJ 3757; 1997 7 JT 85; 1997 3 RCR(Cri) 679; 1997 5 Scale 70; 1997 8 SCC 476; 1997 7 Supreme 241; 1997 0 Supreme(SC) 993; Madhubala Vs Suresh Kumar

144) Criminal Procedure Code, 1973-Section 167(5) (as amended by State of West Bengal)-Time limit for completion of investigation -Extension of time limit-Whether time could have been extended without the Investigating Officer moving for such extension before the expiry of the period? (Yes)-There is no conflict in 1993(3) SCC 288 & (1996) 1 SCC 34). (Para 11)
(ii) Criminal Procedure Code, 1973-Section 468-Limitation for cognizance of offence-Offence u/s. 7 of Essential Commodities Act, 1955-Extent of punishment-Section 7(1)(a)(ii) of E.C. Act stating 'punishable with imprisonment which may extend to 7 years'-Section 12AA(1)(f) 'punishable only upto 2 years'-Whether offence u/s. 7 E.C. Act is punishable only upto 2 years on a/c of Section 12AA of the Act? (No)-Effect-Offence will not attract bar of limitation u/s. 468 of Cr.P.C. (Paras 17 & 18)

There is no conflict between the ratio in State of West Bengal v. Falguni Dutta & Ors., 1993(3) SCC 288 and that in Durgesh Chandra Shah v. Vimal Chandra Shah 1996(1) SCC 341.

1998 0 AIR(SC) 2322; 1998 0 AIR(SCW) 2235; 1998 2 CCR(SC) 251; 1998 2 Crimes(SC) 267; 1998 0 CrLJ 3282; 1998 3 JT 436; 1998 2 RCR(Cri) 578; 1998 3 Scale 232; 1998 4 SCC 590; 1998 0 SCC(Cri) 1100; 1998 4 Supreme 209; 1998 0 Supreme(SC) 518; Nirmal Kanti Roy etc. Vs State of West Bengal etc

145) When the Investigating Officer is of the opinion that there is no prima facie case made out against the accused for filing report does not open to any other authority to interfere with the discretion of the formation of opinion and direct the Investigating Officer to prosecute the accused

It is settled principle of law that the report submitted by the Commission of Inquiry under the Commission of Inquiries Act cannot be treated as a police report under the provisions of Code of Criminal Procedure.

1997 3 ALD 784; 1997 1 ALD(Cri) 142; 1997 2 ALT(Cri) 53; 1997 0 CrLJ 3741; 1997 1 LS 533; 1997 0 Supreme(AP) 386; Mutharaju Satyanarayan Vs. Government Of A.P.

146) "41.30 We find that policemen have a tendency to become cynical. We also find that frequently such cynicism is developed, within very few years of service. Policemen very rapidly pick up the knowledge that what the law requires is one thing but what has actually to be done in practice is another. Once this dichotomy takes root in their minds, all training, all exhortations are a waste. Thus, the law is that third degree is not permitted, but in practice that is the only way. Very often people themselves expect the police to beat up goondas and when this is not done charges of bribery and corruption are hurled at the police. People complain that police are partial in their conduct, but policemen learn that while under the law all are equal, as things happen, a rich man is more equal than a poor man, a common citizen different from a politician or one who has the support of a politician, a bureaucrat different from an ordinary government employee - the list is endless."

130. It is the basic principle of legal jurisprudence that an enactment is void for vagueness if its prohibitions are not clearly defined. Vague laws offend several important values. It is insisted or emphasised that laws should give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly. Vague laws may trap the innocent by not providing fair warning. Such a law impermissibly delegates basic policy matters to policemen and also judges for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application. More so uncertain and undefined words deployed inevitably lead citizens to "steer far wider of the unlawful zone....than if the boundaries of the forbidden areas were clearly marked."

Powers of the High Court under Article 226 of the Constitution to grant bail cannot be affected by any legislation.

1994 1 Crimes(SC) 1031; 1994 0 CrLJ 3139; 1994 2 JT 423; 1994 Supp1 Scale 1; 1994 3 SCC 569; 1994 0 SCC(Cri) 899; 1994 0 Supreme(SC) 1; KARTAR SINGH Vs. STATE OF PUNJAB

147) THE basic idea embedded in Section 27 of the Evidence Act is the doctrine of confirmation by subsequent events. The doctrine is founded on the principle that if any fact is discovered in a search made on the strength of any information obtained from a prisoner, such a discovery is a guarantee that the information supplied by the prisoner is true. The information might be confessional or non-inculpatory in nature, but if it results in discovery of a fact it becomes a reliable information. Hence the legislature permitted such information to be used as evidence by restricting the admissible PORtion to the minimum. It is now well-settled that recovery of an object is not discovery of a fact as envisaged in the Section. The decision of Privy Council in Pullukurri Kottayya v. Emperor AIR 1947 PC 67 is the most quoted authority for supPORting the interpretation that the "fact discovered" envisaged in the Section embraces the place from which the object was produced, the knowledge of the accused as to it, but the information given must relate distinctly to that effect.

2000 0 AIR(SC) 1691; 2000 0 AIR(SCW) 1617; 2000 3 CCR(SC) 41; 2000 0 CrLJ 2301; 2000 2 JCC 601; 2000 5 JT 575; 2000 2 RCR(Cri) 781; 2000 4 Scale 8; 2000 6 SCC 269; 2000 0 SCC(Cri) 1088; 2000 0 Supreme(SC) 920; State Of Maharashtra Vs Damu S/o Gopinath Shinde

148) The lapse on the part of the Investigating Officer should not be taken in favour of the accused, may be that such lapse is committed designedly or because of negligence. Hence, the prosecution evidence is required to be examined de hors such ommissions to find out whether the said evidence is reliable or not.

Where Statements of the deceased to several witnesses including Police Sub-Inspector who recorded the statement consistently and clearly stated manner of assault and identified the accused, conviction treat¬ing statements as dying declarations was justified.

1999 0 AIR(SC) 644; 1999 0 AIR(SCW) 296; 1999 1 CCR(SC) 1; 1999 0 CrLJ 1122; 1999 1 JCC 70; 1999 1 JT 25; 1999 1 PLJR(SC) 66; 1999 1 RCR(Cri) 627; 1999 1 Scale 26; 1999 2 SCC 126; 1999 0 SCC(Cri) 85; 1999 1 SCJ 299; 1999 1 Supreme 2; 1999 0 Supreme(SC) 22; Paras Yadav & Ors. Vs. The State of Bihar

149) Statement recorded by Investigating Officer at hospital which was treated as FIR—At the time of recording statement investigating officer did not possess capacity of investigating officer as investigation had not

commenced by then—Such statement could be treated as dying declara¬tion in evidence under Section 32(1).

2000 3 Crimes(SC) 142; 2000 0 CrLJ 3949; 2000 0 SCC(Cri) 1343; 2000 5 Supreme 381; Gulam Hussain & Anr.Vs. State of Delhi

150) 1. Evidence of police officials, after careful scrutiny, if inspires, confidence and is found reliable and trustworthy, if can form basis of conviction.

2. Conscious possession of an unlicenced fire-arm, which answers the discription of an arm under the Arms Act, in a Notified Area attracts punishment under Section 5 of TADA Act.

3. Terrorists and Disruptive Activities (Prevention) Act, 1987-Section 5-Even after expiry of the Act, proceedings vitiated under the Act wound not come to an end. Without final conclusion. (Para 7)

1996 0 AIR(SC) 3079; 1996 0 AIR(SCW) 1534; 1996 2 CCR(SC) 54; 1996 1 Crimes(SC) 222; 1996 3 Scale 41; 1996 3 SCC 338; 1996 1 SCC(Cri) 515; 1996 3 Supreme 48; 1996 0 Supreme(SC) 637; Tahir Vs. State (Delhi)

151) PW-3, Siri Chand, head Constable arrested the accused and on search being conducted by him a pistol and the cartridges were recovered from the accused. It was on his complaint a formal first information report was lodged and the case was initiated. He being complainant should not have proceeded with the investigation of the case. But is appears to us that he was not only the complainant in the case but he carried on with the investigation and examined witnesses under S. 161, Cr.P.C. Such practice, to say the least, should not be resorted to so that there may not be any occasion to suspect fair and impartial investigation.

The learned counsel in his fairness has submitted that although the evidence given by the police personnel cannot be discarded as a matter of rule but the rule of prudence requires that the prosecution case should stand corroborated by an independent witness when such evidence can easily be available so as to lend credence to the prosecution case. He has also submitted that both the witnesses of the prosecution were police personnel and they were examined shortly after the arrest of the accused. In such circumstances, there should not have been any discrepancy about the number of cartridges alleged to have been recovered from the person of the accused. It has been submitted by the learned counsel that such discrepancy only points out that the said police personnel were not actually present at the time of search and seizure but a false case was initiated against the appellant and precisely for the said reason the discrepancy arose.

1995 0 AIR(SC) 2339; 1995 0 AIR(SCW) 3477; 1995 0 CrLJ 3988; 1997 2 RCR(Cri) 3; 1996 11 SCC 709; 1995 0 Supreme(SC) 219; Megha Singh vs State of Haryana.

152) Criminal Procedure Code, 1973 - Section 172 - Scope of - Nature of entries to be made in General diary as required u/s. 172 - Limited permissible use by court or by accused indicated therein - Vagueness as to nature of diary contemplated u/s. 172 - Some vagueness or confusion is there in respect of meaning of word diary used in Sec. 172 and other Sections of Cr. P.C. - A legislature change is necessary providing for framing of appropriate and uniform regulations regarding maintenance of diaries by police for purpose contemplated by Section 172 vis-a-vis other sections.

1995 0 AIR(SC) 1748; 1995 0 AIR(SCW) 2741; 1995 3 CCR(SC) 54; 1995 2 Crimes(SC) 487; 1995 4 JT 159; 1995 3 Scale 236; 1995 4 SCC 430; 1995 0 SCC(Cri) 753; 1995 2 SCJ 466; 1995 0 Supreme(SC) 644; Shamshul Kanwar Vs State of U.P

153) The contradictions which persuaded the trial Court to disbelieve the eye-witnesses related to their omissions to make certain statements before the Investigating Officer, which they made before the Court. On perusal thereof we find that the omissions were so minor and insignificant that they did not amount to contradictions at all. (Para 7)

In responding to the next criticism of the trial Court regarding the failure of the Investigating Officer to indicate in the site plan prepared by him the spot wherefrom the shots were allegedly fired by the appellants and its resultant effect upon the investigation itself, the High Court observed that such failure did not detract from the truthfulness of the eye witnesses and only amounted to an omission on the part of the Investigating Officer. In our opinion neither the criticism of the trial Court nor the reason ascribed by the High Court in its rebuttal can be legally sustained. While preparing a site plan an Investigating Police Officer can certainly record what he sees and observes, for that will be direct and substantive evidence being based on his personal knowledge; but as, he was not obviously present when the incident took place, he was to derive knowledge as to when, where and how it happened from persons who had seen the incident. When a witness testified about what he heard from somebody else it is ordinarily not admissible in evidence being hearsay, but if the person for whom he heard is examined to give direct evidence within the meaning of Section 60 of the Evidence Act, the former s evidence would be admissible to corroborate the latter in accordance with Section 157 Cr. P.C. However such a statement made to a Police Officer, when he is investigating into an offence in accordance with Chapter XII of the Code of Criminal Procedure cannot be used to even corroborate the maker thereof in view of the embargo in Section 162 (1) Cr.P.C. appearing in that chapter and can be used only to contradict, him (the maker) in accordance with the proviso thereof, except in those cases where sub-section (2) of the section applies. That necessarily means that if in the site plan P.W. 6 had even shown the place from which the shots were allegedly fired after ascertaining the same from

the eye witnesses it could not have been admitted in evidence being hit by Section 162 Cr. P.C. (Para 9)
1996 0 AIR(SC) 3136; 1996 0 AIR(SCW) 1666; 1996 2 CCR(SC) 13; 1996 1 Crimes(SC) 174; 1996 3 JT 89; 1996 2 Scale 650; 1996 8 SCC 199; 1996 0 SCC(Cri) 565; 1996 2 Supreme 608; 1996 0 Supreme(SC) 544; Jagdish Narain & Anr.Vs. State of U.P.

154) It is the obligation of the police particularly after taking a person in custody to ensure appropriate protection of the person taken into custody including medical care if such person needs it.
1991 2 PLJR(SC) 76; 1991 3 SCC 482; 1991 0 SCC(Cri) 639; 1991 0 Supreme(SC) 130; SUPREME COURT LEGAL AID COMMITTEE THROUGH ITS HONY. SECRETARY Vs. STATE OF BIHAR AND OTHERS.

155) Constitution of India - Article 32 - Habeas Corpus Writ. Case u/s. 363/366/506 I.P.C. registered on the report of brother of girl- Girl alleging to have married accused boy on her own - Police alleging to have kept the girl in police station for 3 days to get her radiological examination and then for getting her statement recorded u/s. 164 Cr. P.C. - Girl imputing constant threat and misbehaviour at the hands of police in the police station - Though the girl had been released but the writ petition to continue as one for qualified habeas corpus for examining the legality of detention - In view of the allegations and counter allegations an inquiry report called from Dist. Judge.
1993 3 Crimes(SC) 1062; 1993 4 Scale 418; 1994 Supp1 SCC 500; 1994 0 SCC(Cri) 584; 1993 0 Supreme(SC) 1072; Arvinder Singh Bagga Vs State Of U.P.

156) The detention of a married woman in custody who is not an accused on the pretext of her being a victim of abduction and rape which never was to her knowledge and to the knowledge of the police officers concerned aforesaid is itself a great mental torture for her which cannot be compensated later but here we have found that she was tortured otherwise also by threats of violence to her and to her husband and his family and was given physical violence calculated to instil fear in her mind and compel her to yield and to abondon her marriage with Charanjit Singh Bagga which had been duly performed in Arya Samaj Bhoor and which had been duly performed in Arya Samaj Bhoor and which had been duly registered inthe officer of Registrar of Hindu Marriages under the U.P. Hindu Marriage Registration Rules, 1973 framed by the Governor in exercise of the powers conferred by section 8 of the Hindu Marriage Act, 1955 (Act No. xxv of 1995).
The State shall pay a compensation of Rs. 10,000 to Nidhi, Rs. 10,000/-to Charanjit Singh Bagga and Rs. 5,000/- to each of the other persons who were illegally detained and humiliated for no fault of theirs. Time for

making payment will be three months from the date of this Judgement. Upon such payment it will be open to the State to recover personally the amount of compensation from the concerned police officers. **AIR 1995 SC 117= 1994(6) SCC 565 = 1994(6) JT 478 = 1994(4) Scale 466 = 1994(3) Crimes 694 = Arvinder Singh Bagga Vs State Of U.P**

157) International Covenant on Civil and Political Rights, 1966-Article 9(5)-To what extent can the provisions of such international covenants/conventions be read into national laws?

Held : It is not clear whether our Parliament has approved the action of the Government of India ratifying the said 1966 Covenant. Assuming that it has, the question may yet arise whether such approval can be equated to legislation and invests the covenant with the sanctity of a law made by Parliament. As pointed out by this Court in S.R. Bommai v. Union of India (1994 (3) SCC 1), every action of Parliament cannot be equated to legislation. Legislation is no doubt the main function of the Parliament but it also performs many other functions all of which do not amount to legislation. In our opinion, this aspect requires deeper scrutiny than has been possible in this case. For the present, it would suffice to state that the provisions of the covenant, which elucidate and go to effectuate the fundamental rights guaranteed by our Constitution, can certainly be relied upon by courts as facets of those fundamental rights and hence, enforceable as such. So far as multi-lateral treaties are concerned, the law is, of course, different - and definite. (Para 9)

1997 0 AIR(SC) 1203; 1997 0 AIR(SCW) 1234; 1997 1 CCR(SC) 187; 1997 1 CHN(SC) 57; 1997 1 Crimes(SC) 190; 1997 2 JT 311; 1997 2 RCR(Cri) 161; 1997 1 Scale 706; 1997 3 SCC 433; 1997 0 SCC(Cri) 434; 1997 1 SCJ 480; 1997 2 Supreme 429; 1997 0 Supreme(SC) 209; People s Union for Civil Liberties Vs Union of India & Anr

158) It is the settled law that each case must be decided on its own facts and that no rigid rule can be followed and every rule has its own exception. It is also settled that the Courts of law are not to be carried away by mere suspicions, conjectures and imaginary things but however, the Courts are bound to follow the circumstances and the legal evidence alone. The suspicion however it strong may be, may not be a good ground for the Court to implement the law in any given case. Accordingly, if we consider the contentions made by the learned counsel on behalf of the petitioners, simply because some doubt arises or suspicion arises, it cannot be a countenance for any moment in the light of our elaborate observations and discussions given above.

We are quite sure to say that it is possible for the reasoning that with a view to meet the three dreaded gangsters who are the notorious gangsters indulging in extortion during the trap led by the police party. There is evidence to show that the police party had selected three teams which must be conversant with the retaliation work with all accurate aim,

adequately too and that above all, the police personnel decided to lay the trap and secured the accused as fully trained personnel used the fire arms and it was thus while they retaliate against the untrained persons, the injuries found on them could have been caused by the bullets fired by the trained persons, may reach the vulnerable parts of the body. If this being so, there is nothing strange for severe injuries found on the important parts of the human anatomy and the three dreaded persons and it is not possible for the policemen to sustain any injuries on their part. The sending of the articles, according to the learned counsel for the petitioners, for chemical analyser was very late in the instant case and that therefore the case of the respondents could not be believed. We find hardly any substance in the said contention. This is not a case of one side eliminated the other by indirect manner. This is a case of encounter and immediately after the encounter the case was registered and the investigation was started and all the materials were collected to show that it was a true encounter that had taken place at the time and day as claimed.

1998 0 CrLJ 4295; 1998 0 Supreme(Mah) 326; Vandana Vikas Waghmare VS State of Maharashtra

159) Articles 21, 226-Persnnal liberty-Violation of-Under trial prisoner handcuffed and paraded through streets-No justification-Rules of Bombay Police Manual dis-regarded.

Article 226 of the Constitution specifically provides that the High Court may issue to any person or authority directions for the enforcement of any of the rights conferred by Part III and for any other purpose. The 4th respondent is a person. He is also a person in whom authority is vested under the Code of Criminal Procedure. He has abused that authority. He has acted outside the scope of that authority. He has acted outside the scope of the law which given him that authority. He has acted outside the rules which he must follow while exercising that authority. Court has therefore, no hesitation in holding that in exercise of the powers of this Court under Article 226 of the Constitution, Court can also direct that compensation shall be paid by the State or a person acting on behalf of the State to a citizen whose fundamental rights have been trampled upon.

1990 2 BomCR 242; 1991 0 CrLJ 2344; 1990 0 Supreme(Mah) 49 ; Ravikant Patil VS Director General of Police & others

160) Sections 56, 59-Notice of externment to petitioner grounds-Beating people. causing loss to peoples properties and witness not willing to come forward out of fear challenged-Defects in notice-Held-Period during which petitioner indulged in alleged antisocial activities not mentioned in notice-Allegation of beating people and causing loss to peoples properties vague-Not mentioned in notice that witnesses were not coming forward out of fear-Such failure fatal to validity of notice-Order of externment illegal and liable of be set aside.

1991 0 CrLJ 1251; Prakash Sitaram Shelar VS State of Maharashtra and others

161) TAKING out religious processions peaceably are traceable to both Arts. 19 (1) (b) as also 25 of the constitution of India. It is true that reasonable restrictions can be placed as envisaged under Art. 19 (3) of the Indian Constitution to maintain public order S. 30 of the Police Act referred to by the 3rd respondent in his proceedings mentioned supra may be a regulation in that regard. But the restriction under the said regulation should be a reasonable restriction and should not be unreasonable so as to exceed the necessity of placing such a restriction.

IN the writ petition, it is pleaded that the procession ought to be taken out is a religious procession and the taking out of the same is a part of fundamental rights and that discrimination is being played by respondents 2 and 3 in permitting the 4th respondent to take out such procession and preventing the petitioner from doing so.

WHEN the fundamental rights are involved and when there is an allegation of discrimination between the two similarly situated persons or associations, no embargo can be placed on the powers of this Court in exercise of Art. 226 of the Constitution of India. The law and order problem is a problem which has to be tackled by the respondents 1 or 3 and it is their duty and obligation. In fact, in a police State like ours, the State owes the said duty towards the citizens and the same has to be carried out in full spirit by the respondents 2 and 3.

Allowed on condition to fix different timings and avoiding convergence of both rallies.

1992 0 AIR(AP) 357; 1993 0 CrLJ 406; 1992 0 Supreme(AP) 334; Gehohe-e-miran Shah VS Secretary, Home Department, Government Of A. P

162) I am of the considered opinion that no person has any right under the provisions of the Act and the Rules framed thereunder to get amusement licence as a matter of right. No such right is conferred upon any individual and similarly no such statutory duty is imposed upon the Commissioner of Police to grant the amusement licence as and when asked for by an interested person. It is true the statutory power conferred upon the Commissioner of Police is required to be exercised fairly and reasonably. Every person who applies for grant of amusement licence, undoubtedly, has a right for consideration of his application in accordance with law. The Commissioner of Police, while considering such application for granting amusement licence is required to take decision in accordance with law and provisions of the Act and the Rules framed thereunder. He is required to take the relevant factors into consideration and eshew the irrelevant facts. An important aspect that was not taken into consideration by this Court in the earlier decisions is that there is no provision for renewal of amusement licence. Every time the concerned individual has to apply afresh for grant

of the licence and every time such request is required to be considered by the authority afresh and in accordance with law. There is no provision for granting renewal, as in the case of various other enactments.

THE petitioner is not doing any business in organising Indian Classical dance. His business is running Restaurant. By the impugned order the business and trade of the petitioner is in no way adversely effected. Therefore, the question of infringement of the fundamental right guaranteed under Article 19 (1) (g) of the Constitution of India does not arise. At any rate, this point is not seriously pursued by the petitioner and, therefore, no final opinion as such need be expressed. Variety of questions may arise about the nature of the trade and business and the extent of restrictions that could be imposed on such trade or business. No opinion need be expressed on that count.

1998 3 ALD 346; 1998 3 ALT 613; 1998 1 APLJ(Cri) 352; 1998 0 CrLJ 4121; 1998 0 Supreme(AP) 283; Badshah Restaurant VS Commissioner of Police, Hyderabad

163) THE Act called the "code of Criminal Procedure, 1973" (Central Act No. 2 of 1974) which, is not in dispute, applies in respect of all offences under the Indian Penal Code as well as other laws, subject to any enactment for the time being in force, regulating the manner or place of investigation enquiring into crime or otherwise dealing with such offences in the State. The Code has broadly recognised the role of Executive Magistrates and Judicial Magistrates, the hierarchy of the investigation of the offences, subject to the provisions of the Police Acts applicable in different areas of the State and that of the Courts of Sessions.

The Director General of Police and such other Police Officers who are empowered in this behalf shall have the powers of the Magistrate (Executive Magistrate) throughout the territory for which they are appointed such as the District Superintendent of Police shall have the power of the Executive Magistrate under the Andhra Pradesh (Andhra Area) District Police Act. Under the Andhra Pradesh (Telangana Area) District Police Act, the police administration with the local jurisdiction of the Collector of a District shall, under the general supervision and direction of such Collector of a District, be vested in the District Superintendent of Police who has the powers of the Executive Magistrate and in the city governed by the Hyderabad City Police Act, the Commissioner of Police shall have the said power. These Acts have elaborately provided for deployment of the Police force for prevention as well as, after the offence is committed, for investigation and such suitable action as the law provides for and for many other matters in which the Police has to play a positive role for prevention of crimes and investigation of cases and in doing so, the power of the Executive Magistrate is vested in the concerned Police Officer to discharge the duties of the Executive Magistrate.

WE accordingly hold :- (1) The State has a duty to provide necessary security to the constitutional functionaries and if there is any expense upon such security, the Government can do so out of the funds of the exchequer of the State; (2) The Government has a duty to protect the properties of the State including the Union and other State Governments and any expenses for security of the properties of the State can legitimately be borne out of the State s exchequer; (3) Depending upon the threat perception in respect of such statutory functionaries which are discharging duties on behalf of the State, the Government may take a policy decision and provide security to such personnel to such extent as decided by the Government and expenses for the same can legitimately be borne by the State exchequer; (4) The State has a duty to maintain peace to ensure that the public order is not threatened and to protect the life and liberty of all persons living within the territory of the State as well as has a duty to enforce effectively such measures as laws have permitted for preventing any unlawful activity of any person or persons and the State, for such failures or failings by its servants and agents, shall be answerable to the Court as and when complaints in this behalf are made. (5) Individual or individuals, who apprehend threat to peace and to his or their lives can approach the competent authority at the first instance at the district level and make application for deployment of special force for maintaining peace and for protection of his or their lives and liberty. On such application being made, the competent authority shall be duty bound to promptly make suitable orders without any delay. In case the application is rejected by the district authority, the applicant shall have the right to make application before the superior authority in the hierarchy as indicated above, the last being before the Government of the State. The applicant/applicants for such security or deployment of Special Police Force shall, however, be responsible for the cost as envisaged under the Acts aforementioned and the Government shall have no authority at all to make any expense upon such special force from and out of the revenue of the State; (6) Any person or persons, who, however, have apprehension to threat to their life or his or her property from the Government, its servants or agents, in exceptional cases, can approach the Court for suitable orders and the Court of the first instance, in our view, will be the Court of the Magistrate, who may issue necessary directions for bonds to be executed. In such cases, however, where the threat is from the police and the charge is of police excess, the party concerned can move the Court for protection; (7) Applicant, in case his applications have been refused, can approach this Court seeking judicial review of the order of the Court with all constraints self imposed and within the bounds of rules of judicial review may examine individual cases strictly in accordance with law. Any application, however, except for judicial review in the aforesaid circumstances directly made to this Court shall not be entertainable as no cause for a mandamus by the Court shall be deemed to have been arisen if

the applicant made no efforts to approach the competent authority for such security.

1997 2 ALD 694; 1997 4 ALD 588; 1997 1 ALD(Cri) 19; 1996 4 ALT 985; 1997 0 CrLJ 1296; 1996 0 Supreme(AP) 1043; G. Subas Reddy VS State Of A. P

164) Since the Act is a special law which prescribes a period of limitation different from the period prescribed in the Schedule to the Limitation Act for suits against persons governed by the Act in relation to matters covered by Section 140, by virtue of Section 29(2) of the Limitation Act, the period of limitation prescribed by Section 140 of the Act would be the period of limitation prescribed for such suits and not the period prescribed in the Schedule to the Limitation Act.

1993 0 AIR(SC) 2579; 1993 0 AIR(SCW) 3240; 1993 0 CrLJ 3531; 1993 5 JT 189; 1994 1 RCR(Cri) 252; 1993 3 Scale 706; 1994 1 SCC 64; 1994 0 SCC(Cri) 99; 1993 4 SCT 320; 1993 0 Supreme(SC) 742; 1993 2 UJ 599; Prof. Sumer Chand Vs. Union of India and others

165) CRIMINAL PROCEDURE CODE, Secs482 and 313 - After prosecution evidence and examination of accused u/S313 CrPC, petition filed on behalf of accused for appointment of Commissioner for examining a wintess who is suffering from Diabetes, High BP and Chronic Heart Disease requiring continuous medication, to prove plea of alibi - Sessions Judge dismissing application on ground of directions of High Court to dispose of case with in specified period - Trial Court is bound to comply with a direction of High Court for disposal of case by particular date - Such direction can not be a ground for rejecting application on ground that grant of such an application could disable Sessions Judge in complying with directions of High Court for expeditious disposal - Order passed by Sessions Judge - Quashed - Directions issued to appoint Commissioner for examining witness on behalf of accused.

2000 1 ALD(Cri) 893; 2000 2 ALT(Cri) 248; 2000 0 CrLJ 2564; 2000 2 LS 157; 2000 0 Supreme(AP) 305; Pyboina Ravindra Kumar VS State Of A. P.

166) Prevention of Food Adulteration Act, Sec. 14 (iii) -Distributor whether a seller-Sec.19 (2) & 20 (A)-Meaning and scope of-Code of Criminal Procedure 1898, Sec. 239 (d) - Joint trial of manufacturer, distributor & vendor whether proper-Their action when forms part of the same transaction.

A vendor, distributor and a manufacturer can be tried together provided the allegations made before the court show that there are connecting links between their activities so, as to constitute the same transaction. (Para 23)

1975 0 AIR(SC) 1309; 1975 0 BBCJ(SC) 340; 1975 0 CrLJ 1091; 1975 1 SCC 866; 1975 0 SCC(Cri) 410; 1975 0 Supreme(SC) 137; M/s. Bhagwan Das Jagdish Chander, Vs. Delhi Administration and another.

167) 1. If the witness who deposed one way earlier comes before the appellate Court with a prayer that he is prepared to give evidence which is materially different from what he has given earlier at the trial with the reasons for the earlier lapse, the Court can consider the genuineness of the prayer and in an appropriate case accept it.

2. Whether a re-trial under Section 386 Cr.P.C. or taking up of additional evidence u/s 391 Cr.P.C. is the proper procedure will depend on the facts and circumstances of each case for which no straight jacket formula of universal and invariable application can be formulated.

3. In the case of defective investigation the Court has to be circumspect in evaluating the evidence and may have to adopt an active and analystical role.

A criminal trial is a judicial examination of the issues in the case and its purpose is to arrive at a judgment on an issue as a fact or relevant facts which may lead to the discovery of the fact issue and obtain proof of such facts at which the prosecution and the accused have arrived by their pleadings; the controlling question being the guilt or innocence of the accused. Since the object is to mete out justice and to convict the guilty and protect the innocent, the trial should be a search for the truth and not a bout over technicalities, and must be conducted under such rules as will protect the innocent, and punish the guilty. The proof of charge which has to be beyond reasonable doubt must depend upon judicial evaluation of the totality of the evidence, oral and circumstantial and not by an isolated scrutiny. Failure to accord fair hearing either to the accused or the prosecution violates even minimum standards of due process of law. It is inherent in the concept of due process of law, that condemnation should be rendered only after the trial in which the hearing is a real one, not sham or a mere farce and pretence. Since the fair hearing requires an opportunity to preserve the process, it may be vitiated and violated by an overhasty stage-managed, tailored and partisan trial. The fair trial for a criminal offence consists not only in technical observance of the frame and forms of law, but also in recognition and just application of its principles in substance, to find out the truth and prevent miscarriage of justice.

Criminal Trial-Fair trial, concept of-Prohibition against tampering with witness, victim or informant-Courts have to take a participatory role in a trial-Criminal Procedure Code, 1973-Sections 311 and 391-Evidence Act, 1872-Section 165.

In the case of a defective investigation the Court has to be circumspect in evaluating the evidence and may have to adopt an active and analytical role to ensure that truth is found by having recourse to Section 311 or at a later stage also resorting to Section 391 instead of throwing hands in the air in despair. It would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing into the hands of the investigating officer if the investigation is designedly defective.

Since we have directed re-trial it would be desirable to the investigating agency or those supervising the investigation, to act in terms of Section 173(8) of the Code, as the circumstances seem to or may so warrant. The Director General of Police, Gujarat is directed to monitor re-investigation, if any, to be taken up with the urgency and utmost sincerity, as the circumstances warrant.

2004 0 AIR(SC) 3114; 2004 3 BBCJ(SC) 194; 2004 2 CCR(SC) 187; 2004 2 Crimes(SC) 213; 2004 0 CrLJ 2050; 2004 1 JT 94; 2004 Supp1 JT 94; 2004 2 RCR(Cri) 836; 2004 4 Scale 375; 2004 4 SCC 158; 2004 0 SCC(Cri) 999; 2004 3 Supreme 210; 2004 0 Supreme(SC) 451; Zahira Habibulla H. Sheikh & Anr. Vs. State of Gujarat & Ors.

168) The High Court has chosen to sidestep another incriminating circumstance which is based on Section 27 of the Evidence Act on the ground of delay in interrogating the accused by the investigating officer. We are unable to appreciate the said reasoning for dispelling the evidence which otherwise is a circumstance positively inculpating the respondent. An Investigating Officer may have his own reasons for not interrogating the accused as soon as he saw him. Court cannot overlook the realities that Investigating Officer, who is otherwise a police officer, has to attend to umpteen engagements and even in the investigation of the particular case itself he may have to observe a number of formalities, even it is assumed that he had only one case to investigate at that time. (Paras 17 & 18)

It is not correct to say that motive may not be very much material in cases depending on direct evidence whereas motive is material only when the case depends upon circumstantial evidence. There is no legal warrant for making such a hiatus in criminal cases as for the motive for committing the crime. Motive is a relevant factor in all criminal cases whether based on the testimony of eye witnesses or circumstantial evidence. The question in this regard is whether a prosecution must fail because it failed to prove the motive or even whether inability to prove motive would weaken the prosecution to any perceptible limit. No doubt, if the prosecution proves the existence of a motive it would be well and good for it, particularly in a case depending on circumstantial evidence, for such motive could then be counted as one of the circumstances. However, it cannot be forgotten that it is generally a difficult area for any prosecution to bring on record what was in the mind of the respondent. Even if the Investigating Officer would have succeeded in knowing it through interrogations that cannot be put in evidence by them due to the ban imposed by law. (Para 11)

2000 0 AIR(SC) 1735; 2000 0 AIR(SCW) 1798; 2000 2 BBCJ(SC) 215; 2000 2 CCR(SC) 75; 2000 2 Crimes(SC) 260; 2000 0 CrLJ 2457; 2000 2 JCC 447; 2000 4 JT 456; 2000 3 PLJR(SC) 153; 2000 2 RCR(Cri) 618; 2000 3 Scale 215; 2000 4 SCC 515; 2000 0 SCC(Cri) 845; 2000 3 Supreme 722; 2000 0 Supreme(SC) 764; State of U.P. Vs. Babu Ram

169) Learned counsel for the petitioners has also drawn our attention to the judgment and order dated 9.10.2013, passed by a Division Bench of Delhi High Court dismissing the Writ Petition (C) No. 6384 of 2013 filed by Rashtravadi Shiv Sena against Sanjay Leela Bhansali Films Pvt. Ltd. and others challenging the exhibition of the said film ("Goliyon Ki Rasleela Ram-Leela") on the same ground i.e. the film attempts to hurt the religious sentiments of Hindus at large. Delhi High Court, in this judgment, while relying on the law laid down by the Apex Court in the case of Rajkapoor v. Laxman, AIR 1980 SC 605, has held that in view of the bar as provided by Section 5-A and also the provisions of 5-B of Cinematograph Act, criminal prosecution is not maintainable.

In our opinion the circumstances relied upon by the High Court in holding that the investigation was tainted are not of any substance on which such an inference could be drawn and in a case like the present one where the prosecution case is fully established by the direct testimony of the eye-witnesses, which is corroborated by the medical evidence, any failure or omission of the investigating officer cannot render the prosecution case doubtful or unworthy of belief.

2003 0 AIR(SC) 1164; 2003 1 CCR(SC) 325; 2003 2 Crimes(SC) 186; 2003 0 CrLJ 1282; 2003 1 JCC 325; 2003 1 JT 130; 2003 2 JT 1; 2003 2 PLJR(SC) 10; 2003 1 Scale 529; 2003 2 SCC 518; 2003 2 Supreme 155; 2003 1 Supreme 353; 2003 0 Supreme(SC) 120; Amar Singh Vs. Balwinder Singh & Ors.

170) Article 20(2) of Constitution provides that no person shall be prosecuted and punished for the same offence more than once - In order to attract Article 20(2) a person must be both prosecuted and punished - A prosecution without punishment would not bring the case within Article 20(2)

1989CriLJ2374 E.K. Thankappan Vs. Respondent: Union of India (UOI)

171) In Bindeshwari Prasad Singh v. Kali Singh MANU/SC/0100/1976 : 1978CriLJ187 the Supreme Court has held as follows (Para 4 of Cri LJ) :- "There is no provision in Cr.P.C. empowering a Magistrate to review or recall a judicial order passed by him. Inherent powers under S. 561-A are only given

172) In Maj Genl. A. S. Gauraya v. S. N. Thakur MANU/SC/0185/1986 : 1986CriLJ1074 again the Supreme Court on this point of law has held as follows (Paras 9, 10 (of Cri LJ) :-

"So far as the accused is concerned, dismissal of a complaint for non-appearance of the complainant or his discharge or acquittal on the same ground is a final order and in the absence of any specific provision in the Code, a Magistrate cannot exercise any inherent jurisdiction, to restore thecase. A second complaint is permissible in law if it could be brought

within the limitations imposed by the Supreme Court in Pramatha Nath Taluqdar v. Saroj Ranjan Sarkar, MANU/SC/0149/1961 : AIR1962SC876. Filing of a second complaint is not the same thing as reviving a dismissed complaint after recalling the earlier order of dismissal. The Criminal P.C. does not contain any provision enabling the criminal court to exercise such an inherent power. Also, what the Court has to see is not whether the Code contains any provision prohibiting a Magistrate from entertaining an application to restore a dismissed complaint, but the task should be to find out whether the said Code contains any provision enabling a Magistrate to exercise an inherent jurisdiction which he otherwise does not have."

This Court in Laxminarayan v. Ramaswamy MANU/KA/0191/1988 has held as follows :- "Applying the Decision of the Supreme Court reported in MANU/SC/0185/1986 : 1986CriLJ1074 , laying down that in the absence of a provision empowering a Magistrate to review or recall an order passed by him and in the absence of inherent powers in subordinate Criminal Courts, the Magistrate has absolutely no jurisdiction to recall the order dismissing the complaint, order in Revision affirmed, although rejecting the reasons given by learned Sessions Judge."

1992 0 CrLJ 1727; 1992 65 FLR 391; 1992 0 ILR(Kar) 1165; 1991 3 KarLJ 63; 1991 0 Supreme(Kar) 389M/s Naga Theatre and another Vs. Respondent: The Provident Fund Inspector, Bangalore

173) Criminal Procedure Code 1973 - Section 319 -- De novo trial of newly added accused, mandatory - Such de novo trial against newly added accused would not in any way affect trim which had already proceeded against remaining accused - After completing de novo trim against newly added accused, Sessions Judge to pronounce judgment simultaneously against accused, who were earlier tried and also newly added accused.

2013 1 ALD(Cri) 902; 2014 1 ALT(Cri) 75; 2013 0 Supreme(AP) 218; Vadde Veeresh & Another Vs The State of A.P.

174) National Investigation Agency Act 2008 - Section 21(4) - Unlawful Activities (Prevention) Act 1967 - Section 43-D (5) - Appeal against order of Sessions Judge granting bail to accused would lie to a Division Bench of High Court

2013 1 ALD(Cri) 821; 2013 1 ALT(Cri) 167; 2012 0 Supreme(AP) 1264; National Investigation Agency Chikoti Garden Vs Mohmed Anwar Shak & Another

2013 1 ALD(Cri) 907; 2014 1 ALT(Cri) 109; 2013 0 Supreme(AP) 292; National Investigation Agency Vs Devendra Gupta & Another

175) Indian Penal Code 1860 - Section 302 – Murder---Conviction - Any normal man can understand fact that injury on neck in ordinary course will cause death or cause severe bodily injury to deceased - Accused died

due to neck injury -- Contention that accused had no motive to kill accused, cannot be accepted - Conviction, upheld - Appeal dismissed**.**
2013 1 ALD(Cri) 939; 2013 3 ALT(Cri) 321; 2013 0 CrLJ 356; 2013 0 Supreme(AP) 72; Burka Kannaiah Vs. State of Andhra Pradesh

176) Held therefore, when so recast, the practice which can be a better substitute is this : Whenever an objection is raised during evidence taking stage regarding the admissibility of any material or item of oral evidence the trial Court can make a note of such objection and mark the objected document tentatively as an exhibit in the case (or record the objected part of the oral evidence) subject to such objections to be decided at the last stage in the final judgment. If the court finds at the final stage that the objection so raised is sustainable the judge or magistrate can keep such evidence excluded from consideration. In our view there is no illegality in adopting such a course. (However, we make it clear that if the objection relates to deficiency of stamp duty of a document the court has to decide the objection before proceeding further. For all other objections the procedure suggested above can be followed.) (Para 14)
2001 0 AIR(SC) 1158; 2001 0 AIR(SCW) 841; 2001 2 BBCJ(SC) 76; 2001 1 Crimes(SC) 288; 2001 0 CrLJ 1254; 2001 134 ELT 611; 2001 1 JCC 269; 2001 1 JLJR(SC) 725; 2001 3 JT 120; 2001 2 PLJR(SC) 132; 2001 1 RCR(Cri) 859; 2001 2 Scale 167; 2001 3 SCC 1; 2001 0 SCC(Cri) 417; 2001 1 SCJ 460; 2001 2 Supreme 65; 2001 0 Supreme(SC) 346; 2001 1 UJ 573; Bipin Shantilal Panchal Vs. State of Gujarat & Anr.

177) A) CRIMINAL PROCEDURE CODE, 1973, Section 173(5):- Prosecution is not barred from producing certified copies of the documents and marking the same through the witness subject to proof of relevancy. (Para 4)
B) CRIMINAL PROCEDURE CODE, 1973, Section 242(3):- The words ”all such evidence” mentioned in section 24(3) has an overriding over Section 175 and hence the Magistrate has all the powers to receive an additional documents that may be produced by the prosecution. Revision against the docket order of the Magistrate dismissed. (Paras 5 and 6)
2011 1 ALD(Cri) 822; 2011 2 ALT(Cri) 74; 2011 0 Supreme(AP) 126; G.Saroja v. State of A.P. rep. by the Public Prosecutor and another

178) But the question is whether in this case appellants knew that the substances in question were explosive substances. The knowledge whether a particular substance is an explosive substance depends on different circumstances and varies from person to person. An ignorant man or a child coming across an explosive substance may pick it up out of curiosity and not knowing that it is an explosive substance. A person of experience may immediately know that it is an explosive substance. In the instant case, the appellants had been dealing with the substances in question for

a long time. They certainly knew or at least they shall be presumed to have known what these substances were and for what purpose they were used.
1981 0 AIR(SC) 1062; 1981 0 CrLJ 588; 1981 1 Scale 445; 1981 2 SCC 443; 1981 0 SCC(Cri) 477; 1981 3 SCR 68; 1981 0 Supreme(SC) 144; Mohamad Usman Mohammad Hussain Maniyar and another Vs The State of Maharashtra,

179) INDIAN PENAL CODE, Secs. 302 read with Sec. 149 and Sec. 325 read with Sec. 34 - Accused persons inflicting grivous injuries on the head of deceased with sticks in a Quarrel resulting in the death of deceased - Accused also causing injuries on other witnesses - Absence of knowledge to accused that they caused injuries with the knowledge that injuries are likely to cause death and absence of intention to cause death of deceased - Accused are not liable to conviction under Sec. 302 but they are liable to conviction under Sec. 325 read with Sec. 34.
1995 1 ALT(Cri) 71; 1995 1 APLJ 127; 1995 0 CrLJ 701; 1995 1 LS 208; 1995 1 LS(SRC) 10; 1994 0 Supreme(AP) 451; Siddapuram Siva Reddy alias Pyreedy Vs State OF A.P.

180) INVESTIGATION-Decision to investigate or decision on the agency which should investigate, does not attract principles of natural justice-Accused cannot have a say in who should investigate the offences he is charged with-No requirement of recording reasons for such a decision-If investigation by local police is not satisfactory-Further investigation by CBI not precluded.
1997 0 AIR(SC) 93; 1996 0 AIR(SCW) 4249; 1996 4 Crimes(SC) 104; 1997 0 CrLJ 63; 1996 9 JT 131; 1996 7 Scale 508; 1996 11 SCC 253; 1996 7 Supreme 455; 1996 0 Supreme(SC) 1633; Central Bureau of Investigation & Anr. Vs. Rajesh Gandhi & Anr

181) Case against the contesting accused ended in acquittal as eye witnesses did not support the prosecution case. Split up case against the absconding accused who has been apprehended is quashed.
2000 1 ALT(Cri) 174; 1999 0 Supreme(AP) 644; Thallapalli Rajaiah @ Pogula Rajaiah Vs State OF A.P.

182) I once again state that the principles laid down by Sri Justice M. Ranga Reddy followed by Sri Justice Vaman Rao are on the right lines. If the prosecution story is not adhered to before the court in respect of the accused whose cases have been split up, then it must be taken that they are not speaking truth and they are having reservations. More over, when the witness turned hostile, it cannot be imagined that he will again speak to the prosecution story and mention the name of the accused person, who has been absconding and who has made appearance subsequently. There is no slightest possibility of mentioning the name of the accused by the witnesses, if they have not spoken to already regarding the overt acts of

the absconding accused. Viewed from this angle, i disagree with the reasoning mentioned in g. Venkataratnam Kumar s case (supra 3) and i agree with the reasoning mentioned in the aforesaid decisions referred to by the learned counsel for the petitioner. In that view of the matter, I am of considered view that it is waste to continue the proceedings and it is abuse of process of the court if the trial were continued knowing fully well that the witnesses have already turned hostile in judicial proceedings. Hence, the proceedings are liable to be quashed and I, accordingly, quash the proceedings. The petition is, accordingly, allowed.

2002 2 ALD(Cri) 951; 2003 1 ALT(Cri) 56; 2002 0 Supreme(AP) 1237; Azghar Ahmed Khan Vs. State OF A.P

183) IN view of these authoritative pronouncements of the Apex Court, it is not permissible at this stage to sift the evidence or to see whether on merits the case stands or falls against the petitioner even if the trial were to be conducted. Paucity of evidence and the chance or possitbility of conviction of accused being remote, due to weakness of the case of the prosecution are not the relevant considerations for the Court at that stage. The Splitup case cannot be quashed as the main case ended in acquittal.

2001 2 ALD(Cri) 851; 2001 2 ALT(Cri) 482; 2001 0 Supreme(AP) 1306; G.VENKATARATNAM KUMAR Vs. State OF A.P.

184) There is nothing to indicate any scheme for the receipt of the money by the firm from its depositors as a consideration for promise to pay the interest in excess of the stipulated rate and also to pay back principal amount on the expiry of the term dependent in any way on any event or contingency relative or applicable to the enrolment of new depositors, considering the depositors to be members. I am, therefore, of the opinion, that not any of the requirements of a money circulation scheme is satisfied in the instant case. As there is no money circulation scheme, there can be no scheme as contemplated in the Act in view of the definition of scheme in the Rules. The materials, appear to disclose violation of revenue laws. They" however, do not disclose any violation of the Act.

1982 0 AIR(SC) 949; 1982 0 CrLJ 819; 1982 1 Scale 38; 1982 1 SCC 561; 1982 0 SCC(Cri) 283; 1982 3 SCR 121; 1982 0 Supreme(SC) 47; State of W.B. and others Vs. Swapan Kumar Guha and others,

185) It is manifest that a conspiracy is always hatched in secrecy and it is impossible to adduce direct evidence of the same. The offence can be only proved largely from the inferences drawn from acts or illegal omission committed by the Conspirators in pursuance of a common design which has been amply proved by the prosecution as found as a fact by the High Court.

We may point out that under the principle contained in Section 10 of the Evidence Act, once a conspiracy to commit an illegal act is proved, act of one conspirator becomes the act of the other.

1980 0 AIR(SC) 439; 1980 0 CrLJ 388; 1980 2 SCC 465; 1980 1 SCC(Cri) 493; 1979 0 Supreme(SC) 421; Shivanarayan Laxminarayan Joshi and others Vs. State of Maharashtra and others

186) Non-supply of copies of earlier detention order & its ground which order was quashed by High Court on technical ground, can not be said that some material documents affecting rights of detenu to make effective representation were withheld.
National Security Act, 1980 - Section 3(3) - Preventive detention order - It was not necessary to inform petitioner detenu that he could make a representation to Distt. Magistrate himself.
1996 4 Crimes(HC) 343; 1996 0 CrLJ 3923; Gulam Hussain Vs. The District Magistrate and Another

187) UNDER Section 340, Cr. P. C, when upon an application made to the Court and if the Court is of the opinion that it is expedient in the interest of justice that an enquiry should be made into the office referred to in clause (b) of sub-section (1) of Section 195, Cr. P. C. which appears to have been committed in or in relation to the proceeding in that Court in respect of the evidence in a proceeding in that Court, such Court may after such preliminary enquiry, if any, as it thinks necessary, make a complaint thereof in writing and send it to the Magistrate of the I Class having jurisdiction and take sufficient surety for the appearance of the accused before such Magistrate.
2001 2 ALD(Cri) 415; 2001 2 ALT(Cri) 283; 2001 0 CrLJ 4891; 2002 2 RCR(Cri) 797; 2001 0 Supreme(AP) 777; State Of A. P. VS P. Venugopal

188) S.C & S.T PREVENTION OF ATROCITIES ACT, Sec.3(x) - CRIMINAL PROCEDURE CODE, Sec.482 - "Public view" - Interpretation of - Difference between "Public place" and "Public view" - Stated - Accused, Officer abusing employee in the office uttering words "Malas and Madigas" - Magistrate taking cognizance of private complaint - Incident happened in office cannot be construed that incident happened in "Public view" - Public place and Public view are different - Interpretation given to "Public place" cannot be given to "Public view" - Admittedly incident took place in office and it cannot be construed to be "Public view" within the meaning of Sec.3(x) of the Act - No offence is made out against accused under the Act - Proceedings against accused are liable to be quashed - Petition allowed.
2003 1 ALT(Cri) 246; 2002 3 LS 481; 2003 2 RCR(Cri) 503; 2002 0 Supreme(AP) 1326; J.SUMANA Vs. ENDLURI ASEERWADAMMA

189) No doubt, the petitioner is bound to prove that he stored the coconut oil properly while that was in his possession and he sold it in the same state as he purchased it. The petitioner has asserted in his evidence that he stored the oil properly while it was in his possession and sold it in the

same state as he purchased it. There is no reason to distrust his version. It is true that when the plea of protection under S.19(2) of the Act is taken by an accused, the burden is upon him to establish that plea. The burden of proof on the accused is, however, not heavy as that of prosecution in proving the accused guilty

2000 2 ALT(Cri) 482; 2000 3 KLT 693; 2001 1 RCR(Cri) 340; 2000 0 Supreme(Ker) 397; Koyakutty Vs. Food Inspector

190) Even when a search is made by a gazetted officer it is obligatory for the prosecution to inform the accused of his right to be searched before a gazetted officer or before a Magistrate, as provided under Section 50 of the NDPS Act.

2000 0 AIR(SC) 2790; 2000 0 AIR(SCW) 2969; 2000 3 BBCJ(SC) 209; 2000 3 CCR(SC) 142; 2000 3 Crimes(SC) 188; 2000 0 CrLJ 4008; 2000 2 JCC 723; 2000 9 JT 416; 2000 4 PLJR(SC) 124; 2000 3 RCR(Cri) 759; 2000 6 Scale 94; 2000 7 SCC 477; 2000 0 SCC(Cri) 1407; 2000 3 SCJ 354; 2000 5 Supreme 731; 2000 0 Supreme(SC) 1391; 2000 2 UJ 1349; Ahmed Vs. State of Gujarat

191) TO summarize, in order that a bank is a banking company, it is in the first place necessary that it must be a company registered under the Companies Act and secondly it must do banking business. Only on fulfilment of these two conditions, it can be termed as a "banking company" within the meaning of Section 5 (c) of the Banking Regulation Act. A society registered under the Societies Registration Act, whether banking business is done by it or not, does not fall within the meaning of "banking company" (sic) Section 5 (c) of the Banking Regulation Act.

THE other argument advanced by the learned senior counsel is that in the first instance, resort must be had to the provisions under Sections 3, 7 to 10 of Act 17 of 1999 and after exhausting those remedies only, Section 5 of that Act must be pressed into service. This argument, in my opinion, is devoid of merits for the reason that the interest of depositors is of paramount consideration. Section 5 of the Act, which is a penal provision for default committed by any financial establishment, is an independent provision and can be invoked under the circumstances as mentioned therein. Therefore, other remedies need not first be exhausted so as to invoke this provision. As already observed supra, the main object of Act 17 of 1999 is to protect the interests of gullible and innocent depositors.

2003 1 ALD(Cri) 768; 2003 2 ALT(Cri) 233; 2003 0 CrLJ 2835; 2003 0 Supreme(AP) 481; K.Jayaprakash Ram Vs. Addl.Director General of Police, Criminal Investigation Department

192) It would now be useful to refer to the object behind investing the police with powers of seizure. Seizure and production in court of any property, including those regarding which an offence appears to have been committed or which appears to have been used for the commis¬sion of any

offence or any other property will have a two-fold effect. Production of the above property may be necessary as evidence of the commission of the crime. Seizure may also have to be necessary, in order to preserve the property, for the purpose of enabling the Court, to pass suitable orders under S. 452 of the Criminal Procedure Code at the conclusion of the trial. This order would include destruction of the property, confiscation of the property or delivery of the property to any person claiming to be entitled to possession thereto. It cannot be contended that the concept of restitution of propety to the victim of a crime, is totally alien to the Criminal Procedure Code. No doubt, the primary object of prosecution is punitive. However, Criminal Procedure Code, does contain several provisions, which seek to re-imburse or compensate victims of crime, or bring about restoration of property or its restitution. As S. 452, Crl. P.C. itself indicates, one of the modes of disposing of property at the conclusion of the trial, is ordering their return to the person entitled to possession thereto. Even interim custody of property under Ss. 451 and 457, Crl. P.C., recognises the rights of the person entitled to the possession of the properties. An innocent purchaser for value is sought to be re-imbursed by S. 453, Crl. P.C. Restoration of immovable property under certain circumstances, is dealt with under S. 456, Crl. P.C. Even, monetary compensation to victims of crime or any bona fide purchaser of property, is provided for under S. 357, Crl. P.C. Wherein when a Court while convicting the accused imposes fine, the whole or any part of the fine, if recovered, may be ordered to paid as compensation to any person, for any lose or injury, caused by the offence or to any bona fide purchaser of any property, after the property is restored to the possession of the person entitled thereto. This two fold object of investing the police with the powers of seizure, have to be borne in mind, while setting this legal issues."

we have no hesitation to come to the conclu¬sion that the High Court of Bombay committed error in holding that the police officer could not have seized the bank account or could not have issued any direction to the bank officer, prohibiting the account of the accused from being operated upon.

1999 0 AIR(SCW) 3389; 1999 0 CrLJ 4305; 1999 2 JCC 534; 1999 7 JT 92; 1999 4 RCR(Cri) 232; 1999 5 Scale 613; 1999 7 SCC 685; 1999 8 Supreme 149; 1999 0 Supreme(SC) 1052; 2000 1 UJ 431; State of Maharashtra Vs. Tapas D. Neogy

193) PROCEDURE OF ISSUANCE OF SOCIAL STATUS CERTIFICATE - GUIDELINES GIVEN BY SUPREME COURT.

1995 0 AIR(SC) 94; 1994 0 AIR(SCW) 4116; 1994 5 JT 488; 1994 3 Scale 935; 1994 6 SCC 241; 1994 0 Supreme(SC) 832; Kumari Madhuri Patil and another Vs. Additional Commissioner, Tribal Development and others.

194) Though under Section 357(1), Cr. P.C. the amount of compensation forms part of sentence of fine, under Section 357(3), Cr. P.C. it is separate and compensation can be awarded only where there is no sentence of fine.
2001 2 ALT(Cri) 142; 2001 3 Crimes 185; 2001 0 Supreme(AP) 442; Suganthi Suresh Kumar Vs. Jagadeesan

195) In view of the aforesaid position in law, both on international law as well as the relevant statute in this country, we dispose of these cases with the conclusion that a fugitive brought into this country under an Extradition Decree can be tried only for the offences mentioned in the Extradition Decree and for no other offence and the Criminal Courts of this country will have no jurisdiction to try such fugitive for any other offence. (Para 3)
2001 0 AIR(SC) 1716; 2001 0 AIR(SCW) 1731; 2001 0 CrLJ 2188; 2001 2 JLJR(SC) 66; 2001 5 JT 31; 2001 2 RCR(Cri) 535; 2001 3 Scale 370; 2001 4 SCC 516; 2001 0 SCC(Cri) 751; 2001 3 Supreme 363; 2001 0 Supreme(SC) 699; 2001 2 UJ 1002; Daya Singh Lahoria etc. Vs. Union of India and Ors. Etc

196) HAVING regard to these facts I am of the view that prima facie there appears to be a reason to believe that the provisions of S. C. and S. T. (Prevention of Atrocities) Act are not clearly applicable in this case. Hence, Sec 18 of the act does not get attracted and the anticipatory bail prayed for can be granted.
2001 2 ALT(Cri) 159; 2001 0 Supreme(AP) 618;Koppathi Venkat Subrahmanyam Vs. State OF A.P.

197) In order to establish a right by way of prescription one has to show that the incumbent has been using the land as of right peacefully and openly and without any interruption for the last 20 years.
2005 0 AIR(SC) 236; 2005 1 BBCJ(SC) 206; 2004 10 JT 228; 2005 1 PLJR(SC) 188; 2005 4 RCR(Civ) 505; 2004 9 Scale 593; 2005 1 SCC 471; 2004 8 Supreme 398; 2004 0 Supreme(SC) 1455; Justiniano Antao and Ors.Vs. Smt. Bernadette B. Pereira

198) Therefore, merely because a given caste is specified in State A as a Scheduled Caste does not necessarily mean that if there be another caste bearing the same nomenclature in another State the person belonging to the former would be entitled to the rights, privileges and benefits admissible to a member of the Scheduled Caste of the latter State for the purposes of this Constitution. This is an aspect which has to be kept in mind and which was very much in the minds of the Constitution-makers as is evident from the choice of language of Articles 341 and 342 of the Constitution.
1994 0 AIR(SCW) 3305; 1994 4 JT 423; 1994 3 Scale 358; 1994 5 SCC 244; 1994 0 Supreme(SC) 601; Action Committee on Issue of Caste

Certificate to scheduled Castes and Scheduled Tribes in the State of Maharashtra and Anr. Vs. Union of India (UOI) and Anr.

199) There are cases of persons claiming such a benefit on the basis of false and fabricated community certificates and there are cases where the children after reaching the stage of adolescence claiming reservation by engineering adoptions into down-trodden families and there are cases where the offsprings of inter-caste marriage couples though brought up in the family of the parent belonging to forward caste, still claiming reservation at crucial stage of education, for admission to professional courses. If the persons are not allowed to enjoy the benefits of reservation either in education or in public employment and the same are snatched away by persons not legally entitled to, the same amounts to playing fraud on the Constitution. A person takes a convenient advantageous position in the society to which he/she is not entitled to by a process of novel impersonation that he, in fact, belongs to reserved class. More often than not, the authorities who are competent to issue community certificates unwittingly or intentionally become part of the fraud. The Courts, especially the constitutional Courts, alone can abet such a situation. As otherwise, the philosophy of article 15 (4) and 16 (4) of the Constitution aimed at Indian Constitution s preambular goal of social justice would be an illusion. Therefore, this Court is under a duty to prevent such ill-advised adventures like the petitioner in the present case. **2000 1 ALD 639; 2000 1 ALT 543; 1999 0 Supreme(AP) 1102; A.PRATHYUSHA Vs Registrar., N.T.R. University of Health Sciences, Vijayawada.**

200) As regards Section 17(1) of the Protection of Women from Domestic Violence Act, 2005, the wife is only entitled to claim a right of residence, in a shared household and a 'shared household' would only mean the house belonging to or taken on rent by the husband, or the house which belongs to the joint family of which the husband is a member. The property belonging to her parents in laws cannot be called a shared household.
2007 0 AIR(SC) 1118(23); 2007 2 BBCJ(SC) 58; 2007 1 CivCC 351; 2007 2 PLR(SC) 425; 2007 1 RCR(Civ) 378; 2007 1 RCR(Cri) 403; 2006 13 Scale 652; 2007 3 SCC 169; 2007 2 SCC(Cri) 56; 2006 8 Supreme 1002; 2006 0 Supreme(SC) 1314; S.R. Batra & Anr. Vs. Smt. Taruna Batra

201) CRIMINAL PROCEDURE CODE, 1973 - Section 311 - Recall and re-examine the witness must appear to be essential to the just decision of the case - The interest of justice is the main touch-stone for deciding whether to invoke Section 311 CrPC or not - Nor for the benefit of the Accused - Nor for the benefit of the Prosecution - It is only for the Court to decide.
IT was lastly contended that the Police have not choosen to cite another witness in the charge-sheet and, therefore, it cannot be allowed to be examined at this stage. This is a very dangerous proposition and it will

mean that what ever the Police had done in the course of investigation is binding on the Court. Therefore, this proposition urged has to be stated for the purpose of rejection only.**1997 2 ALD 819; 1997 1 ALD(Cri) 296; 1997 1 ALT(Cri) 167; 1997 1 APLJ 223; 1997 1 LS 166; 1996 0 Supreme(AP) 1114; Bhukya Babu Vs. State OF A.P.**

202) THE main contention of the learned counsel for the petitioners is that since section 161 Cr. P. C. statement of the witness, intended to be examined as additional witness, is not recorded by the police, petitioners, who are the accused, would be put to hardship and inconvenience as they would not be having an opportunity to cross- examine the witness with reference to his earlier statement- negatived.
The Investigating Officer did not record his statement under Section 161 cr. P. C. and cite him as a witness, and so de facto-complainant cannot be put to prejudice for the laches on the part of the investigating officer. **2005 1 ALD(Cri) 6; 2004 2 ALT(Cri) 481; 2005 0 CrLJ 716; 2004 0 Supreme(AP) 804; Chemo Steel Ltd, Managing Director, Secunderabad Vs. State OF A.P**

203) 1. A lacuna in prosecution is not to be equated with the fallout of an oversight committed by a public prosecutor during trial, either in producing relevant materials or in eliciting relevant answers from witnesses. Lacuna in the prosecution must be understood as the inherent weak¬ness or a latent wedge in the matrix of the prosecution case.
2. It cannot be said as a legal proposition that the Court cannot exercise power of re-summoning any witness if once that power was exercised, nor can the power be whittled down merely on the ground that prosecution discovered latches only when the defence highlighted them during final arguments.**1999 0 AIR(SC) 2292; 1999 0 AIR(SCW) 2356; 2000 1 BBCJ(SC) 37; 1999 3 Crimes(SC) 106; 1999 0 CrLJ 3529; 1999 2 JCC 441; 1999 4 JT 496; 1999 2 PLJR(SC) 81; 1999 3 RCR(Cri) 440; 1999 4 Scale 58; 1999 6 SCC 110; 1999 0 SCC(Cri) 1062; 1999 6 Supreme 4; 1999 0 Supreme(SC) 692; 1999 2 UJ 1315; Rajendra Prasad vs The Narcotic Cell through its Officer-in-Charge, Delhi**

204) It. has been observed that the rules of natural justice are not exclusively principle of administrative law. They are part of judicial procedure which are imported into the administrative process because of their universality. At the same time, they can supplement the law, but cannot supplant it. If a statutory provision either specifically or be inevitable implication excludes the application of the rules or natural justice, then the court cannot ignore the mandate of the legislature. Whether or not the application of the principles of natural justice in a given case has been excluded, wholly or in part, in the exercise of statutory power, depends upon the language and basic scheme of the provision conferring the power, the nature of the power, the purpose for which it is conferred and

the effect of the exercise of that power. In the case of Swadeshi Cotton Mills (supra), it has further been observed. . . . . that this rule cannot be sacrificed at the altar of administrative convenience or celerity. The general principle-as distinguished from an absolute rule of uniform application-seems to be that where a statute does not, in terms, exclude this rule of prior hearing but contemplates a post-decisional hearing amounting to a full review of the original order on merits, then such a statute would be construed as excluding the Audi alter and partem rule at the pre-decisional stage. Conversely if the statute conferring the power is silent with regard to the giving of a pre-decisional hearing to the person affected and the administrative decision taken by the authority involves civil consequences of a grave nature, and no full review or appeal on merits against that decision is provided, courts will be extremely reluctant to construe such a statute as excluding the duty of affording even a minimal hearing, shorn of all its formal trappings and dilatory features at the pre-decisional stage, unless, viewed pragmatically, it would paralyse the administrative process or frustrate the need for utmost promptitude. In short, this rule of fair play must not be jettisoned save in very exceptional circumstances where compulsive necessity so demands. The court must make every effort to salvage this cardinal rule to the maximum extent possible, with situational modifications. But the core of it must, however, remain, namely, that the person affected must have reasonable opportunity of being heard and the hearing must be a genuine hearing and not an empty public relations exercise

1984 2 Crimes 819; 1985 27 DLT 17; 1985 8 DRJ 16; 1984 0 Supreme(Del) 236; BABU AHMCD,SADANAND AND MUSADDI LAI Vs. STATE OF DELHI

205) It is not correct to say that section 167(5) of Criminal Procedure Code 1973 prescribes a period of limitation apart from section 468 Criminal Procedure Code and there is no anomaly In taking cognizance after six months on a private complaint. But in a summon case if the police does not conclude investigation within 6 months from date of arrest and without permission of court continues it, it is illegal and no cognizance can be taken on it.

1984 1 Crimes(HC) 755; Raj Singh Vs. The State (Delhi Administration)

206) 1984 CRLJ 239 (MAD) P.G. PERIASWAMY VS INSPECTOR OF POLICE, PENNAGARAM PS A police officer who has filed a Charge sheet in which he has not laid a charge against two of several persons against whom information was received by him at the earlier stage of investigation, could file a further Charge Sheet against those persons without further investigation being done.

207) A reading of the above provision discloses that a forest officer who is empowered by the Government in that behalf can compound an offence other than an offence under Sections 52 and 55 of the Act. An offence of theft under Section 379 of the IPC namely, taking away the property from the custody of a person without that person's consent is altogether different in comparison with the contravention for the offence underSection 20 of the Act.A person who has grown timber or wood on a patta land needs permission of the Forest officials either for felling trees or for converting into charcoal. If such permission is not obtained, such person is liable for an offence underSection 20(1)(a)(b)(c) read with Section 20(d) (ii) of the Act. If a person fells trees on the land belonging to the Government or other person without obtaining permission from the Government, it is an offence under Section 379 of the IPC and not under Section 20 of the Act.

P. Venkataramaiah And Ors. vs The Station House Officer, 2003 (4) ALT 494

208) In fact, in the definition under S. 141 I. P. C. the first, third, fourth and fifth objects have been clearly proved in this case by the evidence of innumerable witnesses. It is not possible for the prosecution to prove what was in the minds of the persons assembled. That can only be inferred by the subsequent conduct of the assembly. It is not necessary to prove that there was a previous concert regarding the common object. It may even be that when the crowd originally assembled there may not have been any such common object. The common object can be even after the original assembly was formed. In this case when the Magistrate asked them to disperse and they refused and continued to be there and began to pelt stones and create obstruction and cause mischief, it is clear that the assembly had the common object mentioned in S. 141, first, third, fourth and fifth. I am not therefore prepared to agree with the learned counsel for the appellant that the common object has not been proved.

Coming now to the offences committed in prosecution of the common object, it is clear that simple hurt under S. 323 mischief under S. 440 and rioting under S. 147 I. P. C. have been clearly proved. In fact, there was hardly any argument as to whether the said offences were committed by the assembly. As to this appellant's part in it, it has to be held that when he as a member of the unlawful assembly himself hurled stones, he is guilty of rioting. Again, even though there was no proof that the stones thrown by him caused the hurt and the mischief, he will be guilty when S. 149 is brought in, as he must be held to have known that the offences which were committed by the members of the unlawful assembly were likely to be committed in prosecution of the common object.

1962 0 CrLJ 147; 1961 0 Supreme(Gau) 27; Thokchom Bira Singh and others v. Manipur Administration

209) FOR invoking the provisions of Section 319 Cr. PC, it is necessary that the opinion of the Court that any person not being the accused has committed any offence for which such person could be tried together with the accused, must be based on the material brought forth during the course inquiry or trial of an offence. **2000 2 ALD(Cri) 520; 2000 2 ALT(Cri) 476; 2000 0 Supreme(AP) 646; KASTURI RATNAM Versus THATI LAKSHMI**

210) "Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect. In deciding such cases, one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against the colour of another. To decide, therefore, on which side of the line a case falls, the board resemblance to another case is not at all decisive."

"Precedent would be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches, else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which could impede it." **2003 0 AIR(SC) 2661; 2003 6 JT 184; 2003 5 Scale 255; 2003 11 SCC 584; 2003 5 SLR 82; 2003 4 Supreme 573; 2003 0 Supreme(SC) 609; Ashwani Kumar Singh versus U.P. Public Service Commission & Ors.**

211) CRIMINAL PROCEDURE CODE, 1973, Sections 154 (3) and 156 (3) - A.P. Police Manual approved by Government under G.O. Ms. No.201, Home (Pol.C) Dept., dated 8-9-2001:- While declining a Mandamus to the authorities in general to entrust the task of investigation to a separate entity in view of repeated transgression of the rules by the SHOs in registering FIR in spite of receiving complaint and even if FIR registered, investigation is not done properly, directions given to the police authorities in this regard o prevent filing of such writ petitions by the aggrieved public in future. **2012 1 ALD(Cri) 778; 2012 2 ALT 495; 2012 2 ALT(Cri) 134; 2012 0 Supreme(AP) 35; Jidhav Seshu Rao Patel and others Versus Station House Officer, Police Station Bhainsa, Adilabad District and others**

212) The bail now granted is since a anticipatory one, till end of trial (without prejudice to the right to cancel meanwhile in case of need and/or for non-compliance of conditions supra) any absence of petitioner/s as accused for hearing/enquiry or trial, issuance of non-bailable warrant-NBW (unless cancelled before execution) and even its execution and production of accused as per the NBW; that does not tantamount to cancellation of bail including from the wording of Section 439(2) Cr.P.C. and as such in such an event no fresh bail application can be entertained. As it tantamounts to only cancellation of bail bonds earlier executed, (leave about the power of the court to issue surety notices by forfeiting bonds and for imposing

penalty on the bonds forfeited); the proper course it to direct the accused to work out the remedy to pay penalty on the previous forfeited bonds as per Sections 441 to 446 Cr.P.C. and to submit fresh solvency with self bond for enlarging him by release from custody on payment of penalty of the earlier bonds forfeited without need of enforcing against earlier sureties again." **2015 1 ALT(Cri) 164; 2014 0 Supreme(AP) 1217; Datla Ashwini Swetha Vs. State of A.P. and Ors**

213) Further the Apex Court in Sheonandan paswan s case (supra) held thus:"section 321 enables the Public Prosecutor or Assistant Public Prosecutor in-charge of a case to withdraw from the prosecution with the consent of the Court. Before an application is made under Section 321, the public Prosecutor has to apply his mind to the facts of the case, independently without being subject to any outside influence. But it cannot be said that a Public Prosecutor s action will be illegal if he receives any communication or instruction from the government. Unlike the Judge, the Public prosecutor is not an absolutely independent officer. He is an appointee of the government, Central or State appointed for conducting in Court any prosecution or other proceedings on behalf of the Government concerned. So there is the relationship of counsel and client between the Public prosecutor and the Government. A Public prosecutor cannot act without instructions of the Government; a Public Prosecutor cannot conduct a case absolutely on his own, or contrary to the instruction of his client, namely, the Government in Section 321 does not lay any bar on the Public Prosecutor to receive any instruction from the Government before he files an application under that section. If the Public Prosecutor receives such instructions, he cannot be said to act under extraneous influence. On the contrary, the Public Prosecutor cannot file an application for withdrawal of a case on his own without instructions from the government. " **2003 1 ALD(Cri) 776; 2002 0 Supreme(AP) 1381; V.THUKARAM GOUD Versus State OF A.P**

214) The fact that a conspiracy is also an abutment within the meaning of S. 109 I. P. C. does not, in our view, make it any the less an offence by itself, if it comes within the scope of the S. 120-B. but we are in respectful agreement with him as regards the applicability of s. 182 Cr. P. C. (24) IN (S) , AIR1957 SC 340 , 1957 Crilj422 the Supreme Court observed that where the charge, as framed in that case, disclosed one single conspiracy, although spread over several years, there is only one object of the conspiracy and that is to cheat members of the public; the fact that in the course of years joined the conspiracy or that several conspiracies. Their Lordships held dated on the facts of that case the instances of cheating were in pursuance of one conspiracy and were parts of the same transaction. If we apply the ratio of that decision to the facts of the case before us then it follows that the several acts committed by individual conspirators are parts of the same transaction. **1962 0 AIR(Kar) 275;**

1962 0 CrLJ 765; 1961 0 Supreme(Kar) 38; V.GOVINDRAJALU Versus STATE OF MYSORE

215) Scope and ambit of Section 197 Cr.P.C.-Protection is to protect responsible public servant against possible vexatious criminal proceedings-Protection is available only when alleged act done was reasonably connected with discharge of official duty and was not merely a cloak for doing an objectionable act-It was not the duty which required examination so much as the act-It is no part of duty of public -servant while discharging his official duty to commit forgery-Want of sanction u/s 197 Cr.P.C. was no bar and High Courts view could not be maintained. **2003 0 AIR(SCW) 6887; 2004 1 RCR(Cri) 197; 2003 10 Scale 522; 2004 2 SCC 349; 2003 8 Supreme 706; 2003 0 Supreme(SC) 1230; State of H.P.VS M.P. Gupta**

216) MUBARIK ALI AHMED VS STATE OF BOMBAY AIR 1957 SC 858
The question whether the evidence discloses only a breach of civil liability or a criminal offence under Sec 420 Penal code, depends upon whether the complainant in parting with his money acted on the representations of the aaccused and in belief of the truth thereof and whether those representation , when made were in fact false to knowledge of the accused and whether he had a dishonest intention from the outset. If the courts below and these facts specifically against the accused in categorical terms, the above questions of fact are not open to challenge in the Supreme Court in an appeal on special leave.

217) DR. KISHAN PAL VS STATE OF UP 1996 SCC (Crl) 249 Criminal Procedure code – S. 161 – Inordinate delay in examination of witness by Police – Delay not explained – simply on that ground the convincing and reliable evidences given by the eyewitnesses cannot be discarded. (Para 9)
S.174 – inquest report – omission to mention crime number in – Merely because the investigating officer had not been diligent enough it would not be proper to discard reliable and clinching evidence adduced by the eyewitnesses. (Para 9)
Non-mention of the name of one of the eyewitnesses in the FIR not fatal (Para 9)

218) SIDDHARAM SATLINGAPPA MHETRE VS STATE OF MAHARASTRA AND OTHERS 2011 (1) ALT (CRL) 69 SC The courts considering the bail application should try to maintain fine balance between the societal interest vis-avis personal liberty while adhering to the fundamental principle of criminal jurisprudence that the accused is presumed to be innocent till he is found guilty by the competent court. (Para 93)
Arrest leads to many serious consequences not only for the accused but for the entire family and at times for the entire community. (Para 97)
The court which grants the bail also has the power to cancel it (Para 103)

The discretion of grant or cancellation of bail can be exercised either at the instance of the accused, the public prosecutor or the complainant on finding new material or circumstances at any point of time. (Para 103)

Order granting anticipatory bail for a limited duration and thereafter directing the accused to surrender and apply before a regular bail is contrary to the legislative intention and the judgment of the Constitution Bench. (Para 102)

The Court cannot rewrite the provisions of the statute in the grab of interpreting it. (Para 113)

Benches of lesser strength are bound by the statements of the Constitution Bench and any Bench of smaller strength taking contrary view is per in curium. (Para 148)

Not only the judgment of a larger strength is binding on a judgment of smaller strength but the judgment of a co-equal strength is also binding on a Bench of judges of co-equal strength. (Para 14)

INDIAN PENAL CODE JUDGMENTS

1. It could not be said that merely because the proceedings before the learned Sessions Judge were held up due to stay granted by the High Court in that revision, the learned Single Judge could have taken recourse to the inherent powers of the High Court under S. 482 of the Code, or that it was necessary to do so either to prevent abuse of the process of Court or otherwise to secure ends of justice.
   1987 0 AIR(SC) 2104; 1987 3 Crimes(SC) 215; 1987 0 CrLJ 1929; 1987 3 JT 382; 1987 2 RCR(Cri) 461; 1987 2 Scale 337; 1987 4 SCC 170; 1987 0 SCC(Cri) 744; 1987 3 SCR 968; 1987 0 Supreme(SC) 648; State of Karnataka Vs. Narsa Reddy
2. The Acquittal under Sec 304 B IPC does not bar the court from finding the accused guilty of the offence under sec 498-A IPC.
   1996 1 ALD 214; 1996 1 ALD(Cri) 406; 1996 1 ALT(Cri) 318; 1996 1 APLJ 157; 1996 0 CrLJ 1528; 1995 0 Supreme(AP) 702; ReguriSampath Reddy Vs. State OF A.P

3. The three Oral dying Declarations and the two written Dying Declarations were consistent, hence the court believed the same and convicted the accused for the offence U/Sec. 304 B IPc and 498-A IPC.
   2008 2 ALT(Cri) 220; 2008 0 Supreme(AP) 276; Giri Ravi Vs. State of A.P.

4. it is held that it is not every harassment or every type of cruelty that would attract section 498-A IPC. It should be remembered that the petitioner has filed a petition U/s. 482 Cr. P. C. to quash the proceedings. Whether the alleged harassment or cruelty would attract Section 498-A IPC or not, as alleged in the charge-sheet are primarily questions of fact. It is settled principle of law that questions of fact cannot be decided in a proceeding under Section 482 Cr. P. C. It is alleged that the accused persons forcibly took away gold ornaments of the complainant at the instigation of the petitioner and also subjected her to harassment and cruelty with a view to knock off her properties and also attempted to obtain signatures on stamp papers and in the face of the said allegations, it cannot be said that there is no material on record to proceed against the petitioner for the offence u/s. 498-A r/w 109 IPC etc. The truth or otherwise of the said allegations can be decided only after trial of the case. Therefore, on a careful consideration of the material on record, I am inclined to hold that there is no merit in the contention of the learned Counsel, for the petitioner and the petitioner is not entitled to the relief of quashing the proceedings.**1997 6 ALD 144; 1997 2 ALD(Cri) 905; 1998 1 ALT(Cri) 182; 1997 0 CrLJ 4668; 1997 2 LS 597; 1997 0 Supreme(AP) 881;SangabathulaBalusulaRao Vs. JujjavarapuSubbayamma**

5. the question is whether in this case appellants knew that the substances in question were explosive substances. The knowledge whether a particular substance is an explosive substance depends on different

circumstances and varies from person to person. An ignorant man or a child coming across an explosive substance may pick it up out of curiosity and not knowing that it is an explosive substance. A person of experience may immediately know that it is an explosive substance. In the instant case, the appellants had been dealing with the substances in question for a long time. They certainly knew or at least they shall be presumed to have known what these substances were and for what purpose they were used.
1981 0 AIR(SC) 1062; 1981 0 CrLJ 588; 1981 1 Scale 445; 1981 2 SCC 443; 1981 0 SCC(Cri) 477; 1981 3 SCR 68; 1981 0 Supreme(SC) 144; MohamadUsman Mohammad HussainManiyar and another Versus The State of Maharashtra

6. In the light of the above observation, we have no hesitation to conclude that in the absence of any explanation by the accused as to how the occurrence took place inside his house in which deceased sustained injuries, we could possibly infer that the accused had participated in the Commission of Crime
Therefore we hold that the statement made by appellant to P.W. 1 immediately after the occurrence without any long time lag would admissible under Section 6 of the Evidence Act.
1997 2 ALT(Cri) 554; 1997 0 CrLJ 3854; 1997 0 Supreme(Mad) 357; Venkatesan Versus State

7. We do not think that this letter which has painted the accused with black brush is sufficient to hold that she was so bad and she ill-treated the deceased so much that the deceased was driven to commit suicide only because of these factors.
In the matter of offence under Section 306, IPC we would expect much stronger evidence than what is presented. True it is that the evidence about what happens within the four corners of walls is not available to the Investigating Agency. But in this case, very strangely, the Investigating Agency has not proceeded against the husband against whom there was a very strong suspicion. The Investigating Agency has instead made a scapegoat of the old mother perhaps trying to rely on the age old concept of bickerings between the mother-in-law and daughter-in-law. That is not the universal truth. The courts below should have therefore in such a matter appreciated the evidence with discerning eyes.
2010 0 AIR(SC) 499; 2009 4 JCC 3047; 2009 13 JT 402; 2010 1 RCR(Cri) 227; 2009 13 Scale 367; 2009 10 SCC 164; 2010 1 SCC(Cri) 281; 2009 0 Supreme(SC) 1633; Mankamma Versus State Of Kerala

8. The presumption of robbery has been drawn by us as against the appellant in view of the fact that he was found in possession of looted property the next day at about 1.30 p.m. which could be said to be soon after the incident of robbery which may have taken place around 9.30 p.m.

the previous day but thereafter drowning of the deceased any time before his body was recovered on 30.6.95 cannot be linked with robbery.
2002 2 Crimes(SC) 129; 2002 0 CrLJ 2031; 2002 0 SCC(Cri) 824; 2002 3 Supreme 138;George versus State of Kerala

9. For all intent and purport Rule 72 of Criminal Rules of Practice has become redundant and extrajudicial confession by an accused before the Village Administrative Officer is admissible and can be relied upon.
It was further submitted that the purported extra-judicial confession which was recorded by a person not authorized therefor in view of Rule 72 of Criminal Rules of Practice (CRP) in terms whereof a village magistrate is prohibited from recording the extra judicial confession or statement whatever made by an accused person after the police investigation has begun.
Extra-judicial confession may or may not be a weak evidence. Each case is required to be examined on its own fact
2006 0 AIR(SC) 653; 2005 0 AIR(SCW) 6360; 2006 2 BBCJ(SC) 1; 2006 0 CrLJ 536; 2005 10 JT 379; 2006 1 RCR(Cri) 208; 2006 1 Scale 1; 2006 1 SCC 714; 2005 8 Supreme 637; 2005 0 Supreme(SC) 1574; Sivakumar Vs. State by Inspector of Police

10. Common intention to cause injuries, co accused cannot be punished differently from that of the main accused.
1991 0 AIR(SC) 1225; 1991 0 CrLJ 1712; 1990 0 Supreme(SC) 717; Balkar Singh and another Versus State of Punjab,

11. A girl after marriage goes to live with her husband and his people in a totally new atmosphere. There might be lot of change in the way of life to which she is used to and to the one in her husband's place. Before a marriage can succeed there must be mental compatibility and mutual understanding and an attitude of give and take between the spouses and the close relatives of the husband. The marriage undergoes lot of stress and strain in the first few years. Emotions, sentiments and attitudes may make or mar a marriage. For various causes a married woman in Indian set up may find it difficult to continue the married life or to come out of it for social and other reasons and may in a weak moment decide to end her life. As such, law, while trying to strengthen the hands of the prosecution in cases of dowry death or abetment to suicide of a married woman within 7 years of marriage provided for some presumption to be drawn, has scrupulously not permitted any presumption to be drawn on the question of cruelty, which is one of the ingredients of the dowry death. Cruelty must be established as any other fact.
THOUGH there is some evidence that prior to the marriage A2 and A3 had demanded some dowry and had also received the same, there is no direct evidence of the accused actually demanding or desiring further dowry after the marriage.

In SharadBirdhichandSarda v. State of Maharashtra (AIR 1984 S -1622) : (1984 Cri LJ 1738) the Supreme Court has made the following remarks with regard to the assessment of the evidence of close relatives in such cases :"before discussing the evidence of the witnesses we might mention a few preliminary remarks against' the background of which the oral statements are to be considered. All persons to whom the oral statements are said to have been made by Manju when she visited Beed for the last time, are close relatives and friends of the deceased. In view of the close relationship and affection any person in the position of the witness would naturally have a tendency to exaggerate or add facts which may not have been stated to them at all. Not that this is done consciously but even unconsciously the love and affection for the deceased would create a psychological hatred against the supposed murderer and, therefore, the Court has to examine such evidence with very great care and caution. Even if the witnesses were speaking a part of the truth or perhaps the whole of it, they would be guided by a spirit of revenge or nemesis against the accused person and in this process certain facts which may not or could not have been stated may be imagined to have been stated unconsciously by the witnesses in order to see that the offender is punished. This is human psychology and no one can help it. "

The evidence of PW 8 shows that when the first accused found his wife hanging he broke down. His parents were not there and only the child was with him. Obviously in that condition he himself could not have gone out to give information either to PWs 1 and 2 or to the police. He states that he requested one person to convey the information to PWs 1 and 2. PW 8 in his statement before police has stated that A-1 gave one telephone number and requested him to give information to the brother and mother of the deceased. Possibly the person who gave information to PWs 1 and 2, in order to avoid they being shocked, has told them that Shashikala was serious. It is not the case of the prosecution that A-1 had made any attempts to cremate the body in a hurry. He has waited till PWs 1 and 2 and others arrived. Though A-1 himself might not have given. information to the police the evidence of PW 1 shows that even before he could secure Ex. P3, chit, from the accused the police had come there. The complaint has been lodged subsequently. As such some one must have given information to the police. On the facts of this case it cannot be said that A-1 had committed an offence under S. 202, I. P. C. without even a charge being framed in that regard.

1996 1 ALT(Cri) 635; 1996 0 CrLJ 2628; 1996 0 ILR(Kar) 1107; 1996 2 KarLJ 1; 1996 0 Supreme(Kar) 103; State of Karnataka Versus Dr.H.A.Ramaswam

12. When ocular evidence is consistent and wholly reliable, mere non-examination of other witnesses who might have seen the incident would not affect the prosecution case.

Learned counsel also doubted the truthfulness of the prosecution case as regards the place of occurrence. It was submitted that if several shots were fired, some pellets would have been found at the place of occurrence. It is the case of the prosecution that no pellets were found. For this reason alone we cannot discard the case of the prosecution. If pellets were found at the place of occurrence it would have further strengthened the case of the prosecution, but in the absence of such evidence one has to rely upon the ocular evidence which if found reliable, may be acted upon. Unfortunately, in this case, despite the efforts of the prosecution, the investigating officer could not be examined as a witness. The seizure witness has also been declared hostile. There is really no corroborative evidence, except the circumstantial evidence to corroborate the version given by the witnesses. However, we find the eye witnesses to be straight forward and reliable. Being rustic villagers, there is no effort on their part to improve the case of the prosecution on the basis of imaginary facts. They have deposed in a straight forward manner, and there is a ring of truth in their testimony. We find them to be implicitly reliable.
2005 0 AIR(SC) 1284; 2004 0 AIR(SCW) 6950; 2005 1 BBCJ(SC) 418; 2005 2 JCR(SC) 38; 2004 10 Scale 84; 2005 9 SCC 719; 2004 8 Supreme 591; 2004 0 Supreme(SC) 1432; BirendraRai&Ors. Versus State of Bihar

13. When there is imminent peril to life and limb, it is not expected to weigh the situation in a golden scale. Although the appellant had a right of private defence, it was not within his right to assault the deceased with the yoke causing his death. Therefore, he is guilty of offence under Section 304, Part I, I. P. C. and not under Section 302, I. P. C
2003 0 CrLJ 3256; 2003 0 Supreme(Ori) 151; MINAKETAN BHOI Versus STATE OF ORISSA

14. It is apparent that the case of the accused persons was that whatever injuries had been inflicted on the deceased or on others had been inflicted in exercise of the right of defence of person when the complainant party came to Gopal s house and started attacking them
The injuries which were inflicted on the members of the accused party were so numerous and extensive and even involved two ladies.
1972 0 AIR(SC) 1838; 1972 0 CrLJ 1191; 1972 3 SCC 486; 1972 0 SCC(Cri) 593; 1972 0 Supreme(SC) 101; Gopal and others Versus The State of Rajasthan

15. Section 149, IPC consists of two parts. The first part of the section means that the offence to be committed in prosecution of the common object must be one which is committed with a view to accomplish the common object. In order that the offence may fall within the first part, the offence must be connected immediately with the common object of the unlawful assembly of which the accused was member. Even if the offence committed

is not in direct prosecution of the common object of the assembly, it may yet fall under Section 141, if it can be held that the offence was such as the members knew was likely to be committed and this is what is required in the second part of the section. The purpose for which the members of the assembly set out or desired to achieve is the object. If the object desired by all the members is the same, the knowledge that is the object which is being pursued is shared by all the members and they are in general agreement as to how it is to be achieved and that is now the common object of the assembly. An object is entertained in the human mind, and it being merely a mental attitude, no direct evidence can be available and, like intention, has generally to be gathered from the act which the person commits and the result therefrom. Though no hard and fast rule can be laid down under the circumstances from which the common object can be culled out, it may reasonably be collected from the nature of the assembly, arms it carries and behaviour at or before or after the scene of incident. The word `knew' used in the second part of the section implies something more than a possibility and it cannot be made to bear the sense of `might have been known'. Positive knowledge is necessary. When an offence is committed in prosecution of the common object, it would generally be an offence which the members of the unlawful assembly knew was likely to be committed in prosecution of the common object. That, however, does not make the converse proposition true; there may be cases which would come within the second part but not within the first part. The distinction between the two parts of Section 149 cannot be ignored or obliterated. In every case it would be an issue to be determined, whether the offence committed falls within the first part or it was an offence such as the members of the assembly knew to be likely to be committed in prosecution of the common object and falls within the second part. However, there may be cases which would be within the first part, but offences committed in prosecution of the common object would be generally, if not always, be within the second part, namely, offences which the parties knew likely to be committed in the prosecution of the common object.We shall also deal with the contention regarding interestedness of the witnesses for furthering prosecution version. Relationship is not a factor to affect credibility of a witness. It is more often than not that a relation would not conceal actual culprit and make allegations against an innocent person. Foundation has to be laid if plea of false implication is made. In such cases, the court has to adopt a careful approach and analyse evidence to find out whether it is cogent and credible.

Maranadu vs. State by Inspector of Police, Tamil Nadu 2009 (1) JLJ SC 4; 2008 0 AIR(SCW) 6210; 2008 0 CrLJ 4562; 2008 10 JT 164; 2009 1 RCR(Cri) 256; 2008 12 Scale 420; 2008 6 Supreme 677; 2008 0 Supreme(SC) 1366;

16. The earliest version of the case without any embellishment and improvements should be placed before the court, which inspires confidence of the court. Since the earliest version is suppressed in this case, the only conclusion that can be drawn is that after due deliberations, the FIR was brought into existence to suite the case of the prosecution.
2009 1 ALD(Cri) 720; 2009 2 ALT(Cri) 135; 2009 0 Supreme(AP) 153; ThummalaLovaraju Versus The State of A.P.,

17. True, that the accused need not prove the existence of the right of private defence beyond reasonable doubt and it is enough for him to show as in a civil case that preponderance of probabilities is in favour of his plea- Right of private defence cannot be used to do away with a wrong doer unless the person concerned has a reasonable cause to fear that otherwise death or grievous hurt might ensue in which case that person would have full measure of right to private defence
The mere fact that the other seven accused were acquitted or that some of the prosecution witnesses were also convicted would not be sufficient to hold that the appellant was not the aggressor.
2012 0 AIR(SC) 2181; 2012 2 BomCR(Cri)(SC) 614; 2012 2 CalCriLR 453; 2012 2 CCR(SC) 262; 2012 2 Crimes(SC) 248; 2012 0 CrLJ 2641; 2012 3 JLJR(SC) 8; 2012 4 JT 447; 2012 3 MLJ(Cri)(SC) 275; 2012 5 Scale 52; 2012 5 SCC 530; 2012 3 SCC(Cri) 224; 2012 3 Supreme 453; 2012 0 Supreme(SC) 343; ArjunVs State of Maharashtra.

18. Coming to the plea regarding absence of proper medical treatment the argument is clearly unsustainable in view of the Explanation to Section 299 IPC.
The Explanation to Section 299 IPC clearly contemplates that where the death is caused by bodily injury, the person who causes such bodily injury shall be deemed to have caused the death, although by resorting to proper remedies and skillfultreatment, the death might have been prevented.
2007 1 AD(Cr) 453; 2007 Supp AIR(SC) 350; 2007 0 AIR(SCW) 937; 2007 2 ALT(Cri)(SC) 276; 2007 1 AWC(SC) 494; 2007 3 BBCJ(SC) 17; 2007 1 Crimes(Sc) 289; 2007 0 CrLJ 1442; 2007 3 JT 247; 2007 1 RCR(Cri) 880; 2007 2 Scale 373; 2007 15 SCC 327; 2007 1 Supreme 830; 2007 0 Supreme(SC) 102; Sellappan versus State of Tamil Nadu

19. The actual manner of misappropriation, it is well settled, is not required to be proved by the prosecution. Once entrustment is proved, it was for the accused to prove as to how the property entrusted to him was dealt with in view of Section 405 of the IPC. If the respondent had failed to produce any material for this purpose, the prosecution should not suffer therefor. **2006 0 AIR(SC) 2211; 2006 0 AIR(SCW) 2853; 2006 3 BBCJ(SC) 274; 2006 2 Crimes(SC) 239; 2006 0 CrLJ 2917; 2006 0 CrLJ 507; 2006 2 JCC 946; 2006 5 JT 479; 2006 3 RCR(Cri) 379; 2006 5&6 SBR 256; 2006 5 Scale 654; 2006 5 SCC 381; 2006 2 SCC(Cri) 460; 2006 8 SCJ 93;**

2006 4 Supreme 319; 2006 0 Supreme(SC) 506; State of H.P. versus Karanvir

20. Every breach of trust may not result in a penal offence of criminal breach of trust unless there is evidence of a mental act of fraudulent misappropriation. An act of breach of trust involves a civil wrong in respect of which the person wronged may seek his redress for damages in a civil court but a breach of trust with mensrea gives rise to a criminal prosecution as well.
    To hold a person guilty of cheating it is necessary to show that he had fraudulent or dishonest intention at the time of making the promise. From his mere failure to keep up promise subsequently such a culpable intention right at the beginning, that is, when he made the promise cannot be presumed.
    It is further held that a provision made in the agreement for referring the disputes to arbitration is not an effective substitute for a criminal prosecution when the disputed act constitutes a criminal offence.
    2001 0 AIR(SC) 2960; 2001 0 AIR(SCW) 4435; 2001 3 BBCJ(SC) 209; 2001 0 CrLJ 4765; 2001 2 JCC 361; 2001 9 JT 151; 2002 1 PLJR(SC) 247; 2001 4 RCR(Cri) 572; 2001 7 Scale 430; 2002 1 SCC 241; 2002 0 SCC(Cri) 129; 2001 8 Supreme 216; 2001 0 Supreme(SC) 1469; S.W. Palanitkar&Ors. Versus State of Bihar &Ors

21. The Magistrate is entitled and indeed has a duty to consider the entire material referred to in Section 239. In order to hold a charge groundless, there should either be no iota of evidence or the evidence should contra-indicate the offence or there should be other fundamental error in assuming cognizance of the offence. This provision of law is calculated to eliminate further harassment to the accused persons when the evidentiary materials gathered after a prolonged and thorough investigation of the occurrence falls short of minimum requirement, and therefore, the provision of law cannot be reduced into a dead letter and the accused persons made to understand the rigour of the futile trial where such a trial of materials available is palpably, not warranted against him.
    2004 2 ALD(Cri) 305; 2004 2 ALT(Cri) 360; 2004 0 CrLJ 4100; 2004 0 Supreme(AP) 691; Diamond Cables Ltd., Baroda Versus State OF A.P.

22. though the requisite intention to commit murder could not be attributed to the accused, he wielded a weapon like a knife and therefore he could be attributed with the knowledge that he was likely to cause an injury, which was likely to cause death and in such a situation though he could not be convicted under Section 302 IPC, he would be guilty of committing an offence under section 304 Part II.
    2003 1 ALT(Cri) 256; 2003 0 Supreme(AP) 104; BayanaboinaSubbarayudu Versus State OF A.P.

23. Sections 299 and 300 - Academic distinction between "murder" and "culpable homicide not amounting to murder" - All murder is culpable homicide but not vice-versa-Distinction lies between a bodily injury likely to cause death and a bodily injury sufficient in ordinary course of nature to cause death - Distinction is fine but real and if overlooked, may result in miscarriage of justice.
2007 0 AIR(SC) 3215; 2007 0 AIR(SCW) 5826; 2008 1 BBCJ(SC) 151; 2007 0 CrLJ 4690; 2007 11 JT 156; 2007 4 RCR(Cri) 211; 2007 11 Scale 103; 2007 14 SCC 588; 2009 3 SCC(Cri) 221; 2009 2 SCC(Cri) 221; 2007 0 Supreme(SC) 1177; PhuliaTudu and Anr Versus The State of Bihar (now Jharkhand)

24. Section 188 r/w section 195, Code of Criminal procedure, 1973 – Section 195 being mandatory, cognizance cannot be taken u/s 188 unless the public servant whose orders have not been complied with files a complaint in writing – Non-compliance of section 195 would render trial and conviction void ab initio – Instantly no such complaint filed – Charge could not be framed u/s 188 IPC – Even if charges u/s 188 are quashed, charges for other offences will remain unaffected.
Clubbing of cases – One occurrence fall out of the other – They would be one and the same occurrence – Damage caused to the public transport vehicles and consequential burning of the University bus – Part of one and the same incident – Merely lodging of two separate complaints will not bar clubbing together of these cases – No infirmity in filing one charge sheet.
Indian Evidence Act, 1872 – Section 9 – **TI Parade** – Part of the investigation – Very useful where the accused are not known before-hand to the witnesses – Used only to corroborate the evidence recorded in the court – Therefore not substantive evidence – Accused should not be shown to any of the witnesses after arrest, and before holding the Test Identification Parade, he is required to be kept "baparda" – Witnesses identifying accused in jail as well as in court – No infirmity.
Hostile witness – One witness turning hostile – In view of consistent evidence of other witnesses, one witness turning hostile does not affect the prosecution case
Defective investigation – Occurrence ugly and awful – Investigation in highly charges atmosphere – Some irregularities bound to occur – Investigation transferred to CBCID – Irregularities committed in investigation lose relevance – However, defect in investigation by itself cannot be a ground for acquittal.
Extra judicial confession – Only admissible part of such statement can be exhibited – Instantly, full statement exhibited in court – Not permissible – However in view of sufficiency of other materials on record it did not prejudice the accused.
Hostile witness – Evidence of a hostile witness cannot be discarded as a whole – Relevant parts thereof, admissible in law, can be used by the prosecution or the defence.

Appreciation of evidence – Discrepancies – Minor or trivial omissions or discrepancies – Ought to be ignored.
2010 0 AIR(SC) 3178; 2010 3 CalCriLR 698; 2010 3 CCR(SC) 391; 2010 9 JT 95; 2010 4 RCR(Cri) 268; 2010 4 RLW(SC) 3096; 2010 9 SCC 567; 2010 3 SCC(Cri) 1402; 2010 6 SCJ 822; 2010 0 Supreme(SC) 796; C. Muniappan& Others Versus State of Tamil Nadu

25. It was open to the prosecution to negative the rival or the parallel version about the incident. But as noticed above, in this case no evidence has been produced by the prosecution to do so. There is not even a suggestion by the Investigating Officers in their testimony to the effect that the other version is ill-founded or has been brought up to "take the investigation for a ride". It is our understanding that in such a situation, the prosecution has firstly to establish that the second version, which according to it is liable to be discredited, was false and the version on which they are relying is the only one to be considered. In a case like the present, the accused are not required to prove their innocence, they are not obliged to prove by preponderance of probability or even that most probably they had not committed the crime. They are just to bring on record that the defence put forth is plausible.
1989 0 CCrC 625; 1990 0 CrLJ 337; 1989 39 DLT 449; 1989 2 ILR(Del) 24; 1989 0 Supreme(Del) 307; MOTI RAM Versus STATE OF DELHI

26. the lapse of Investigating Officer should not prevent the Court from accepting the evidence of the witnesses.
The Supreme Court in Pandurang v. State of Hyderabad, had cautioned the Courts with regard to acceptance of omnibus inclusions where there are number of accused. It is useful to refer paras (32) and (33) of the above referred judgment and they are as follows :
"32. Now in the case of Section 34 we think it is well established that a common intention presupposes prior concert. It requires a pre-arranged plan because before a man can be vicariously convicted for the criminal act of another, the act must have been done in furtherance of the common intention of them all: Mahbub Shah v. King-Emperor (1945 (46) Cri LJ 689 : AIR 1945 PC 118). Accordingly there must have been a prior meeting of minds. Several persons can simultaneously attack a man and each can have the same intention, namely the intention to kill, and each can individually inflict a separate fatal blow and yet none would have the common intention required by the section because there was no prior meeting of minds to form a pre-arranged plan. In a case like that, each would be individually liable for whatever injury he caused but none could be vicariously convicted for the act of any of the others; and if the prosecution cannot prove that his separate blow was a fatal one he cannot be convicted of the murder however clearly an intention to kill could be

proved in his case: Barendra Kumar Ghosh v. King Emperor(1925 (26) Cri LJ 431 : AIR 1925 PC 1) and Mahbub Shah v. King-Emperor (1945 (46) Cri LJ 689 : AIR 1945 PC 118). As their Lordships say in the latter case, 'the partition which divides their bounds is often very thin: nevertheless, the distinction is real and substantial, and if overlooked will result in miscarriage of justice'.

33. The plan need not be elaborate, nor is a long interval of time required. It could arise and be formed suddenly, as for example, when one man calls on bystanders to help him kill a given individual and they, either by their words or their acts, indicate their assent to him and join him in the assault. There is then the necessary meeting of the minds. There is a pre-arranged plan however hastily formed and rudely conceived. But pre-arrangement there must be and premeditated concert. It is not enough, as in the latter Privy council case, to have the same intention independently of each other, e.g., the intention to rescue another and, if necessary, to kill those who oppose."

2004 1 ALD(Cri) 963; 2004 2 ALT(Cri) 603; 2004 0 CrLJ 4052; 2004 0 Supreme(AP) 372; EdigaJagannadhaGowd Versus State OF A.P.

27. A Magistrate who receives the case on transfer & takes cognizance would not become incompetent to do so merely because the sanction of transfer of case to his file is not in accordance with law.

1996 0 AIR(SC) 1840; 1995 0 AIR(SCW) 3937; 1995 3 Crimes(SC) 740; 1996 0 CrLJ 408; 1995 6 JT 428; 1996 1 PLJR(SC) 5; 1996 1 RCR(Cri) 43; 1995 5 Scale 216; 1995 6 SCC 142; 1995 0 SCC(Cri) 1051; 1995 0 Supreme(SC) 855; Anil Saran versus State of Bihar &Anr.

28. In the defnition of Section 415 there are set forth two separate classes of acts which the person deceived may be induced to do. In the first place he may be induced fraudulently or dishonestly to deliver any property to any person. The second class of acts set forth in the section is the doing or omitting to do anything which the person deceived would not do or omit to do if he were not so deceived. In the first class of cases the inducing must be fraudulent or dishonest. In the second class of acts, the inducing must be intentional but not fraudulent or dishonest. In determining the question it has to be kept in mind that the distinction between mere breach of contract and the offence of cheat-ing is a find one. It depends upon the intention of the accused at the time of inducement which may be judged by his subsequent conduct but for this subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, that is the time when the offence is said to have been committed. Therefore it is the intention which is the gist of the offence. To hold a person guilty of cheating it is necessary to show that he had fraudulent or dishonest intention at the time of making the promise. From his mere failure to keep up promise subsequently such

a culpable intention right at the beginning that is, when he made the promise cannot be presumed.

2000 2 Crimes(SC) 72; 2000 0 CrLJ 2983; 2000 3 Supreme 13; HridayaRanjan Pd. Verma&Ors. Versus State of Bihar &Anr 2000 0 AIR(SC) 2341; 2000 0 AIR(SCW) 2077; 2000 2 CCR(SC) 62; 2000 1 JCC 362; 2000 3 JT 604; 2000 3 PLJR(SC) 137; 2000 2 RCR(Cri) 484; 2000 2 Scale 694; 2000 4 SCC 168; 2000 0 SCC(Cri) 786; 2000 3 Supreme 13; 2000 0 Supreme(SC) 667;

29. We have, therefore, no hesitation in holding that Section 49A of the Police Act and Section 4 of the Gaming act are not applicable to wagering or betting on a horse-race when such wagering or betting takes place within the club premises and on the date on which such race is actually run on the turf of the club. These Sections are applicable to the bucket-shops or any house, house room, tent, enclosure, vehicle, etc. which are run in the streets, bazaars or any other place away from the club.

1996 0 AIR(SC) 1153; 1996 0 AIR(SCW) 713; 1996 1 CCC(SC) 77; 1996 1 CLT(SC) 389; 1996 0 CrLJ 1635; 1996 1 JT 173; 1996 1 RCR(Cri) 468; 1996 1 Scale 208; 1996 2 SCC 226; 1996 1 Supreme 322; 1996 0 Supreme(SC) 91; Dr. K.R. Lakshmanan versusState of Tamil Nadu &Anr.

30. The part of the body on which the blow was dealt, the nature of the injury and the type of the weapon used will not always be determinative as to whether an accused is guilty of murder or culpable homicide not amounting to murder. The events which precede the incident will also have a bearing on the issue whether the act by which death was caused was done with an intention of causing death or knowledge that it is likely to cause death but without intention to cause death.

The injuries received by accused, the imminence of threat to his safety, injuries caused by accused and whether accused had time to have recourse to public authorities are all relevant factors to be considered while determining right to private defence.

2012 0 AIR(SC) 1856; 2012 1 BBCJ(SC) 431; 2012 0 CrLJ 2135; 2012 1 RCR(Cri) 117; 2012 1 SCC 414; 2012 1 SCC(Cri) 454; 2011 8 Supreme 260; 2011 0 Supreme(SC) 1104;Ranjitham versus Basavaraj&Ors.

31. Though it cannot be laid as a rule of universal application that when ever there is delay in lodging the FIR and/or there is delay in dispatching the report to the Elaka Magistrate and/or the medical evidence is at some variance with the ocular evidence, the prosecution has to fail. In the instant case the combined effect of the three factors leave no manner of doubt that prosecution has failed to establish the accusations. The view taken by the High Court is a possible view and we do not consider that to be a fit case where any interference is called for.

2008 0 AIR(SCW) 5802; 2008 12 JT 309; 2009 1 RCR(Cri) 247; 2008 14 Scale 368; 2010 1 SCC(Cri) 435; 2008 0 Supreme(SC) 1557;State of Punjab Versus Avtar Singh

32. Indian Penal Code, 1860 - Sections 498A and 306 - Death by hanging. Deceased was subjected to abuses, humiliation and mental torture from the very beginning of her married life. Her husband used to come home drunk and abuse her and also used to assault her on occasions - Bridal presents brought by her branded as goods of inferior quality. Case of mental and physical torture - Depositions of close relations reliable in such a case. Absence of any independent evidence given by the neighbours and co-tenants about physical assault or the abuses hurled on the deceased by her in laws, not fatal- Conviction of mother- in law and husband u/s. 498A of the Code.
Such depositions by close relations, who may be interested in the prosecution of the accused, need not be discarded simply on the score of the absence of corroboration by independent witness. Whether the evidence of interested witness is worthy of credence is to be judged in the special facts of the case. In our view, the acts of cruelty by the accused were expected to be known by the very close relations like mother, brother, sister, etc. The evidence of the mother has been accepted by / the learned Sessions Judge as worthy of credence and we do not think that the same should be discarded, in the facts of the case.
1993 3 Crimes(SC) 518; 1994 0 CrLJ 2104; State of West Bengal versus Sri OrilalJaiswal&Anr

33. It is well settled that a prosecutrix complaining of having been a victim of the offence of rape is not an accomplice after the crime. There is no rule of law that her testimony cannot be acted without corroboration in material particulars. She stands at a higher pedestal than an injured witness. In the latter case, there is injury on the physical form, while in the former it is physical as well as psychological and emotional. However, if the court on facts finds it difficult to accept the version of the prosecutrix on its face value, it may search for evidence, direct or circumstantial, which would lend assurance to her testimony. Assurance, short of corroboration as understood in the context of an accomplice would suffice.
Indian Penal Code, 1860-Section 228-A-Disclosure of identity of victim of rape is punishable-It would be appropriate that in judgments, be it of trial Court, High Court or Supreme Court, name of victim should not be indicated.
2004 0 AIR(SC) 4404; 2004 4 BBCJ(SC) 369; 2004 4 Crimes(SC) 32; 2004 0 CrLJ 4232; 2004 3 JCC 1442; 2005 1 JCR(SC) 108; 2004 8 JT 236; 2005 1 PLJR(SC) 52; 2004 4 RCR(Cri) 345; 2004 7 Scale 626; 2004 8 SCC 153; 2004 6 Supreme 550; 2004 0 Supreme(SC) 1065; State of Himachal Pradesh versusShree Kant Shekari

34. Indian Penal Code, 1860-Sections 363 and 366-Victim child aged about 5 years was called and taken away by appellant who was known to her-Grand mother of victim child found victim naked and appellant lying on her-Conviction for offences by trial Court and High Court maintained-Conviction and sentence of three years imprisonment but acquitted of charge under Section 376 r/ws 511 IPC-Appeal-Evidence of grand mother of victim had essence of credibility and truthfulness and was rightly relied upon-Word "keeping" in offence of kidnapping connote idea of charge, protection, maintenance and control-Provision was designed to protect the scared right of guardians with respect to their minor wards-Trial Court and High Court were justified in convicting appellant and sentence imposed was liberal and called for no interference.
2004 0 AIR(SC) 227; 2003 0 AIR(SCW) 6485; 2004 1 Crimes(SC) 98; 2004 0 CrLJ 595; 2003 10 JT 58; 2004 1 RCR(Cri) 109; 2003 10 Scale 389; 2004 1 SCC 339; 2003 8 Supreme 555; 2003 0 Supreme(SC) 1217; Parkash versus State of Haryana

35. in view of Section 464 Cr.P.C., it is possible for the appellate or revisional Court to convict an accused for an offence for which no charge was framed unless the Court is of the opinion that a failure of justice would in fact occasion. In order to judge whether a failure of justice has been occasioned, it will be relevant to examine whether the accused was aware of the basic ingredients of the offence for which he is being convicted and whether the main facts sought to be established against him were explained to him clearly and whether he got a fair chance to defend himself.
Criminal Procedure Code, 1973-Sections 222 and 464-Court can convict for a minor offence even though charge had been framed for major offence-Even in appeal or revision, any error, omission or irregularity in the charge including misjoinder of charges shall not result in invalidating conviction unless the appellate or revisional Court comes to conclusion that failure of justice had infact occasioned thereby.
2004 0 AIR(SC) 1990; 2004 0 AIR(SCW) 2119; 2004 2 BBCJ(SC) 305; 2004 2 CCR(SC) 134; 2004 2 Crimes(SC) 471; 2004 0 CrLJ 2025; 2004 1 DMC 680; 2004 4 JT 455; 2004 4 Scale 238; 2004 5 SCC 334; 2004 0 SCC(Cri) 1592; 2004 3 Supreme 506; 2004 0 Supreme(SC) 446; Dalbir Singh versus State of U.P.

36. Section 366-Appellant convicted for kidnapping minor girl and arrangement for marriage between victim-prosecutrix and appellant had been made in house of appellant-Appeal-Doctor had opined that prosecutrix was below 18 years and school record also showed girl was minor on date of incident-Contention that appellant and victim were in love and she voluntarily and willingly went with him without there being any element of enticement or taking away-Finding of fact by Courts below that appellant had promised to marry her on that promise she went away

with appellant-It amounts to enticement of minor-Conviction called for no interference.
2004 0 AIR(SC) 2472; 2004 3 BBCJ(SC) 75; 2004 2 CCR(SC) 293; 2004 2 Crimes(SC) 254; 2004 0 CrLJ 2553; 2004 2 JCC 777; 2004 Supp1 JT 44; 2004 4 Scale 539; 2004 5 SCC 120; 2004 0 SCC(Cri) 1545; 2004 3 Supreme 294; 2004 0 Supreme(SC) 475; MoniramHazarika versus State of Assam

37. Date of birth recorded in birth register of Municipal Corporation and register of Hospital where prosecutrix was born showed prosecutrix was less than 16 years of age but school leaving certificate showed her age more than 16 years—Evidence of parents corroborated by age recorded in birth register of Municipal Corporation and register of hospital established that prosecutrix was less than 16 years of age—Expert medical evidence was not binding on ocular evidence as evidence given by medical officer is really of an advisory character and not binding on witness of fact—Ossification test in the case could not form basis for determination of age of prosecutrix—Statement of prosecutrix that she was ravished by force and against her will was quite natural, inspired confidence and merited acceptance—Conviction could be sustained on sole testimony of prosecutrix if it inspired confidence—Conviction and sentence called for no interference.
2006 0 AIR(SC) 508; 2005 0 AIR(SCW) 6149; 2006 1 BBCJ(SC) 337; 2006 0 CrLJ 303; 2005 10 JT 174; 2006 1 PLJR(SC) 391; 2006 1 RCR(Cri) 201; 2005 9 Scale 510; 2006 1 SCC 283; 2005 8 Supreme 165; 2005 0 Supreme(SC) 1531; Vishnu @ Undrya versusState of Maharashtra

38. No reason has been indicated by the High Court to discard the documentary evidence produced i.e. school leaving certificate and the school register. The Headmaster of the school also deposed and produced the records before the trial Court. The High Court held that the entry in the school register was not in the handwriting of the Headmaster and he could not have deposed about the date of birth. There was no basis for the High Court to conclude that the entry cannot be taken to be above suspicion. On the basis of the evidence of the Headmaster and the original school leaving certificate and the school register which were produced the High Court came to abrupt conclusion that normally for various reasons the guardians to understate the age of their children at the time of admission in the school. There was no material or basis for coming to this conclusion. The High Court in the absence of any evidence to the contrary should not have come to hold that the date of birth of the prosecutrix was not established and the school leaving certificate and the school register are not conclusive. Interestingly, no question was put to the victim in cross examination about the date of birth. The High Court also noted that no document was produced at the time of admission and a horoscope was

purportedly produced. There is no requirement that at the time of admission documents are to be produced as regards the age of the student. Practically, there was no analysis of the evidence on record and abrupt conclusions, mostly based on surmises, were arrived at. The inevitable conclusion is that the Judgment of the High Court is unsustainable, deserves to be set aside which we direct. The respondent shall surrender to custody to serve the remainder of the sentences.
2008 4 BBCJ(SC) 101; 2008 0 CrLJ 3549; 2008 7 JT 491; 2008 9 Scale 802; 2008 8 SCC 38; 2008 3 SCC(Cri) 418; 2008 5 Supreme 475; 2008 0 Supreme(SC) 1023; State of Maharashtra versus Gajanan @ HemantJanardhanWankhede

39. It is true that in an appeal under Article 136 of the Constitution this Court normally does not interfere with findings of facts arrived at by the High Court. But when it appears that the findings of facts arrived at are bordering on perversity and result in miscarriage of justice, this Court will not decline to quash such findings to prevent the miscarriage of justice.
In the depositions of witnesses there are always normal discrepancies however honest and truthful they may be. These discrepancies are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of the occurrence, and the like. Material discrepancies are those which are not normal, and not expected of a normal person.
Related is not equivalent to interested. A witness may be called interested only when he or she derives some benefit from the result of a litigation; in the decree in a civil case, or in seeing an accused person punished. A witness who is a natural one and is the only possible eye witness in the circumstances of a case cannot be said to be interested.
1981 0 AIR(SC) 1390; 1981 0 CrLJ 1012; 1981 1 Scale 645; 1981 2 SCC 752; 1981 0 SCC(Cri) 593; 1981 3 SCR 504; 1981 0 Supreme(SC) 267; State of Rajasthan VersusSmt. Kalki and another

40. Knowledge and intention are essential things of the mind and cannot be demonstrated like physical objects. The existence of intention or knowledge has to be culled out from various circumstances in which and upon whom the offence is alleged to have been communicated. A victim of molestation and indignation is in the same position as an injured witness and her testimony should receive the same weight.
2004 1 ALD(Cri) 924; 2004 2 ALT(Cri) 421; 2004 0 CrLJ 4050; 2004 0 Supreme(AP) 483; HarijanaGadiLingappa @ Gadigadu Versus State OF A.P.

41. Criminal trial of crimes against women-Evidence of prosecutrix how to be appreciated (Para 20)-Harras-ment during her cross examination avoided-(Para 21)-Trial should be in camera and name of victim be avoided.

1996 0 AIR(SC) 1393; 1996 0 BBCJ(SC) 71; 1996 1 Crimes(SC) 37; 1996 0 CrLJ 1728; 1996 1 JT 298; 1996 1 RCR(Cri) 533; 1996 1 Scale 309; 1996 2 SCC 384; 1996 0 SCC(Cri) 316; 1996 1 Supreme 485; 1996 0 Supreme(SC) 114; The State of Punjab versus Gurmit Singh &Ors

42. This Court in Willis (William) Slaney v. The State of Madhya Pradesh, 1955(2) SCR 1140 elaborately discussed the applicability of Sections 535 and 537 of the Code of Criminal Procedure 1898, which correspond respec-tively to Sections 464 and 465 of the Code, and held that in judging a question of prejudice, as of guilt, courts must act with a broad vision and look to the substance and not to technicalities, and their main concern should be to see whether the accused had a fair trial, whether he knew what he was being tried for, whether the main facts sought to be established against him were explained to him fairly and clearly and whether he was given a full and fair chance to defend himself. Viewed in the context of the above observations of this Court we are unable to hold that the accused persons were in any way prejudiced due to the errors and omissions in the charges pointed out by Mr.Arunachalam. Apart from the fact that this point was not agitated in either of the courts below, from the fact that the materi-al prosecution witnesses (who narrated the entire incident) were cross examined at length from all possible angles and the suggestions that were put forward to the eye witnesses we are fully satisfied that the accused persons were not in any way prejudiced in their defence. While on this point we may also mention that in their examination under Section 313 of the Code, the accused persons were specifically told of their having committed offences (besides others) under Sections 148 and 302/149 IPC.
1998 0 AIR(SC) 2702; 1998 0 AIR(SCW) 2750; 1999 1 BBCJ(SC) 49; 1999 1 CHN(SC) 27; 1998 3 Crimes(SC) 167; 1998 0 CrLJ 4035; 1998 2 JCC 55; 1998 5 JT 398; 1998 3 RCR(Cri) 749; 1998 4 Scale 416; 1998 6 SCC 554; 1998 0 SCC(Cri) 1488; 1998 6 Supreme 374; 1998 0 Supreme(SC) 785; State of A.P. etc. Versus Thakkidiram Reddy &Ors.

43. Code of Criminal Procedure, 1973 - Sections 154 and 157 – FIR - Earliest information in regard to commission of a cognizable offence is to be treated as FIR - Although FIR is not expected to be encyclopedia of events but an information to police to be 'FIR' u/s 154(1), must contain some essential and relevant details of incident - A cryptic information about commission of a cognizable offence irrespective of nature and details of such information may not be treated as FIR - If evidence of eyewitnesses is found cogent, convincing and credible, delay in receipt of copy of FIR by concerned Court would not be of much significance - FIR is not a substantive piece of evidence - It can be used only to discredit testimony of maker thereof - It cannot be utilized for contradicting or discrediting testimony of other witnesses.

Criminal Law - Appreciation of evidence - Where an occurrence takes place involving rival factions, it is but inevitable that evidence would be of a partisan nature - Rejection of such evidence on that ground may not be proper.

2010 1 BBCJ(SC) 134; 2009 13 JT 242; 2010 1 RCR(Cri) 612; 2009 13 Scale 177; 2009 10 SCC 773; 2010 1 SCC(Cri) 413; 2009 0 Supreme(SC) 1631; 2009 10 UJ 4611; Pandurang Chandrakant Mhatre & Others Versus State of Maharashtra

44. Cryptic telephonic messages cannot be treated as FIR as their object only is to get the police to the scene of offence and not to register the FIR.

Merely because the information given on phone was prior in time would not mean that the same would be treated as the First Information Report.

Dela y in recording the statement of the witnesses does not necessarily discredit their testimonies. The court may rely on such testimonies if they are cogent and credible.

There is no limitation on the part of the Appellate Court to review the evidence upon which order of acquittal is found-Appellate Court in an appeal against acquittal can review the entire evidence and come to its own conclusions.

Evidence of phone calls is a very relevant and admissible piece of evidence.

Presumption of innocence of an accused is a legal presumption and should not be destroyed at the very threshold through the process of media trial and that too when the investigation is pending. In that event, it will be opposed to the very basic rule of law and would impinge upon the protection granted to an accused under Article 21 of the Constitution.

It is not as if every single leading question would invalidate the trial. The impact of the leading questions, if any, has to be assessed on the facts of each case.

Where an accused furnishes false answers as regards proved facts, Court ought to draw an adverse inference qua him and such an inference shall become an additional circumstance to prove the guilt of the accused.

2010 2 ACR(SC) 1645; 2010 0 AIR(SC) 2352; 2010 69 AllCriC(SC) 833; 2010 3 BBCJ(SC) 1; 2010 3 CalCriLR 91; 2010 2 CCR(SC) 179; 2010 2 Crimes(SC) 154; 2010 168 DLT(SC) 739; 2010 3 JLJR(SC) 1; 2010 4 JT 107; 2010 3 PLR(SC) 1; 2010 2 RCR(Cri) 692; 2010 6 SCC 1; 2010 2 SCC(Cri) 1385; 2010 3 SCJ 907; 2010 3 Supreme 190; 2010 0 Supreme(SC) 330; 2010 3 UJ 1650; Sidhartha Vashisht @ Manu Sharma Versus State (NCT of Delhi)

45. Indian Penal Code, 1860—Section 302/34—Appellant inflicted knife blows on deceased while other appellant caught hold of him—Conviction on testimony of sole eye witness, brother of deceased—Sustainability—Other eye witness had turned hostile—No legal impediment in convicting a person on sole testimony of single witness—Minor details not indicated in

FIR and later on elaborated in Court would not justify criticism—Evidence of eye witness found truthful who had graphically described assault on deceased—No reason to discard evidence of eye witness and conviction called for no interference.
Criminal Law—Conviction on testimony of sole eye witness—Evidence is to be weighed and not counted—Test would be whether evidence had a ring of truth and was cogent, credible and trustworthy.
Sunil Kumar versus The State Govt. of NCT of Delhi 2003 4 Crimes(SC) 383; 2004 0 CrLJ 605;

46. Charge under sec 376 IPC r/w 511 IPC maintainable. Accused convicted basing on the testimony of the prosecutrix, under the said sections, though defence pleaded that sec 354 IPC was applicable.
2007 1 ALT(Cri) 456; 2007 0 CrLJ 1499; 2006 0 Supreme(AP) 1431; DOKKA BHUSHAIAH Versus STATE OF A.P.

47. A plethora of decisions by this Court as referred to above would show that once the statement of prosecutrix inspires confidence and accepted by the courts as such, conviction can be based only on the solitary evidence of the prosecutrix and no corroboration would be required unless there are compelling reasons which necessitate the courts for corroboration of her statement. Corroboration of testimony of the prosecutrix as a condition for judicial reliance is not a requirement of law but a guidance of prudence under the given facts and circumstances. It is also noticed that minor contradictions or insignificant discrepancies should not be a ground for throwing out an otherwise reliable prosecution case. Non-examination of doctor and non-production of doctors report would not cause fatal to the prosecution case, if the statements of the prosecutrix and other prosecution witnesses inspire confidence. It is also noticed that the Court while acquitting the accused on benefit of doubt should be cautious to see that the doubt should be a reasonable doubt and it should not reverse the findings of the guilt on the basis of irrelevant circumstances or mere technicalities.
2005 0 AIR(SC) 3570; 2005 0 AIR(SCW) 4839; 2006 1 BBCJ(SC) 47; 2005 4 Crimes(SC) 92; 2005 0 CrLJ 4375; 2005 12 JT 150; 2006 1 PLJR(SC) 69; 2005 7 Scale 663; 2005 8 SCC 122; 2005 0 SCC(Cri) 1988; 2005 6 Supreme 583; 2005 0 Supreme(SC) 1263; State of M.P. Versus DayalSahu

48. Section 376-Code of Criminal Procedure, 1973-Section 378-Rape-Conviction by trial Court-Acquittal by High Court on ground prosecutrix was above 16 years of age and she was consenting party-Medical evidence on basis of X-ray revealing prosecutrix to be 15 years-Doctor admitting possibility that age may be 15 to 16 years because of variation of 3 on plus or minus side as described in medical jurisprudence-Nothing to positively hold age was less than 16 years-Delay of 4 days in lodging FIR due to

community people of accused trying to settle matter by convening panchayat-Delay reasonably explained-Absence of injury on prosecutrix not ground to hold she was consenting party-Incident narrated by prosecutrix supported by medical evidence inspite of delay in medical examination and evidence of father of prosecutrix-High Court not justified in interfering with conviction remanded by trial Court-Acquittal order set aside and conviction order restored.
2000 0 AIR(SC) 1812; 2000 0 AIR(SCW) 1407; 2000 2 Crimes(SC) 84; 2000 0 CrLJ 2205; 2000 3 JT 643; 2000 2 RCR(Cri) 471; 2000 2 Scale 652; 2000 5 SCC 30; 2000 0 SCC(Cri) 898; 2000 3 Supreme 70; 2000 0 Supreme(SC) 651; 2000 1 UJ 762; State of Rajasthan versus Noore Khan

49. There is a need to indicate in the order, reasons for prima facie concluding why bail was being granted particularly where an accused was charged of having committed a serious offence. However, only broad features of the case are to be noted. Elaborate analysis of the evidence is to be avoided.
Merely because the family members of the deceased spoke about the alleged dowry demand and not others that cannot be certainly a ground to conclude that same throws doubt on the alleged torture.
2007 3 AD(Cr) 69; 2007 0 AIR(SCW) 2857; 2007 2 ALD(Cri)(SC) 284; 2007 0 AllMR(Cri)(SC) 1721; 2007 3 ALT(Cri)(SC) 56; 2007 3 BBCJ(SC) 260; 2007 2 Crimes(Sc) 275; 2007 0 CrLJ 2752; 2007 1 JCR(SC) 313; 2007 3 JLJR(SC) 1; 2007 2 RCR(Cri) 672; 2007 5 Scale 639; 2007 14 SCC 537; 2009 1 SCC(Cri) 883; 2007 1 SCC(Cri) 568; 2007 3 Supreme 434; 2007 0 Supreme(SC) 498; GajanandAgrawal versus State of Orissa and Ors

50. In view of Section 464 Cr.P.C., it is possible for appellate Court to convict an accused for offence u/s 306 IPC for which no charge was framed as accused was tried and convicted u/s 302 IPC and Court finds that no failure of justice would in fact occasion.
2007 1 AD(Cr) 297; 2007 0 AIR(SCW) 854; 2007 0 AllMR(Cri)(SC) 1382; 2007 3 ALT(Cri)(SC) 101; 2007 2 BBCJ(SC) 146; 2007 1 CalCriLR 733; 2007 1 Crimes(Sc) 370; 2007 0 CrLJ 1435; 2007 2 JT 452; 2007 1 RCR(Cri) 858; 2007 2 Scale 103; 2007 9 SCC 211; 2007 3 SCC(Cri) 120; 2007 1 Supreme 191; 2007 0 Supreme(SC) 55; Virendra Kumar versus State of U.P.

51. Contention that offence of rape was not made out from evidence of doctor & only offence u/s 354 IPC could be said as Committed – Out rage to female modesty – Essence of woman's modesty was her sex – Modesty was an attribute associated with female human being as a class – Distinction between offence of attempt to commit rape & to commit indecent assault – It attempt succeeds, accused commits offence & if he fails due to reasons beyond his control, he is said to have attempted to commit the offence –

Sine qua non of offence of rape was penetration & not ejaculation – Evidence of Prosecution & evidence of doctor who examined her after incident showed that Commission of actual rape was established – No interference in conviction & sentence of 7 years imprisonment was called for.

2007 0 AIR(SC) 49; 2007 0 AIR(SCW) 2198; 2007 2 ALD(Cri)(SC) 940; 2007 3 ALT(Cri)(SC) 135; 2007 3 Crimes(Sc) 115; 2007 0 CrLJ 2302; 2007 4 JT 393; 2007 1 OLR(SC) 803; 2007 2 RCR(Cri) 391; 2007 4 Scale 438; 2007 11 SCC 265; 2007 5 Supreme 297; 2007 0 Supreme(SC) 373; Ramkripal S/o ShyamlalCharmakar versus State of Madhya Pradesh

52. Indian Penal Code, 1860-Section 376/511-Appellant convicted by Courts below for committing rape on a girl-Appeal-Sine quo non of offence of rape is penetration and not ejaculation-Ejaculation without penetration would constitute an attempt to commit rape and not actual rape-Appellant took off sari of victim, got on top of her but before actual intercourse ejaculated-He left victim on hearing some sound and went away-Intercourse means sexual connection and in the case that connection had not been established-Appellant was liable to be convicted for offence of attempt to rape and awarded sentence of 3½ years.

2004 0 AIR(SC) 1874; 2004 2 BBCJ(SC) 289; 2004 2 CCR(SC) 70; 2004 2 Crimes(SC) 306; 2004 0 CrLJ 1804; 2004 1 JCC 620; 2004 3 JT 328; 2004 3 Scale 96; 2004 3 SCC 602; 2004 0 SCC(Cri) 840; 2004 2 Supreme 358; 2004 0 Supreme(SC) 288; KoppulaVenkatRao versus State of Andhra Pradesh

53. A promise of marriage deliberately made by the accused with a view to elicit the assent of the victim without having the intention or inclination to marry her, will vitiate the consent.

Indian Penal Code, 1860 – Section 90 – Second part of the definition of consent in Section 90 lays emphasis on the knowledge or reasonable belief of the person who obtains the tainted consent – Court has to see whether the person giving the consent has given it under fear or misconception of fact and the court should also be satisfied that the person doing the act i.e. the alleged offender is conscious of the fact or should have reason to think that but for the fear or misconception, the consent would not have been given – This is the scheme of Section 90 – However, Section 90 cannot be considered as an exhaustive definition of consent for the purposes of IPC; the normal connotation and concept of consent is not intended to be excluded.

2007 4 AD(Cr) 413; 2007 0 AIR(SC) 3059; 2007 0 AIR(SCW) 5532; 2007 3 Crimes(Sc) 346; 2007 0 CrLJ 4333; 2007 4 JLJR(SC) 59; 2007 10 JT 246; 2007 2 MhLJ(Cri)(SC) 930; 2007 4 RCR(Cri) 51; 2007 10 Scale 97; 2007 7 SCC 413; 2007 5 Supreme 918; 2007 0 Supreme(SC)

1080; Pradeep Kumar @ Pradeep Kumar Verma versus State of Bihar and Anr.

54. **Raja Lal Singh Vs. The State of Jharkhand - 2007(3)ACR2427(SC), AIR2007SC2154, 2007(2)ALD(Cri)264, 2007CriLJ3262, I(2007)DMC811SC, JT2007(7)SC77, 2007(6)SCALE568, [2007]6SCR105, 2007(4)UC541**
Dowry Death - In case of dowry death 'soon before her death' does not necessarily mean that demand of dowry must be within few days of death but means that there should be perceptible nexus between the death of deceased and dowry related harassment inflicted on her.

55. **Ananda Mohan Sen and Anr. Vs. State of West Bengal - 2007(3)ACR2730(SC), 2007(2)ALD(Cri)611, 2008(1)ALT(Cri)83, 2007CriLJ2770, I(2007)DMC860SC, 2007(7)SCALE254, (2007)10SCC774, [2007]6SCR1088, 2007(4)UC403**
Indian Penal Code, 1860--Section 498A--Explanation--Cruelty--Ascertaining thereof--Held--Clause (a) of said explanation is in two parts--One is any willful conduct which is of such nature as is likely to drive the woman to commit suicide and second part as to cause grave injury or danger to life, limb or health (whether mental or physical) of woman--It may be that death by itself may not lead to an inference that cruelty was meted out to the deceased. [Para--27]
Dowry death--Involvement therein--Assessment of--Held--Involvement may be determined having regard to the entirety of situation and materials brought on records--Section 113-A of Evidence Act raises a presumption against the accused subject of course of certain conditions--Discuss. [Para--37]
"Accused shall be convicted if prosecution established his guilt in facts and circumstances of case."

56. **Shaik Ibrahim Vs The State of A.P., rep. by the Public Prosecutor, High Court of A.P. - 2005(1)ALD163, 2005(1)ALD(Cri)163, I(2005)DMC535**
"If utterances of words compel some one to commit suicide, it would amount to abetment."

57. **Om Prakash Vs. State of U.P. - 2006(2)ACR1540(SC), AIR2006SC2214, 2006(1)ALD(Cri)933, 2006((3))ALT(Cri)152, 2006CriLJ2913, JT2006(5)SC460, RLW2006(3)SC2555, 2006(5)SCALE614, (2006)9SCC787, [2006](2)SuppSCR318**
Indian Penal Code, 1860 - Sections 376 (1) and 376 (2) (e)--Rape--Conviction and sentence--Whether no corroboration to testimony of prosecutrix required when it is trustworthy?--Held, "yes"--No evidence to show that accused knew that prosecutrix was pregnant--Hence, Section

376 (2) (e) not attracted--Case falls under Section 376 (1)--Accordingly, sentence reduced to 7 years from 10 years.

It is settled law that the victim of sexual assault is not treated as accomplice and as such, her evidence does not require corroboration from any other evidence including the evidence of a doctor. In a given case even if the doctor who examined the victim does not find sign of rape, it is no ground to disbelieve the sole testimony of the prosecutrix. In normal course, a victim of sexual assault does not like to disclose such offence even before her family members, much less before public or before the police. The Indian woman has tendency to conceal such offence because it involves her prestige as well as prestige of her family. Only in few cases, the victim girl or the family members have courage to go before the police and lodge a case. In the instant case, the suggestion given on behalf of the defence that the victim has falsely implicated the accused does not appeal to reasoning. There was no apparent reason for a married woman to falsely implicate the accused after scatting her own prestige and honour.

What is necessary is that the Court must be conscious of the fact that it is dealing with the evidence of a person who is interested in the outcome of the charge levelled by her. If the Court keeps this in mind and feels satisfied that it can act on the evidence of the prosecutrix, there is no rule of law or practice incorporated in the Indian Evidence Act, 1872 similar to Illustration (b) to Section 114 which requires it to look for corroboration. If for some reason the Court is hesitant to place implicit reliance on the testimony of the prosecutrix it may look for evidence which may lend assurance to her testimony short of corroboration required in the case of an accomplice. The nature of evidence required to lend assurance to the testimony of the prosecutrix must necessarily depend on the facts and circumstances of each case. But if a prosecutrix is an adult and of full understanding the Court is entitled to base a conviction on her evidence unless the same is shown to be infirm and not trustworthy. If the totality of the circumstances appearing on the record of the case discloses that the prosecutrix does not have a strong motive to falsely involve the person charged, the Court should ordinarily have no hesitation in accepting her evidence.

While considering the case covered by Section 376 (2) (e), what is needed to be seen is whether evidence establishes knowledge of the accused. Mere possibility of knowledge is not sufficient. When a case relates to one where because of the serious nature of the offence, as statutorily prescribed, more stringent sentence is provided, it must be established and not a possibility is to be inferred. The language of Section 376 (2) (e) is clear. It requires prosecution to establish that the accused knew her to be pregnant. This is clear from the use of the expression "knowing her to be pregnant". This is conceptually different from that there is a possibility of his knowledge or that probably he knew it. Positive evidence has to be adduced by the prosecution about the knowledge. In the absence of any

material brought on record to show that the accused knew the victim to be pregnant Section 376 (2) (e), I.P.C. cannot be pressed into service.

58. **PadigiNarasimhaVs State - 1996(2)ALD585, 1996(1)ALD(Cri)555, 1996CriLJ2997**
Criminal - rape - Sections 376 and 450 of Indian Penal Code, 1860, Sections 154, 154 (1), 162, 162 (1) and 313 of Criminal Procedure Code, 1973 and Section 145 of Indian Evidence Act - accused convicted for committing rape by intimidation - medical enquiry conducted within four hours proves forceful sexual intercourse - accused failed to take defence to establish omissions and contradictions in testimonies of witnesses - statements of victim corroborated with medical evidence - circumstantial evidence proves that accused trespassed into victim's house to commit rape - defence of false implication not sustainable - held, conviction justified.

59. **Angad Ram Vs. State of Bihar - 2007CriLJ2337**
"Once person admitted their offence, there is no need of any evidence."

60. **RajendraDattaZarekar Vs. State of Goa - 2008(1)ACR165(SC), AIR2008SC572, 2008CriLJ710, JT2007(13)SC387, RLW2008(2)SC1227, [2007]12SCR840, 2008(1)UJ1**
"For reduction of sentence awarded under Section 376(2)(f) of the Indian Penal Code, 1860, presence of adequate and special reasons must."

61. **State of Madhya Pradesh VsBabulal - 2008(1)ACR235(SC), AIR2008SC582, 2008CriLJ714, ILR[2008]MP6, 2008(3)JLJ53(SC), JT2007(13)SC272, 2008(1)KarLJ551, 2008-1-LW(Crl)633, 2008(2)MPHT350(SC), (2008)39OCR251, 2008(1)OLR483, 2008(I)OLR(SC)483, (2008)1SCC234, [2007]12SCR795**
Indian Penal Code, 1860 - Section 376 (1)--Rape--Sentencing--Principles--Rape cases to be dealt with sternly and severely--Offender of rape, once convicted, should be treated with heavy hand.
Sexual violence apart from being a dehumanizing act is also an unlawful intrusion of the right to privacy and sanctity of a female. It is a serious blow to her supreme honour and offends her self-esteem and dignity. It degrades and humiliates the victim and leaves behind a traumatic experience. It has been rightly said that whereas a murderer destroys the physical frame of a victim, a rapist degrades and defiles the soul of a helpless female. The Courts are, therefore, expected to try and decide cases of sexual crime against women with utmost sensitivity. Such cases need to be dealt with sternly and severely. A socially sensitized Judge is a better armour in cases of crime against women than long clauses of penal provisions, containing complex exceptions and complicated provisos.
Once a person is convicted for an offence of rape, he should be treated with a heavy hand. An undeserved indulgence or liberal attitude in not

awarding adequate sentence in such cases would amount to allowing or even to encouraging 'potential criminals'. The society can no longer endure under such serious threats. Courts must hear the loud cry for justice by society in cases of heinous crime of rape and impose adequate sentence. Public abhorrence of the crime needs reflection through imposition of appropriate sentence by the Court.

"If a Court of Law finds evidence of prosecutrix truthful, trustworthy and reliable, conviction can be recorded solely on the basis of her testimony and no further corroboration is necessary."

62. HeeralalYadavVs. State of M.P. and Ors. - 2006(2)ACR2219(SC), AIR2006SC2535, 2006(2)ALD(Cri)338, 2007(1)ALT(Cri)260, 2006CriLJ3301, ILR[2006]MP1351, 2007(2)JLJ48(SC), JT2006(6)SC210, 2006(6)SCALE517, (2006)10SCC718, [2006](3)SuppSCR147

Whether Dying Declaration recorded by doctor stands admissible? The principle that "no man at the point of his death is presumed to lie. A man will not meet his maker with lie in his mouth" is based on sound public policy. No doubt, as the dead man would not be available for cross-examination, a duty is cast upon the Court to examine the dying declaration with care and caution as to whether the dying declaration is creditworthy for acceptance. In other words whether it inspires confidence on the basis of which alone conviction can be recorded. Similarly, it is also an accepted principle of law that the dying declaration, keeping in view the above principles in mind, if inspiring confidence could be the sole basis for conviction.

The dying declaration of the deceased recorded by PW-1 Dr. A.S. Khan and well corroborated with other attending circumstances inspires confidence, on the basis of which conviction could be sustained.

63. Kollam Brahmananda Reddy Vs. State of A.P - 1999(2)ALD405, 1999(1)ALD(Cri)525, 1999(1)ALT(Cri)529, 1999CriLJ2368

- **a.** Criminal - benefit of conflicting evidences - oral and medical evidence contrary to each other - held, benefit of such vagueness should be granted to accused.
- **b.** Evaluation of evidence - accusation on group - evidence should be taken leaving out improbabilities and exaggerations - held, it is quality and not quantity of evidence that matters.
- **c.** Burden of proof - plea of alibi raised - party pleading alibi liable to prove it - burden to disprove falls on prosecution if alibi pleaded with supporting evidence.

64. Rama Nand and Ors. Vs. State of Himachal Pradesh - AIR1981SC738, 1981CriLJ298, 1981(1)SCALE24, (1981)1SCC511, (1981)SCC(Cri)197, [1981]2SCR444, 1981(13)UJ424

Criminal - murder - Sections 302 and 364 of Indian Penal Code, 1860 - appellants challenged their conviction under Section 302 - marks of violence on vital part of body of victim proved homicidal death of victim - circumstantial evidence are of such definite and clinching character which leads inferences that victim met homicidal death - circumstances established that in all human probabilities victim was murdered by accused concerned - circumstances in their cumulative effect established that accused intentionally caused death of victim - conviction upheld.

65. **The State of Bombay Vs. KathiKaluOghad and Ors. - AIR1961SC1808, 1961AWR(S.C.)31736, (1962)64BomLR240, 1961CriLJ856, [1962]3SCR10**

substantial Question of law regarding interpretation of Article 20 (3) of constitution before Supreme Court - whether act compelling accused to give his specimen handwriting or signature or impression of finger tips amounts to compelling him 'to be witness' against himself within meaning of Article 20 (3) - mere questioning of accused person by police officer resulting in voluntary statement which may ultimately turn out to be incriminatory is not compulsion - to be witness is not equivalent to 'furnishing evidence' in its wide significance that is to say as including not merely making of oral or written statement but also production of documents or giving materials which may be relevant at trial to determine the guilt innocence of accused - to be a witness means imparting knowledge in respect of relevant facts by an oral statement or a statement in writing made or given in Court or otherwise - to bring statement in question within prohibition of Article 20 (3) the person accused must have stood in character of an accused person at time he made statement and it is not enough that he should become an accused any time after the statement has been made.

66. **Rajbabu and Anr. Vs. State of M.P. - 2008(3)ACR2510(SC), AIR2008SC3212, 2009(1)ALD(Cri)122, 2008(56)BLJR2551, 2008CriLJ4301, II(2008)DMC624SC, ILR[2009]MP1, JT2008(8)SC250, 2008(4)MPJR(SC)188, (2008)41OCR195, 2009(1)OLR97, 2009(I)OLR(SC)97, 2008(10)SCALE437, 2008(2)UJ973**

"When there is no direct evidence to establish that the Accused either aided or instigated the deceased to commit suicide or entered into any conspiracy to aid her in committing suicide then conviction under Section 306 will not be sustainable."

67. **Karre Mohan Krishna S/o Krishnaiah Vs. State of Andhra Pradesh through Public Prosecutor, High Court of A.P. - 2009(2)ALD(Cri)82, 2009((2))ALT(Cri)344, 2009(2)APLJ417, 2009CriLJ3375**

"Legal evidence must be proved while convicting accused under Section 306 of IPC."

68. Anicete Lobo and Ashok DattaNaik and ChandrashekharShantaram Desai Vs. The State Goa, Daman and Diu - AIR1994SC1613a, 1994CriLJ1582

Admittedly, A-5 was good in drawing and his services were utilised by A-4 and A-1 to forge the signature. On his own admission A-5 stated that he forged the signature on a form of the bank. At that time he must have fully known that it is going to be used as a genuine document. It was this draft ultimately which was deposited by A-3 by opening an account in the name of a fictitious person and the amount was withdrawn. The plea of A-5 that he only tried to oblige A-4 and that he did not know anything more,can not be accepted under the circumstances. Therefore it has been rightly held by both the courts below that he was a co-conspirator.

69. Vishnu @ Undrya Vs. State of Maharashtra - 2006(1)ACR328(SC), AIR2006SC508, 2006(1)ALD(Cri)22, 2006((1))ALT(Cri)217, 2005CriLJ303, JT2005(10)SC174, 2006(1)PLJR391, RLW2006(1)SC662, (2006)1SCC283, 2006(1)UJ130

Indian Penal Code, 1860 - Sections 375, Clause thirdly, 376/366--Rape, etc.--Conviction and sentence by trial court--High Court maintaining conviction and enhancing sentence -- Whether justified?--Held, "yes"--Age of prosecutrix below 16 years on date of incident--Hence, question of consent immaterial--Date of birth of prosecutrix proved by father and mother--Correct--Date shown in school leaving certificate not correct--Age in opinion of doctor being expert medical evidence--Not binding in face of ocular evidence--Evidence of doctor--Really of advisorycharacter--Not binding on witness of fact--Evidence of prosecutrix inspiring confidence--It is showing forcible sexual intercourse--No girl/woman of self-respect and dignity would depose falsely implicating somebody of ravishing her chastity--Conduct of first investigator rightly commented upon by courts below--No infirmity in well-merited concurrent findings recorded by two courts below.

In the case of determination of date of birth of the child, the best evidence is of the father and the mother. In the present case, the father and the mother-P.W. 1 and P.W. 13 categorically stated that P.W. 4 the prosecutrix was born on 29.11.1964, which is supported by the unimpeachable documents, in all material particulars. These are the statements of facts. If the statements of facts are pitted against the so-called expert opinion of the doctor with regard to the determination of age based on ossification test scientifically conducted, the evidence of facts of the former will prevail over the expert opinion based on the basis of ossification test. Even as per the doctor's opinion in the ossification test for determination of age, the age varies. In the present case, therefore, the ossification test cannot form the basis for determination of the age of the prosecutrix on the face of witness of facts tendered by P.W. 1 and P.W. 13, supported by unimpeachable documents. Normally, the age recorded in the school certificate is considered to be the correct determination of age provided the

parents furnish the correct age of the ward at the time of admission and it is authenticated. In the present case, the parents had admitted to have given an incorrect date of birth of their daughter, presumably with a view to make up the age to secure admission in the school. Apart from this, as noticed earlier, the school certificate collected by P.W. 15 S.I. Bagal was not an authenticated document. Nobody was produced to prove the date of birth recorded in the school certificate. The date of birth recorded in the school certificate as 29.6.1963 is, therefore, belied by the unimpeachable evidence of P.Ws. 1 and 13 and contemporaneous documents like date of birth register of Greater Bombay Municipal Corporation and the register of the Nursing Home where the prosecutrix was born and proved by Dr.

The statement of the prosecutrix, is quite natural, inspires confidence and merits acceptance. In the traditional non-permissive bounds of society of India, no girl or woman of self-respect and dignity would depose falsely implicating somebody of ravishing her chastity by sacrificing and jeopardizing her future prospect of getting married with suitable match. Not only she would be sacrificing her future prospect of getting married and having family life, but also would invite the wrath of being ostracized and outcast from the society she belongs to and also from her family circle. From the statement of the prosecutrix, it is revealed that the accused induced her to a hotel by creating an impression that his wife was admitted in the hospital and that he would see her first and then drop the prosecutrix at her residence whereas, in fact, she was not admitted in the hospital. On the pretext of going to Nanawati Hospital, he took her to a hotel, took her inside a room, closed the door of the room, threatened her to finish her if she shouted and then forcibly ravished her sexually. Hence, a clear case of rape, as defined under Section 375 clause thirdly of I.P.C. has been established against the accused. It is now a well-settled principle of law that conviction can be sustained on the sole testimony of the prosecutrix, if it inspires confidence.

70. JiwanDass Vs. State - 1999(1)ACR575(SC), AIR1999SC1301, 1999(1)ALD(Cri)471, (1999)2CALLT44(SC), 1999CriLJ2034, 1999(1)Crimes119(SC), JT1999(2)SC1, 2000-1-LW(Crl)133, 1999(1)SCALE648, (1999)2SCC530, [1999]1SCR922, 1999(1)UJ544

To bring home a charge under Section 409, what is necessary to be proved is that the accused is a public servant and in such capacity he was entrusted with the property in question or with dominion over it and that he committed criminal breach of trust in respect of it. The necessary elements constituted in the offence must be strictly proved by the prosecution. It is true that prosecution need not prove the actual mode of misappropriation and once entrustment of or dominion over the property is established, then it would be for the accused to explain as to how the property was dealt with.

71. Manilal Vs. State of Kerala - 1998(2)ALT(Cri)369, 1998CriLJ3785, ILR1998(3)Kerala552

The prosecution is expected to establish that Ext. P-8 document was forged by the revision Petitioner/accused. Then only Section 471 is attracted to be established by the prosecution. The specimen thumb impressions of P. W.1 and the revision Petitioner were compared with the thumb impression found in Ext. P-8 and as per the expert's opinion, given in Exts. P-20 and P-21, the left thumb impression in Ext. P-8 is not that of either P.W.1 or the revision Petitioner/accused. So, in that situation, the burden lies on the prosecution to establish that the thumb impression found in Ext. P-8 was put at the instigation of the revision Petitioner. In other words, such document was forged with the connivance of the revision Petitioner and then such document was used as genuine one in transferring the property to P.W 7. In the instant case, practically, there is no evidence as to, who forged Ex P8.

Before convicting an accused under Section 471 I.P.C., the prosecution ought to have established beyond all doubt, as to who has forged the document. Then only the next stage comes that such forged document has been used by the accused as a genuine one. In the absence of the proof as to forgery, no conviction can be rendered u/sec 471 IPC.

72. P.S. Prasad Vs. State of Andhra Pradesh and Anr. - 1998(1)ALD554, 1998(1)ALD(Cri)132, 1998(1)ALT(Cri)268

Criminal - forgery and cheating - Section 173 (2) of Criminal Procedure Code, 1973, Sections 120B, 471, 420 and 421 of Indian Penal Code, 1860 and Section 482 of Criminal Procedure Code, 1973 - forgery and cheating case registered against petitioner in obtaining licence - Collector opined special licence could only be obtained by manipulation - Court to decide whether offences constituted against petitioner and whether criminal proceedings to continue - document to be used with an intention to defraud and making mere fraud representation not sufficient to be guilty - held, proceedings devoid of merit thus quashed.

73. 2006(1)ACR250(SC), AIR2006SC381, 2006((1))ALT(Cri)225, 2005CriLJ139, 2006(1)PLJR476, 2005(9)SCALE371, (2005)13SCC766 - State of Himachal Pradesh Vs. Asha Ram

It is now well-settled principle of law that conviction can be founded on the testimony of the prosecutrix alone unless there are compelling reasons for seeking corroboration. The evidence of a prosecutrix is more reliable than that of an injured witness. The testimony of the victim of sexual assault is vital unless there are compelling reasons which necessitate looking for corroboration of her statement, the Courts should find no difficulty in acting 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. It is also well-settled principle of law that corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a

requirement of law but a guidance of prudence under given circumstances. Even minor contradictions or insignificant discrepancies in the statement of the prosecutrix should not be a ground for throwing out an otherwise reliable prosecution case.

From the evidence, it is clearly established that P.Ws. 1 and 2, despite strained relationship between their mother and father, were happily staying with the accused and there is no rhyme or reason as to why the daughter should depose falsely so as to expose her honour and dignity and also expose the whole family to the society risking the outcasting or ostracization and condemnation by the family circle as well as by the society. No girl of self respect and dignity who is conscious of her chastity having expectations of married life and livelihood would accuse falsely against any other person of rape, much less against her father, sacrificing thereby her chastity and also expose the entire family to shame and at the risk of condemnation and ostracization by the society. It is unthinkable to suggest that the mother would go to the extent of inventing a story of sexual assault of her own daughter and tutor her to narrate a story of sexual assault against a person who is no other than her husband and father of the girl, at the risk of bringing down their social status and spoil their reputation in the society as well as in the family circle to which they belong to.

74. HimadriAdhikari Vs. The State - 1986CriLJ337

"Party shall not convict for an offence, which is not proved by evidence."

75. Hindustani Andolan and Ors. Vs. State of Punjab and Ors. - 1984(8)ACR51(SC), AIR1984SC582, 1984CriLJ299, 1983(2)SCALE855, (1984)1SCC204, [1984]1SCR902, 1984(16)UJ165

Criminal - Power of Government - Whether the Government could ask the police not to enter a place of worship, even if criminals were reported to be hiding or harboured therein - Held, it was impossible and undesirable for any Court to issue a general writ of mandamus to the effect that whenever a criminal was suspected to have taken shelter in a place of worship - Police must enter that place, regardless of the overall situation of law and order.

76. Lal Chand and Ors. Vs. State of Haryana - 1984(8)ACR13(SC), AIR1984SC226, 1984CriLJ164, 1983(2)SCALE1038, 1984(1)SCALE690, (1984)1SCC686

Prosecution to establish beyond reasonable doubt that a fraud had been practised on P.W. 27, Smt. Ghogari, the prosecution must fail as against all the persons arraigned as accused at the trial on all counts.

77. **L. ChandraiahVs. State of A.P. and Anr. - AIR2004SC252, 2004CriLJ365, JT2003(10)SC165, 2003(9)SCALE537, (2003)12SCC670, [2003]5SuppSCR336**

Criminal - Prevention of Corruption Act - Sections 5(1) and 5(2)- Indian Penal Code - Sections 405, 409, 467 and 471 - No evidence to show that the appellants forged the documents which purported to be a valuable security as the evidence is only to the effect that they had negligently put their signatures on those vouchers while passing the vouchers for payment - There is no evidence to show that the appellants had knowledge of the fact that the vouchers were forged vouchers - It may be, that they acted in a negligent manner and if they had takendue care they would have detected the fraud, but they failed to do so but that by itself would not constitute an offence under Section 409 IPC though it may expose the appellants to disciplinary action under the relevant rules - No evidence to show that the accused were acting in conspiracy with each other.

78. Public Prosecutor, High Court of A.P. Vs.P. HanumanthaRao - 2006(1)ALD(Cri)332, 2006((1))ALT(Cri)368, 2006CriLJ1675

Criminal - Misappropriation of document - Sections 409, 471, 420, 468 and 474(a)Indian Penal Code 1860 - Respondent abused his official position and misappropriated various amounts by manipulating and destroying the records on various occasions - Whether, Respondent was responsible for misappropriation of document - Held, the prosecution did not let in any evidence from the Central Accounts and office about the debits made in the branch - The alleged documents marked were not authorized by any officer - However, prosecution did not produce relevant ledgers and folios into Court to prove exactly to which account number the amounts were received - The authors of documents were not examined in the Court - Prosecution did not produce the relevant ledgers and folios into Court to prove that exactly to which account number the amounts were credited and through which cheques the amounts were received - Thus ,confession statement was not signed by the accused and no panchas were present at the time of recording the confession statement - All these omissions clearly establish that the prosecution had miserably failed to bring the guilt of accused - Appeal dismissed.

79. R. Venkatakrishnan Vs.Central Bureau of Investigation - AIR2010SC1812, 2010(2)ALD(Cri)208, JT2009(10)SC597, 2009(11)SCALE102, (2009)11SCC737, [2009]96SCL143(SC), [2009]13SCR762

Criminal - Conspiracy - Section 120B of Indian penal Code, 1860 and National Housing Bank Act, 1987 (1987 Act)- Appellants convicted for criminal conspiracy - Held, under 1987 Act, NHB cannot advance loans to anybody except housing finance institutions, scheduled banks and statutory slum clearance body, and in case it advances any loan to any individual the same would amount to an offence under the provisions of the 1987 Act - Advancement of loan to Harshad Mehta by NHB under the disguise of a call money transaction was illegal - Appellants had the knowledge of the said transaction and committed criminal conspiracy.

Criminal - Initiation of Prosecution - Section 409 of Indian Penal code, 1860 - Appellants challenged conviction under Section 409 - Held, complaint petition under all circumstances must be made by the banks and financial institutions whose money had been the subject matter of offence and criminal law can be set in motion by anybody - Prosecution was initiated on the basis of the information received by the Central Bureau of Investigation - It would entitled to do so not only in regard to its statutory powers contained in the Delhi Special Police Act but it was also entitled to take cognizance in terms of the report submitted by Janakiraman Committee.

Criminal - Criminal Breach of Trust - Section 409 of Indian Penal code, 1860 - Conviction for criminal breach of trust challenged - Held, an amount of Rs. 40 crore was entrusted to Accused No. 6 to be dealt with in accordance with the provisions of the 1987 Act and 1987 Act does not permit grant of loan to an individual - Accused No. 4 in violation of the law handed over the amount to the UCO Bank with full knowledge that the amount would be credited to the account of Accused No. 4 - Call money transaction with UCO Bank was only a cover up and Accused No.6 misappropriated the property which was trusted to him.

80. State of Himachal Pradesh Vs. Karanvir - 2006(2)ACR1899(SC), AIR2006SC2211, 2006(1)ALD(Cri)941, 2006((3))ALT(Cri)290, 2006CriLJ2917, JT2006(5)SC479, 2006(5)SCALE654, (2006)5SCC381, [2006](3)SuppSCR666

The actual manner of misappropriation, it is well-settled, is not required to be proved by the prosecution. Once entrustment is proved, it was for the accused to prove as to how the property entrusted to him was dealt with in view of Section 405 of the I.P.C. If the respondent had failed to produce any material for this purpose, the prosecution should not suffer therefor.

81. State of Gujarat Vs. ChhotalalVallabhji Brahmin - 1992CriLJ2689

Prosecution could not explain the delay of lodging the complaint after lapse of more than six months. Moreover the prosecution dis not specify the reasons for non-examination of the eye witness. Hence acquittal held proper.

82. Jassa Singh and Ors. Vs. Respondent: State of Haryana - 2002(3)ACR2386(SC), AIR2002SC520, 2002(1)ALT(Cri)115, 2002CriLJ563, 2002(1)Crimes236(SC), JT2002(Suppl1)SC593, 2002(1)SCALE26, (2002)2SCC481, 2002(1)UC464

If all the accused persons had formed an unlawful assembly and their common object was to do away with these two persons, necessarily, the other six accused also should have been present at the second stage of the incident. Except the testimony of P.W. 9 and P.W. 10, there is no evidence to speak about the presence of ten accused persons together at the place

of incident. The 'gandasis' were alleged to have been recovered pursuant to their statement. But the recovery of these weapons was not proved by independent witnesses. There is also no evidence to show that these 'gandasis' were stained with human blood. All possible independent evidence to connect these five appellants to the crime is lacking. That apart, the second incident wherein Tehal Singh was done to death, is projected by the prosecution as a sequel to the first incident , but there is no explanation as to where the six persons had gone leaving the four persons who allegedly caused the death of Tehal Singh. The presence of one injury on the body of Surmukh Singh alleged to have been caused by 'gandasis' casts serious doubts about the presence of all the appellants at the place of occurrence. However, the evidence of P.W. 14 and P.W. 15 can safely be accepted as regards the presence of Jassa Singh, Bakha Singh, Lakha Singh and Sukha Singh. The other appellants are certainly entitled to benefit of doubt that arises out of this weak and fragile evidence. As the presence of other accused, namely, Kabul Singh, Jeet Singh, Sarang Singh, Swaran Singh and Satnam Singh is doubtful, they are entitled to be acquitted.

In the instant case, the appellants went to the place of occurrence with guns and deadly weapons. This would clearly indicate that there was pre-meditation on the part of the appellants and from the acts committed by the appellant, it is evident that they had intention of doing more harm than was necessary for the purpose of self-defence. Therefore, the acts committed by the appellants will not come within Exception 2 of Section 300, I.P.C. so as to make it culpable homicide not amounting to murder. There were disputes between the parties and there was also pending litigation. The appellants had also resorted to civil remedies. That apart, the evidence also does not indicate that there was a serious apprehension that death or grievous hurt would be the consequence of the act allegedly committed by Surmukh Singh and others. Therefore, the assailants had no right to take away the life of Surmukh Singh in exercise of the alleged right of private defence.

83. Sham @ KishorBhaskarraoMatkari Vs.The State of Maharashtra - AIR2012SC301, 2011(4)RCR(Criminal)750, 2011(11)SCALE206

"Court shall award death sentence only in rarest of rare case."

84. State, Govt. of NCT of Delhi Vs.Sunil and Another - 2001(1)ACR17(SC), 2001(1)ALD(Cri)54, 2001CriLJ504, JT2000(Suppl3)SC267, RLW2001(1)SC3, 2000(7)SCALE692, [2000]5SuppSCR144

(2) Evidence Act, 1872 - Section 27 - Recovery of article-Resulting from statement of accused-No independent witness of recovery-Whether recovery of article can be discarded?-Held, "no".

There is no requirement either under Section 27 of the Evidence Act or under Section 161 of the Code of Criminal Procedure, to obtain signature of independent witnesses on the record in which statement of an accused is written. The legal obligation to call independent and respectable inhabitants of the locality to attend and witness the exercise made by the police is cast on the police officer when searches are made under Chapter VII of the Code. Section 100 (5) of the Code requires that such search shall be made in their presence and a list of all things seizedin the course of such search and of the places in which they are respectively found, shall be prepared by such officer or other person "and signed by such witnesses". It must be remembered that search is made to find out a thing or document which the searching officer hashas no prior idea where the thing or document is kept. He prowls for it either on reasonable suspicion or on some guess work that it could possibly be ferreted out in such prowling. It is a stark reality that during searches, the team which conducts search would have tomeddle with lots of other articles and documents also and in such process, many such articles or documents are likely to be displaced or even strewn helter-skelter. The legislative idea in insisting on such searches to be made in the presence of two independent inhabitants of the localityis to ensure the safety of all such articles meddled with and to protect the rights of the persons entitled thereto. But recovery of an object pursuant to the information supplied by an accused in custody is different from the searching endeavour envisaged in Chapter VII of the Code.Hence, it is a fallacious impression that when recovery is effected, pursuant to any statement made by the accused, the document prepared by the Investigating Officer, contemporaneous with such recovery, must necessarily be attested by independent witnesses. Of course,if any such statement leads to recovery of any article, it is open to the Investigating Officer to take the signature of any person present at that time, on the document prepared for such recovery. But if no witness was present or if no person had agreed to affix hissignature on the document, it is difficult to lay down, as a proposition of law, that the document so prepared by the police officer must be treated as tainted and the recovery evidence unreliable. The Court has to consider the evidence of the Investigating Officer who deposed to the factof recovery based on the statement elicited from the accused on its own worth.

(3) Evidence Act, 1872 - Sections 3, 27 and 114-Police witness-Reliability-Initial trust on actions and documents made by police to be placed-Not legally approvable that police action unreliable to start with.

We feel that it is an archaic notion that actions of the police officer should be approached with initial distrust. We are aware that such a notion was lavishly entertained during British period and policemen also knew about it. Its hangover persisted during post-independent years but it is timenow to start placing at least initial trust on the actions and the documents made by the police. At any rate, the Court cannot start with the presumption that the police records are untrustworthy. As a proposition of

law, the presumption should be the other way around. That officialacts of the police have been regularly performed is a wise principle of presumption and recognised even by the Legislature. Hence, when a police officer gives evidence in Court that a certain article was recovered by him on the strength of the statement made by the accusedit is open to the Court to believe the version to be correct if it is not otherwise shown to be unreliable. It is for the accused, through cross-examination of witnesses or through any other materials, to show that the evidence of the police officer is either unreliable or atleast unsafe to be acted upon in a particular case. If the Court has any good reason to suspect the truthfulness of such records of the police, theCourt could certainly take into account the fact that no other independent person was present at the time of recovery. But it is not a legally approvable procedure to presume the police action as unreliable to start with, or to jettison such action merely for the reason that police didnot collect signatures of independent persons in the documents made contemporaneous with such actions.

85. **GosuJairami Reddy and Anr. Vs. State of A.P. - 2011(3)ACR3167(SC), AIR2011SC3147, 2011CriLJ4387, 2011(4)Crimes244(SC), 2011(3)JCC2160(SC), JT2011(8)SC263, 2011(4)KCCRSN468, 2011 (3) KLT(SN) 103, 2011(4)PLJR273, 2011(4)RCR(Criminal)540, 2011(8)SCALE58, (2011)11SCC766, 2011(2)UC1531**
"In cases based on eye witness account of the incident proof or absence of a motive is not of any significant consequence."

86. **AIR2001SC2842, 2002(1)ALD(Cri)43, 2001ALLMR(Cri)2384(SC), 2001(2)ALT(Cri)296, 2002(3)CGLJ64, 2001CriLJ4632, JT2001(8)SC110, 2001(6)SCALE490, (2001)8SCC311, 2001(2)UC602 - Ram GulamChaudhury and ors. vs. State of Bihar**
Evidence Act, 1872 - Section 106--Indian Penal Code, 1860-- Sections 302 read with 149 or 302 read with 149 and 201--Murder-- Conviction--Corpus delicti not recovered--After incident appellants took away the body--Non-examination of IO--Blood stained mud and Lungi seized but not produced-- Lantern not seized--HELD --Appellant should explain that what they did with--After took him away--IO not eye-witness--He can't give any evidence about place of occurrence--Non production of said items not resulted in any prejudice to appellants--And deceased with his father having meals --Sister and mother serving--It is clear that they had put source of light--Appeal dismissed. (Para--23 and 29 to 31)

87. **KumudiLal Vs. State of U.P. - 1999(1)ACR856(SC), AIR1999SC1699, 1999(1)ALT(Cri)237, 1999CriLJ2523, 1999(31)Crimes1(SC), JT1999(3)SC121, 1999(2)SCALE622, (1999)4SCC108**
Criminal - rape with murder - Sections 302 and 376 of Indian Penal Code, 1860 - deceased initially gave liberty to accused to touch body - accused later forced her for sexual intercourse against her will - deceased denied

for sexual intercourse - deceased raped by accused and on her crying she was murdered - accused guilty of rape and murder but on account of initial conduct of deceased death sentence reduced to life imprisonment.

88. **1996(1)ALD1, 1996(1)ALD(Cri)358, 1996(1)ALT(Cri)180, 1996CriLJ2196 DudekulaKhabalaSaheb alias Khabala Vs. Respondent: State of Andhra Pradesh**
Nature of offence - Section 300 (3) of Indian Penal Code, 1860 - under Clause (3) of Section 300 an intention to cause death not a mandatory requirement - intention to cause such bodily injury being sufficient in the ordinary course of nature to cause death brings the offence underculpable homicide amounting to murder.

89. **2005 1 ALD(Cri) 163; 2006 1 ALT(Cri) 234; Shaik Ibrahim Versus State of A.P.**
Indian Penal Code, 1860 - Section 305 - Appeal against conviction - Benefit of Doubt - Where evidence on record not discloses direct abetment by accused, the accused is entitled to benefit of doubt. Abetment discussed.

90. **2008 1 ALD(Cri) 532; 2008 1 ALT(Cri) 385; 2008 0 Supreme(AP) 22; NandikanumaLakshmamma and another Vs. State of Andhra Pradesh**
A direct decision on the point namely, when two sets of statements are recorded under Section 161 of the Code from the same witnesses, the effect of non-production or of supply one of them, to the Court or the accused was rendered by the Privy Council in PulukuriKottaya v. Emperor, AIR (34) 1947 PC 67. The importance of the statements recorded under Section 161 Cr.P.C. for an accused was emphasized. As in the present case, in that case also, two Investigating Officers have recorded the statements of the witnesses separately and one set of statement was not produced before the Court at the initial stage, though, made available, at later stage.

91. **2004 0 AIR(SC) 1677; 2004 1 CCR(SC) 349; 2004 2 Crimes(SC) 204; 2004 2 Crimes(SC) 166; 2004 0 CrLJ 1446; 2004 0 CrLJ 1441; 2004 1 JCC 488; 2004 2 JT 425; 2004 3 PLJR(SC) 72; 2004 2 RCR(Cri) 936; 2004 2 Scale 408; 2004 4 SCC 371; 2004 0 SCC(Cri) 1259; 2004 2 Supreme 234; 2004 0 Supreme(SC) 174; RajuPandurangMahale versus State of Maharashtra and Anr.**
Test to determine if modesty of woman was outraged was whether action of offender was such as could be perceived as one which was capable of shocking the sense of decency of a woman.

92. **2001 0 AIR(SC) 393; 2000 0 AIR(SCW) 4303; 2001 1 JLJR(SC) 417; 2000 Supp3 JT 213; 2000 7 Scale 628; 2001 1 SCC 4; 2000 8**

Supreme 429; 2000 0 Supreme(SC) 1903; 2001 1 UJ 271; State of Maharashtra versus Milind&Ors
The rule of stare decisis is not inflexible so as to preclude a departure therefrom in any case but its application depends on facts and circumstances of each case. It is good to proceed from precedent to precedent but it is earlier the better to give quietus to the incorrect one by annulling it to avoid repetition or perpetuation of injustice, hardship and anything ex-facie illegal more particularly when a precedent runs counter to the provisions of the Constitution.

93. **1996 0 AIR(SC) 1011; 1996 0 AIR(SCW) 492; 1996 33 ATC 713; 1996 1 JT 57; 1996 0 LIC 919; 1996 1 Scale 85; 1996 3 SCC 545; 1996 0 SCC(L&S) 772; 1996 1 SLR 655; 1996 0 Supreme(SC) 25; 1996 1 UJ 626; VALSAMMA PAUL Vs. COCHIN UNIVERSITY** As a part of it, the officer concerned should also verify, as a fact, whether a convert has totally abjured his old faith and adopted, as a fact, the new faith; whether he suffered all the handicaps as a Dalit or Tribe; whether conversion is only a ruse to gain constitutional benefits under Articles 15 (4)or 16 (4); and whether the community has in fact recognised his conversion and treated him as a member of the community and the issue such a certificate.

94. 1976 0 AIR(SC) 939; 1976 1 SCC 863; 1976 3 SCR 82; 1975 0 Supreme(SC) 543; C. M. Arumugam Versus S. Rajgopal and others
These cases show that the consistent view taken in this country from the time Administrator-General of Madras v. Anandachari, (1886) ILR 9 Mad 466 (supra) was decided, that is, since 1886, has been that on reconversion to Hinduism, a person can once again become a member of the caste in which he was born and to which he belonged before conversion to another religion, if the members of the caste accept him as a member. There is no reason either on principle or on authority which should compel us to disregard this view which has prevailed for almost a century and lay down a different rule on the subject. If a person who has embraced another religion can be reconverted to Hinduism, there is no rational principle why he should not be able to come back to his caste, if the other members of the caste are prepared to readmit him as a member. It stands to reason that he should be able to come back to the fold to which he once belonged, provided of course the community is willing to take him within the fold. It is the orthodox Hindu society still dominated to a large extent, particularly in rural areas, by medievalistic outlook and status-oriented approach which attaches social and economic disabilities to a person belonging to a Scheduled Caste and that is why certain favoured treatment is given to him by the Constitution. Once such a person ceases to be a Hindu and becomes a Christian, the social and economic disabilities arising because of Hindu religion cease and hence it is no longer necessary to give him protection and for this reason he is

deemed not to belong to a Scheduled Caste. But when he is reconverted to Hinduism, the social and economic disabilities once again revive and become attached to him because these are disabilities inflicted by Hinduism. A Mahar or a Koli or a Mala would not be recognised as anything but a Mahar or a Koli or a Mala after reconversion to Hinduism and he would suffer from the same social and economic disabilities from which he suffered before he was converted to another religion. It is, therefore, obvious that the object and purpose of the Constitution (Scheduled Castes) Order, 1950 would be advanced rather than retarded by taking the view that on reconversion to Hinduism, a person can once again become a member of the Scheduled Caste to which he belonged prior to his conversion.

95. 1995 0 AIR(SC) 1506; 1995 0 AIR(SCW) 2289; 1995 30 ATC 166; 1995 3 JT 684; 1995 2 Scale 815; 1995 4 SCC 32; 1995 2 SLR 595; 1995 0 Supreme(SC) 547; 1995 2 UJ 535; Director of Tribunal Welfare, Government of Andhra Pradesh Versus LavetiGiri and another

PROCEDURE FOR ISSUING SOCIAL STATUS CERTIFICATE.

The admission wrongly gained or appointment wrongly obtained on the basis of false social status certificate necessarily has the effect of depriving the genuine Scheduled Castes or Scheduled Tribes or OBC candidates envisaged of the benefits conferred on them by the Constitution. By reason thereof, the genuine candidates would be denied admission to professional course etc. or appointments to office or posts under a State instrumentialites. More often they are denied social status certificates while ineligible or spurious persons easily would secure them. After falsely gaining entry, resort to dilatory tactics and create hurdles in completion of the inquiries by the Scrutiny Committee. It is the parent or the guardian who may play fraud claiming false status certificate of his child. It is, therefore, necessary that the certificates issued are scrutinised at the earliest and with utmost expedition and promptitude. For that purpose, it is necessary to streamline the procedure for the issuance of social status certificates, their scrutiny and their approval, which may be the following :-

1. The application for grant of social status certificate shall be made to the Revenue Sub-Divisional Officer and Deputy Collector or Deputy Commissioner and the certificate shall be issued by such officer rather than by the Officer like Taluk or Mandal level.

2. The parent, guardian or the candidate, as the case may be, shall file an affidavit duly sworn and attested by a competent gazetted officer or non-gazetted officer with particulars of castes and sub-castes, tribe, tribal community, parts or groups of tribes or tribal communities, the place from which he originally hails from and other particulars as may be prescribed by the Directorate concerned.

3. Application for verification of the caste certificate by the Scrutiny Committee shall be filed at least six months in advance before seeking admission into educational institution or an appointment to a post.
4. All the State Governments shall constitute a Committee of three officers, namely (1) an Additional or Joint Secretary or any officer higher in rank of the Director of the department concerned. (II) the Director, Social Welfare/Tribal Welfare/Backward Class Welfare, as the case may be. and (III) in the case of Scheduled Castes another officer who has intimate knowledge in the verification and issuance of the social status certificates. In the case of the Scheduled Tribes, the Research Officer who has intimate knowledge in identifying the tribes, tribal communities parts of or groups of tribes or tribal communities.
5. Each Directorate should constitute a vigilance cell consisting of Senior Deputy Superintendent of Police in over-all-change and such number of Police Inspectors to investigate into the social status claims. The Inspector would go to the local place of residence and original place from which the candidate hails and usually resides or in case of migration to the town or city, the place from which he originally hailed from. The vigilance office should personally verify and collect all the facts of the social status claimed by the candidate or the parent or guardian, as the case may be. He should also examine the school records, birth registration, if any. He should also examine the parent, guardian or the candidate in relation to their caste etc. or such other persons who have knowledge of the social status of the candidate and then submit a report to the Directorate together with all particulars as envisaged in the pro forma, in particular, of the Scheduled Tribes relating to their peculiar anthropological and ethnological traits, deity, rituals, customs, mode of marriage, death ceremonies, method of burial of dead bodies etc. by the castes or tribes or tribal communities concerned etc.
6. The Director concerned, on receipt of the report from the vigilance officer if he found the claim for social status to be "not genuine" or doubtful or spurious or falsely or wrongly claimed, the Director concerned should issue show cause notice supplying a copy of the report of the vigilance officer to the candidate by a registered post with acknowledgment due or through the head of the educational institution concerned in which the candidate is studying or employed. The notice should indicate that the representation or reply, if any, would be made within two weeks from the date of the receipt of the notice and in no case on request not more than 30 days from the date of the receipt of the notice. In case, the candidate seeks for an opportunity of hearing and claims an inquiry to be made in that behalf, the Director on receipt of such representation / reply shall convene the committee and the Joint / Additional Secretary as Chairperson who shall give reasonable opportunity to the candidate / parent / guardian to adduce all evidence in support of their claim. A public notice by beat of drum or any other convenient mode maybe published in the village or locality and if any person or association opposes

such a claim, an opportunity to adduce evidence may be given to him/it. After giving such opportunity either in person or through counsel, the Committee may make such inquiry as it deems expedient and consider the claims vis-a-vis the objections raised by the candidate or opponent and pass an appropriate order with brief reasons in support thereof.

7. In case the report is in favour of the candidate and found to be genuine and true, no further action need be taken except where the report or the particulars given are procured or found to be false or fraudulently obtained and in the latter event the same procedure as is envisaged in para 6 be followed.

8. Notice contemplated in para 6 should be issued to the parents / guardian also in case candidate is minor to appear before the Committee with all evidence in his or their support of the claim for the social status certificates.

9. The inquiry should be completed as expeditiously as possible preferably by day-to-day proceedings within such period not exceeding two months. If after inquiry, the Caste Scrutiny Committee finds the claim to be false or spurious, they should pass an order cancelling the certificate issued and confiscate the same. It should communicate within one month from the date of the conclusion of the proceedings the result of enquiry to the parent / guardian and the applicant.

10. In case of any delay in finalising the proceedings, and in the mean while the last date for admission into an educational institution or appointment to an officer post, is getting expired, the candidate be admitted by the Principal or such other authority competent in that behalf or appointed on the basis of the social status certificate already issued or an affidavit duly sworn by the parent / guardian / candidate before the competent officer or non-official and such admission or appointment should be only provisional, subject to the result of the inquiry by the Scrutiny Committee.

11. The order passed by the Committee shall be final and conclusive only subject to the proceedings under Article 226 of the Constitution.

12. No suit or other proceedings before any other authority should lie.

13. The High Court would dispose of these cases as expeditiously as possible within a period of three months. In case, as per its procedure, the writ petition / miscellaneous petition / matter is disposed of by a Single Judge, then no further appeal would lie against that order to the Division Bench but subject to special leave under Article 136.

14. In case, the certificate obtained or social status claimed is found to be false, the parent / guardian / the candidate should be prosecuted for making claim. If the prosecution ends in a conviction and sentence of the accused, it could be regarded as an offence involving moral turpitude, disqualification for elective posts or offices under the State or the Union or elections to any local body, legislature or Parliament.

15. As soon as the findings is recorded by the Scrutiny Committee holding that the certificate obtained was false, on its cancellation and confiscation

simultaneously, it should be communicated to the educational institution concerned or the appointing authority by registered post with acknowledgment due with a request to cancel the admission of the appointment. The Principal etc. of the educational institution responsible for making the admission or the appointing authority, should cancel the admission / appointment without any further notice to the candidate and debar the candidate from further study or continue in office in a post.

96. **2004 0 Supreme(Mad) 1738; Arumugham Versus State represented by its The Sub Inspector of Police**Electification of the fence is more an act of rashness and negligence than an intentional act. No infirmity in conviction u/Sec 304 (II) IPC instead of 304 A IPC.

97. 2005 0 AIR(SC) 800; 2005 0 AIR(SCW) 718; 2006 2 JCR(SC) 236; 2005 2 JLJR(SC) 33; 2005 1 JT 496; 2005 1 PLJR(SC) 457; 2005 1 RCR(Civ) 799; 2005 1 Scale 626; 2005 2 SCC 244; 2005 1 Supreme 617; 2005 0 Supreme(SC) 155 SobhaHymavathi Devi Versus SettiGangadharaSwamy and Ors.

The recognition of a lady as a member of a backward community in view of her marriage would not be relevant for the purpose of entitlement to reservation under Article 16(4) of the Constitution for the reason that she as a member of the forward caste, had an advantageous start in life and a marriage with a male belonging to a backward class would not entitle her to the facility of reservation given to a backward community.

98. 2005 0 AIR(SC) 4313; 2005 0 AIR(SCW) 5185; 2005 12 JT 569; 2005 4 PLJR(SC) 321; 2005 8 Scale 288; 2005 8 SCC 283; 2005 7 SCJ 779; 2005 7 Supreme 424; 2005 0 Supreme(SC) 1331; Lilly Kutty versus Scrutiny Committee, S.C. & S.T. &Ors

When a person claims to be a member of Scheduled Caste or Scheduled Tribe, burden of proof that he or she belongs to such caste or tribe is on him/her.

The caste certificate issued to the petitioner who was born and practised Christianity was rightly cancelled.

99. 2012 0 AIR(SC) 3336; 2012 0 CrLJ 4443; 2012 7 Scale 520; 2012 9 SCC 257; 2012 6 Supreme 177; 2012 0 Supreme(SC) 557; SUBRAMANIAN SWAMY VS A. RAJA

Indian penal Code, 1860 - Section 120B - Criminal conspiracy - Cannot be inferred merely on the basis of official discussions.

A wrong judgment or an inaccurate or incorrect approach or poor management by itself, even after due deliberations between Ministers or even with Prime Minister, by itself cannot be said to be a product of criminal conspiracy.

100. **2002 1 ALD(Cri) 393; 2002 1 ALT(Cri) 459; 2002 0 CrLJ 2110; 2001 0 Supreme(AP) 1630; SadashivaRao Versus State OF A.P.** in view of the wider sense given to the term agent by the Supreme Court which include all cases in which property is voluntarily handed over for specific purpose, under S. 409 of the Indian Penal Code, he can be treated as an agent. When the accused has not completed the work of contract, and he failed to account the steel entrusted to him, he has dishonestly and fraudulently misappropriated the steel entrusted by P. W. 1. Thus, the accused is guilty of the criminal breach of trust and, therefore, he is liable to be punished for the offence under S. 409 of the Indian Penal Code, inasmuch as, the accused as an agent on behalf of his Principal P. W. 1, has misappropriated the steel entrusted to him.

101. **2005 2 ALT(Cri) 38; 2004 0 Supreme(AP) 976; P.Prem Kumar Versus State OF A.P.** THE test in such cases would appear to be as to whether it is a civil remedy which is sought to be converted into a criminal profile or not; or where both the remedies are available unless one comes to the conclusion that it is a case of wanton conversion of civil case into a criminal case purposefully, the civil remedy cannot exclude the criminal remedy. It is for the Court, with reference to the facts in each case, to decide whether it is a wanton conversion of civil remedy into a criminal remedy or not.

102. **1996 0 CrLJ 3921; 1996 0 Supreme(Raj) 338; DALPAT SINGH Versus STATE OF RAJASTHAN** THERE is hand-writing experts opinion also that the signatures of Teka and thumb impressions of Chatra on Ex. P/1 to Ex-P/3 resemble the specimen hand-writing and signatures taken from accused Bhera and specimen thumb impressions taken from Khuma. The learned Addl. Sessions Judge concluded that there is no reason to disbelieve the handwriting experts opinion as they have not been called for cross-examination.

UNDER these circumstances conviction cannot be based merely on the basis of the handwriting experts opinion.

103. 1997 1 ALD(Cri) 360; 1996 2 ALT(Cri) 682; 1996 0 Supreme(AP) 606; M.V.SubbaLaxmi and P.Seetharamaiah Versus State rep.by P.P.(C.B.I./s.P.E.Hyderabad)

It is thus obvious that the Officers had signed those documents carelessly and that was not with an intention to cause benefit to oneself or i. e. cause loss to the bank. The signing was done merely carelessly. The proper remedy for the bank was to file civil suits or departmental enquiry against these Officers. There is absolutely nothing to show that there was any Mensrea in signing the documents by accused No. 2.

104. 2012 0 AIR(SC) 1185; 2012 2 BomCR(Cri)(SC) 495; 2012 2 CalCriLR 241; 2012 1 CCR(SC) 266; 2012 0 CrLJ 1519; 2012 1 JLJR(SC) 574;

2012 2 JT 203; 2012 1 MLJ(Cri)(SC) 484; 2012 1 RCR(Cri) 720; 2012 2 Scale 12; 2012 3 SCC 64; 2012 1 SCC(Cri) 1041; 2012 2 SCJ 355; 2012 1 Supreme 577; 2012 0 Supreme(SC) 78; Dr. Subramanian Swamy versus Dr.Manmohan Singh and another

Any citizen may make representation for sanction of prosecution of a public servant whereupon the competent authority shall act within the time frame in accordance with (1998) 1 SCC 226 and CVC guidelines.

105. 2013 0 AIR(SC) 3622; 2013 0 CrLJ 1559; 2013 2 JT 182; 2013 3 SCC 294; 2013 1 Supreme 452; 2013 0 Supreme(SC) 97;MOHINDER SINGH VS STATE OF PUNJAB

Code of Criminal procedure, 1973 - Section 366(1) - Murder reference - High Court has to come to its own independent conclusion as to the guilt or innocence of the accused, independently of the opinion of the trial judge - High Court must examine the entire evidence for itself independent of the Session Courts views - Onerous duty is bestowed on the reference court to balance the aggravating and mitigating circumstances

Criminal Trial - Life imprisonment - Cannot be equivalent to imprisonment for 14 years or 20 years or even 30 years - Rather it always means the whole natural life subject to any remission granted by the appropriate Government under Section 432, Cr.P.C. which in turn is subject to the procedural checks mentioned in the said provision and further substantive check in Section 433-A, Cr.P.C.

106. 2012 3 ACC 379; 2012 0 AIR(SC) 3104; 2012 3 CalCriLR 527; 2012 3 CCR(SC) 272; 2012 3 Crimes(SC) 336; 2012 0 CrLJ 4174; 2012 132 DRJ(SC) 485; 2012 7 JT 251; 2012 3 LS(SC) 26; 2013 1 RLW(SC) 629; 2012 7 Scale 120; 2012 8 SCC 450; 2012 3 SCC(Cri) 899; 2012 7 SCJ 753; 2012 5 Supreme 321; 2012 0 Supreme(SC) 514; STATE TR.P.S.LODHI COLONY NEW DELHI Vs. SANJEEV NANDA

Indian Penal Code, 1860 - Section 304 Part II - Offender having knowledge that rash and negligent driving under intoxication might cause death - Still he did not have any knowledge of the victims being there and had no intention to cause death or such bodily injury to them as is likely to cause death - Offence falls under Section 304 Part II.

Motor Vehicles Act, 1988 - Section 185 r/w sections 203 and 205 - Drunken driving - Breath tests are to be carried out while driving or attempting to drive - Accused escaping from scene of occurrence - Breath tests not possible or feasible - Blood tests soon after and clinical tests next morning confirming drunken state of accused at the time of occurrence - Acceptable.

Motor Vehicles Act, 1988 - Section 134 - Duty of driver in accident - Accused escaping from scene of occurrence instead of helping victims - Liable for punishment under section 187 - Direction for providing medical assistance on Highways reiterated.

Criminal Trial - Hostile witness - A growing menace - Courts should made efforts to unearth truth - Section 193 IPC should be invoked where necessary.
Interpretation of Section 304 Part II and Section 304 A of the IPC falls for consideration in this appeal.

107. Mohan Vs. State by Inspector of Police - 1997CriLJ22

"Section 27 is brought into operation where a person in police custody produces from some place of concealment some object said to be connected with the crime of which the information is the accused. The concealment of the fact which is not known to the police is what is discovered by the information and lends assurance that the information was true. No witness with whom some material fact, such as the weapon of murder, stolen property or other incriminating article is not hidden or sold or kept and which is unknown to the police can be said to be discovered as a consequence of the information furnished by the accused. A witness cannot be said to be discovered if nothing is to be found or recovered from him as a consequence of the information furnished by the accused and information which disclosed the identity of the witness will not be admissible. But even apart from the admissibility of the information under Section 27, the evidence of the Investigating Officer and the panches that the accused had taken them to P.W. 11 and pointed him out and as corroborated by P.W. 11 himself would be admissible under Section 8 of the Evidence Act as conduct of the accused.
the fact of the accused pointing out P.W. 9 as the person from whom he purchased M.O. 3 knife, cannot come under Section 27 of the Evidence Act and nothing has been recovered form that witness, who was pointed out by the accused, but the conduct of the accused could be considered under Section 8 of the Evidence Act. Moreover, P.W. 9 being an important witness, was traced out only at the instance of the accused, during the course of the investigation. So, since it does not come under Section 27 of the Evidence Act, there is no bar for this court to consider and act upon the evidence of PW9.

108. State of Kerala Vs. M.K. Pyloth - 1973CriLJ869

"Before ordering remand or extension of remand, Court had to satisfy itself on an examination of materials placed before it that there were reasonable grounds for doing so."

109. Rajbir Singh Vs. State of U.P. and Anr. - 2006(1)ACR1131(SC), 2006(9)ADJ640, AIR2006SC1963, 2006((2))ALT(Cri)211, 2006(2)ALT(Cri)211, 101(2006)CLT788(SC), 2006CriLJ2458, JT2006(3)SC372, 2006-2-LW(Crl)503, 2006(2)PLJR327, 2006(3)SCALE125, (2006)4SCC51

Code of Criminal Procedure, 1973 - Sections 227 and 228--Indian Penal Code, 1860--Sections 301, 302 and 201--Scheduled Castes and Scheduled

Tribes (Prevention of Atrocities) Act, 1989--Section 3 (2) (v)--Framing of charge--Charge framed by trial court against second respondent under Section 302/34 and Section 3 (2) (v) of S.C./S.T. Act--High Court setting aside order framing charge--High Court reasoned that respondent neither intended to kill deceased nor she was aimed at because she was Scheduled Caste--Whether High Court justified?--Held, "no"--High Court completely ignored Section 301, I.P.C.--Reasons given by High Court for quashing charges wholly erroneous in law--High Court's order quashed--Matter remitted to trial court with direction to amend charges.

110. SantoshDevidasBehade and Ors. Vs. State of Maharashtra - 2009(3)ACR2523(SC), 2009(2)ALD(Cri)217, JT2009(7)SC417, 2009(3)SCALE727, (2009)13SCC680, [2009]4SCR83

Indian Penal Code, 1860--Section 149--Constructive liability under Section 149--Mere presence in unlawful assembly cannot render person liable--Unless there was common object--And he was actuated by that common object--When common object of unlawful assembly not proved--Accused persons cannot be convicted with aid of Section 149. [Paras 5 to 9].

(3) Evidence Act, 1872--Sections 3 and 9--Appreciation of evidence--Close relatives will not conceal real culprits--And make allegations against innocent persons--It cannot be said that close relatives are not independent witnesses.

(4) Code of Criminal Procedure, 1973--Sections 156 and 162--Investigation--Identification tests do not constitute substantive evidence--They are primarily meant for helping investigating agency--Identification can be used only as corroborative of statement in Court--T.I.Ps. generally governed by Section 162--Failure to hold T.I.P.--Would not make in-admissible evidence of identification in Court.

111. Boddella Babul Reddy Vs. Public Prosecutor, High Court of A.P. - 2010(1)ACR340(SC), AIR2010SC3231, JT2010(1)SC24, 2010(1)SCALE60, (2010)3SCC648, [2010]1SCR149

Indian Penal Code, 1860 - Section 302-Murder-Conviction and sentence by High Court-Reversing acquittal by trial court-Whether liable to interference?-Held, "yes"-Conviction of appellant by High Court set aside.

The role of Y. ChinnaNarayana Reddy (P.W. 1), K. Sudhakar Reddy (P.W. 2), G. Raghurami Reddy (P.W. 3), R. VenkataSubba Reddy (P.W. 4) and K. GopalYadav (P.W. 5) and more particularly, their evidence regarding the overt act attributed to the appellant herein was not above suspicion. We are also surprised that insofar as BodellaMalikarjuna Reddy (A-2), YedulaNagamuni Reddy (A-3), YeddulaMaruthi Prasad Reddy (A-5), YeddulaManohar Reddy (A-7) and YeddulaPrabhakar Reddy (A-14) are concerned, the High Court chose to disbelieve the evidence of Y. ChinnaNarayana Reddy (P.W. 1), K. Sudhakar Reddy (P.W. 2), G. Raghurami Reddy (P.W. 3), R. VenkataSubba Reddy (P.W. 4) and K. GopalYadav (P.W. 5) on the ground that there was no corroboration to the

evidence of each witness about the injuries received by the respective accused person. The High Court expressed the view that the prosecution witness might have received splinter injuries while running away from the scene and it was not possible for them to observe as to which accused hurled bombs against each of them. Once the benefit of such kiosk has been given to the other accused against whom the appeal was filed by the State, the same advantage should have been given even to the appellant herein, more particularly because he was admittedly a leader and the version against him was absolutely parrot-like. The High Court has not exercised the caution that was expected to while dealing with the judgment of acquittal by the trial court. It has also left out of consideration the important findings regarding the F.I.R. and the other important circumstance that before the F.I.R. was given, the lawyers/legal advisors had already reached the place alongwith their leader, who was a Member of Legislative Assembly. The High Court has also not further considered the contradictions between the evidence of Y. ChinnaNarayana Reddy (P.W. 1), Dr. K. VenkataNarayana (P.W. 11), the Medical Officer, E. V. Rami Reddy (P.W. 14), Head Constable and S. Ramakrishna Reddy (P.W. 15), Circle Inspector inter se. The High Court was not justified in interfering with the well considered judgment of the trial court.

112. Banti @ Guddu Vs. State of Madhya Pradesh - 2004(1)ACR308(SC), AIR2004SC261, 2004(1)ALD(Cri)94, 2004CriLJ372, 2004(2)JLJ194(SC), JT2003(8)SC392, 2003(9)SCALE215, (2004)1SCC414, [2003]5SuppSCR119, 2004(1)UJ321

Indian Penal Code, 1860 - Section 302/34--Code of Criminal Procedure, 1973--Sections 226 and 231--Murder--Conviction and sentence--Whether sustainable?--Held, "yes"--D.W. 1, though being with complainant and witnessing incident becoming compulsive liar to help accused---His evidence rightly discarded--Merely because P.W. 1 is relation of deceased and P.W. 2 known to him--No ground to discard their evidence found to be acceptable on careful scrutiny--Public prosecutor not obliged to examine all witnesses--Delayed examination of prosecution witness not to render prosecution version suspect--No ground to interfere with concurrent findings recorded by both courts below.

It is true, the evidence of defence witness is not to be ignored by the Courts. Like any other witnesses, his evidence has to be tested on the touchstone of reliability, credibility and trustworthiness particularly when he attempts to resile and speak against records and in derogation of his earlier conduct and behaviour. If after doing so, the Court finds it to be untruthful, there is no legal bar in discarding it.

If the lack of motive as pleaded by the accused appellants is a factor, at the same time, it cannot be lost sight of that there is no reason as to why P.W. 1 would falsely implicate the accused persons. There was no suggestion of any motive for such allegedfalse implication. Merely because P.W. 1 is a relation of the deceased, and P.W. 2 was known to him, that

per se cannot be a ground to discard their evidence. Careful scrutiny has been done of their evidence and it has been found acceptable by both the trial court and the High Court. There is no reason to take a different view.
If there are too many witnesses on the same point, the public prosecutor is at liberty to choose two or some among them alone so that the time of the Court can be saved from repetitious depositions on the same factual aspects. That principle applies when there are too manywitnesses cited, if they all had sustained injuries at the occurrence. The public prosecutor, in such cases is not obliged to examine all the injured witnesses. If he is satisfied by examining any two or three of them, it is open to him to inform the Court that he does not propose to examine the remaining persons in that category. This will help not only the prosecution in relieving itself of the strain of adducing repetitiveevidence on the same point but also help the Court considerably in lessening the workload.
It cannot be laid down as a rule of universal application that if there is any delay in examination of a particular witness, the prosecution version becomes suspect. It would depend upon several factors. If the explanation offered for the delayed examination is plausible and acceptable and the court accepts the same as plausible, there is no reason to interfere with the conclusion.

113. VajralaParipunachary Vs. State of Andhra Pradesh - 1998(1)ACR442(SC), AIR1998SC2680, 1998(2)ALD(Cri)391, 1998(2)ALT(Cri)238, 1998CriLJ4031, JT1998(5)SC224, 1998(4)SCALE293, (1998)6SCC463, (1998)6SCC663

Dying declaration of deceased recorded by Magistrate - In dying declaration recorded before Magistrate deceased stated that she was burnt by appellant - Dispute on fact of place of incident does not affect credibility of dying declaration

114. State of U.P. Vs. Dan Singh and others - 1997(21)ACR262(SC), AIR1997SC1654, 1997(1)ALD(Cri)470, 1997(1)ALT(Cri)644, 1997(2)BLJR1662, 1997CriLJ1150, 1997(1)Crimes121(SC), JT1997(2)SC149, 1997(1)SCALE626, (1997)3SCC747, [1997]1SCR764

Criminal - unlawful assembly - Sections 149 and 302 of Indian Penal Code, 1860 - marriage party was passing through village of accused - accused attacked this marriage party - following precedent set by Apex Court it was observed that in order to held accused responsible for unlawful assembly they should be identified by atleast four witnesses**.**
a Court has to deal with the evidence pertaining to the commission of an offence involving a large number of offenders and a large number of victims, it is usual to adopt the test that the conviction could be sustained only if it is supported by 2/3 or more witnesses who give a consistent account of the incident, in a sense the test may be described as mechanical; but it cannot be treated as irrational or unreasonable".
(Relied on Masalti v. State of Uttar Pradesh)

115. Mani Kumar Thapa Vs. State of Sikkim - 2002(3)ACR2844(SC), AIR2002SC2920, 2002(2)ALD(Cri)410, 2002(2)ALT(Cri)288, 2002(4)CGLJ374, 2002CriLJ4069, 2002(3)Crimes138(SC), JT2002(6)SC349, 2002(6)SCALE1, (2002)7SCC157

Indian Penal Code, 1860 - Sections 364, 302 and 201, read with Section 34--Abduction, murder, etc.--A-1 dying during trial and proceedings against him abated--Appellant's conviction and sentence by trial court--Upheld by High Court--Whether valid?--Held, "yes"--Circumstantial evidence--Deceased taken away in jeep by A-1 in association with appellant--Absence of motive and corpus delicti (dead body) immaterial--Appellant failed to show that he did not share common intention with A-1--All circumstances clearly proving guilt of appellant--Appellant rightly convicted and sentenced.

It is a well-settled principle in law that in a trial for murder, it is neither an absolute necessity nor an essential ingredient to establish corpus delicti. The fact of the death of the deceased must be established like any other fact. Corpus delicti in some cases may not bepossible to be traced or recovered. There are a number of possibilities where a dead body could be disposed of without trace, therefore, if the recovery of the dead body is to be held to be mandatory to convict an accused,in many a case, the accused would manage to see that the dead body is destroyed which would afford the accused complete immunity from being held guilty or from being punished. What is, therefore, required in law to base a conviction for an offenceof murder is that there should be reliable and plausible evidence that the offence of murder like any other factum of death was committed and it must be proved by direct or circumstantial evidence albeit the dead body may not be traced. 1992 ACrR 39 (SC), relied on.

116. Ram Saran Mahto and Anr. Vs. The State of Bihar - 1999(3)ACR2202(SC), AIR1999SC3435, 1999(2)ALT(Cri)331, 1999(3)BLJR2345, 1999CriLJ4311, 1999(3)Crimes125(SC), JT1999(6)SC501, 1999(5)SCALE396, (1999)9SCC486, [1999]2SuppSCR250

Criminal - ingredients - Section 201 of Indian Penal Code, 1860 - two indispensable ingredients must be satisfied for convicting accused under Section 201 - firstly accused should have had knowledge that offence has been committed or at least that he should have reason to believe it - secondly he should then have caused disappearance of evidence of commission of that offence.- unless prosecution proves the two ingredients conviction of accused under Section 201 cannot be upheld.

117. ThathadiAppala Naidu Vs. Inspector of Police, Gagapathinagaram Circle, Vizianagaram District - 1999(1)ALD597, 1999(1)ALD(Cri)308, 1999(1)ALT(Cri)301, 1999CriLJ1186

Criminal - change in sentence - Sections 304 and 324 of Indian Penal Code, 1860 - accused convicted under Section 304 for causing death of deceased by hitting him on head and chest - deceased died due to chest injuries - beating on chest not recorded in FIR – circumstances depicting chest injuries might have been caused on way to hospital - conviction altered to one under Section 324 from sentence given under Section 304.

118. Damodar Vs. State of Karnataka - 1999(3)ACR2289(SC), AIR2000SC50, 1999(2)ALD(Cri)852, 2000CriLJ175, JT1999(8)SC62, 1999(6)SCALE306, (2000)10SCC328

Criminal - conviction - Sections 201, 302, 364 and 377 of Indian Penal Code, 1860 - appellant convicted by Trial Court for offence punishable under Sections 302 and 377 - appellant alleged to have sexually assaulted deceased, killed and buried body - High Court while confirming findings of Trial Court modified sentence in respect of Section 377 as proper charges not framed - Courts below justified in coming to conclusion that it was appellant who kidnapped deceased, committed murder and concealed dead body - findings of Trial Court along with modifications of High Court confirmed - appeal dismissed.

119. ChiguripatiSuryanarayana and another Vs. State of A.P. - 1999(1)ALD590, 1999(1)ALD(Cri)300, 1999(1)ALT(Cri)219, 1999CriLJ1201

Criminal - evidentiary value of FIR - Section 154 of Criminal Procedure Code, 1973 and Section 302 of Indian Penal Code, 1860 - accused and deceased were in enmity - alleged that accused armed with deadly weapons attacked deceased along with others with common object - appeal filed against conviction - no FIR or even entry in daily diary recorded - medical evidence to be believed as it is - oral evidence suffers from discrepancies - prosecution witnesses not trustworthy as they are follower witnesses - held, evidence not reliable and accused cannot be convicted.

120. Bhupendra Singh and Ors. Vs. State of U.P. - 2009(2)ACR1659(SC), AIR2009SC3265, 2009(57)BLJR1885, JT2009(6)SC79, 2009(5)SCALE653, (2009)12SCC447, [2009]6SCR262, 2009(5)UJ2383

(2) Indian Penal Code, 1860--Section 149--Common object of unlawful assembly -- Scope and applicability of Section 149.

The emphasis in Section 149, I.P.C. is on the common object and not on common intention. Mere presence in an unlawful assembly cannot render a person liable unless there was a common object and he was actuated by that common object and that object is one of those set out in Section 141, I.P.C. Where common object of an unlawful assembly is not proved, the accused persons cannot be convicted with the help of Section 149. The crucial question to determine is whether the assembly consisted of five or more persons and whether the said persons entertained one or more of the common objects, as specified in Section 141.

A common object may be formed by express agreement after mutual consultation, but that is by no means necessary. It may be formed at any stage by all or a few members of the assembly and the other members may just join and adopt it. Once formed, it need not continue to be the same. It may be modified or altered or abandoned at any stage. The expression "in prosecution of common object" as appearing in Section 149 has to be strictly construed as equivalent to "in order to attain the common object". It must be immediately connected with the common object by virtue of the nature of the object. There must be community of object and the object may exist only up to a particular stage, and not thereafter. Members of an unlawful assembly may have community of object up to a certain point beyond which they may differ in their objects and their knowledge, possessed by each member of what is likely to be committed in prosecution of their common object which may vary not only according to the information at his command, but also according to the extent to which he shares the community of object, and as a consequence of this the effect of Section 149, I.P.C. may be different on different members of the same assembly.

(3) Evidence Act, 1872--Sections 3 and 9--Appreciation of evidence--Related witness cannot be said to be not independent witness--Merely because eye-witnesses are family members--Their evidence cannot per se be discarded.

121. Jarnail Singh and Ors. Vs. State of Punjab - AIR2010SC3699, CLT(<(Sup)CLTCryear>2009)Supp.Crl.<(Sup)CLTCrpage>1666, JT2009(11)SC282, 2009(12)SCALE47, (2009)9SCC719, [2009]13SCR774

FIR is not encyclopedia of all the facts relating to crime. The only requirement is that at the time of lodging FIR, the informant should state all those facts which normally strike to mind and help in assessing the gravity of the crime or identity of the culprit briefly.

122. State of Madhya Pradesh Vs. Imrat and Anr. - AIR2008SC2967, 2009((2))ALT(Cri)108,CLT(<(Sup)CLTCryear>2008)Supp.Crl.<(Sup)CLTCrpage>1108, 2008CriLJ3869, 2008(10)SCALE143, (2008)11SCC523

Accused charged under Section 307 IPC cannot be acquitted merely because the injuries inflicted on the victim were in the nature of a simple hurt.

123. Ratan Singh Vs. State of M.P. and Anr. - 2009(2)ACR1969(SC), AIR2010SC597, ILR[2009]MP1866, 2009(3)JLJ169(SC), JT2009(6)SC166, 2010(II)MPJR(SC)259, (2009)43OCR409, (2009)12SCC585, [2009]6SCR976

Code of Criminal Procedure, 1973 - Sections 482 and 228--Charge framing--Charge under Section 307 r/w Section 149--High Court quashing

charge on ground that no injury caused on vital part of body -- Whether justified?--Held, "no" -- Accused charged under Section 307 cannot be acquitted - Code of Criminal Procedure, 1973 - Sections 482 and 228--Charge framing--Charge under Section 307 r/w Section 149--High Court quashing charge on ground that no injury caused on vital part of body -- Whether justified?--Held, "no" -- Accused charged under Section 307 cannot be acquitted -Merely because injuries inflicted on victim were in nature of simple hurt--Intention or knowledge is determinative factor--Order of High Court set aside.

In order to justify conviction under Section 307, I.P.C. it is not essential that bodily injury capable of causing death should have been inflicted. Although the nature of injury actually caused may often give considerable assistance in coming to a finding as to the intention of the accused, such Intention may also be deduced from other circumstances, and may even, in some cases, be ascertained without any reference at all to actual wounds. The section makes a distinction between an act of the accused and its result, if any. Such an act may not be attended by any result so far as the person assaulted is concerned, but still there may be cases in which the culprit would be liable under this section. It is not necessary that the injury actually caused to the victim of the assault should be sufficient under ordinary circumstances to cause the death of the person assaulted. What the Court has to see is whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section. An attempt in order to be criminal need not be the penultimate act. It is sufficient in law, if there is present an intent coupled with some overt act in execution thereof.

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

The mere fact that the injury actually inflicted by the accused did not cut any vital organ of the victim, is not by itself sufficient to take the act out of the purview of Section 307.

Whether there was intention to kill or knowledge that death will be caused is a question of fact and would depend on the facts of a given case. The circumstances that the injury inflicted by the accused was simple or minor will not by itself rule out application of Section 307, I.P.C. The determinative question is intention or knowledge, as the case may be, and not nature of the injury.

124. Pratap Singh Vs. State of Jharkhand and Anr. - 2005(1)ACR819(SC), AIR2005SC 2731, 2005((1))ALT(Cri)294, 2005(1)ALT(Cri)294, 2005(2)ALT14(SC), 2005(1)BLJR434, 2005CriLJ3091, [2005(3)JCR244(SC)], 2005(2)JLJ40(SC), JT2005(2)SC271, 2005-1-LW(Crl)405, 2005(2)OLR191, 2005(II)OLR(SC)191, RLW2005(2)SC261, (2005)3SCC551, [2005]1SCR1019, 2005(1)UJ587

(1) Juvenile Offender--Determination of age of juvenile--Whether date of occurrence is reckoning date for determining age of alleged offender as juvenile offender or date when he is produced before Court/Competent authority?--Held, "it is date of commission of offence and not date of production before Court/Competent authority.

The field covered by the Act includes a situation leading to juvenile delinquency vis-a-vis commission of an offence. In such an event, he is to be provided the post-delinquency care and for the said purpose, the date when delinquency took place would be the relevant date. It must, therefore, be held that the relevant date for determining the age of the juvenile would be one on which the offence has been committed and not when he is produced in Court. (Arnit Das v. State of Bihar – overruled)

(2) Juvenile Offender--Proceedings initiated under old Act--And pending on 1.4.2001 when new Act came into force--Whether provisions of new Act to apply to such proceedings?--Held, "yes" but only when offender had not completed 18 years of age on 1.4.2001.

125. GallaNageswaraRao Vs. State of Andhra Pradesh - 1993Supp(I)ALT239, 1992CriLJ2601

Criminal - dishonest intention - Sections 420, 463 to 471 and 511 of Indian Penal Code, 1860 and Sections 239 and 313 of Criminal Procedure Code, 1973 - - appellant was convicted under Sections 471 and 420 - Sessions Judge confirmed conviction of accused - Court observed that accused tried to derive benefits with dishonest intention by using forged documents - both Court below rightly convicted accused - High Court reduced sentence from one year to six months.

126. SoneLal and Ors. Vs. State of U.P. - 1981()ACR222(SC), AIR1981SC1379, 1981CriLJ1027, 1981(1)SCALE604, (1981)2SCC531, (1981)SCC(Cri)556, [1981]3SCR352

Criminal - conviction - Sections 302, 307 and 323 of Indian Penal Code, 1860 - long standing dispute between appellants and deceased - fresh dispute arose due to throwing of rubbish - appellant fire from pistol resulted in death of deceased - convicted under Sections 302, 307 and 323 sentenced to life imprisonment - appeal - facts revealed that appellants were aggressors - deceased had right to private defence - aggressors cannot have right of private defence - deceased died due to shot from weapon of appellants - appeal dismissed.

127. Deepak gulati Vs State of Haryana; 2013 0 AIR(SC) 2071; 2013 0 CrLJ 2990; 2013 7 SCC 675; 2013 3 Supreme 727; 2013 0 Supreme(SC) 494;

Rape and consensual sex distinguished. Intention of accused to deceive from the very beginning essential for charge of deceit/rape.

128. Arvind Kumar and Anr. Vs. State of Madhya Pradesh - 2007(3)ACR3197(SC), AIR2007SC2674, 2007CriLJ3741, II(2007)DMC178SC, JT2007(9)SC398, 2007(9)SCALE324, [2007]8SCR474

Abetment of suicide - Presumption under Section113 will be applicable if the accused failed to lead any evidence to rebut the presumption.

129. Iqbal Vs. State of Kerala - AIR2008SC288, 2008CriLJ436, JT2007(12)SC311, (2008)39OCR241, [2007]11SCR655

Criminal - Convicted - Sections 366A and 376 read with Section 34 of the Indian Penal Code, 1860 - Accused were convicted under Sections 366A and 376 read with Section 34 of the Indian Penal Code - Hence this appeal - Whether, the order of conviction could be set aside - Held, girl was left in the company of the accused of her own will and that she was not forced to sexual intercourse with any person other than the accused - However, she had sexual intercourse with the accused for which, considering her age, conviction under Section 376 IPC has been maintained - Since the essential ingredient that the intercourse must be with a person other than the accused had not been established, Section 366A had no application - Thus, conviction for offence punishable under Section 366A IPC was set aside while the conviction and sentence imposed in respect of offence punishable under Section 376 IPC was maintained - Appeal allowed.

There can be no conviction without evidence

130. Sushil Kumar Sharma Vs. Union of India (UOI) and Ors. - 2005(2)ACR2070(SC), AIR2005SC3100, 2005(2)ALD(Cri)633, 2005(5)ALLMR(SC)982, 2005CriLJ3439, II(2005)DMC325SC, JT2005(6)SC266, 2005(3)KLT611(SC), RLW2005(3)SC433, (2005)6SCC281, [2005](2)SuppSCR730, 2005(2)UJ1057

Indian Penal Code, 1860 - Section 498A -- Whether Section 498A dealing with offence of husband or relative of husband of woman subjecting her to cruelty and punishment--Whether ultra vires Constitution? -- Held, "no" -- Mere possibility of abuse of provision of law--Does not per se invalidate legislation --If provision of law is misused or subjected to abuse of process of law--It is for Legislature to amend, modify or repeal it, if deemed necessary.

From the decided cases in India as well as in United States of America, the principle appears to be well-settled that if a statutory provision is otherwise intra vires, constitutional and valid, mere possibility of abuse of power in a given case would not make it objectionable, ultra vires or

unconstitutional. In such cases, "action" and not the "section" may be vulnerable. If it is so, the Court by upholding the provision of law, may still set aside the action, order or decision and grant appropriate relief to the person aggrieved.

Merely because the provision is constitutional and intra vires, does not give a licence to unscrupulous persons to wreck personal vendetta or unleash harassment. It may, therefore, become necessary for the Legislature to find out ways how the makers of frivolous complaints or allegations can be appropriately dealt with. Till then, the Courts have to take care of the situation within the existing framework. As noted above, the object is to strike at the roots of dowry menace. But by misuse of the provision, a new legal terrorism can be unleashed. The provision is intended to be used a shield and not an assassin's weapon.

131. **2009 4 SCC 26; 2009 2 SCC(Cri) 40;2009 0 AIR(SC) 1642; 2009 0 CrLJ 1530; State of M.P. Versus Kashiram&Ors-** Indian Penal Code, 1860, Section 307, 326:- Where the intention to commit murder of the victim is established, that the injury caused actually is only simple in nature is immaterial in convicting the accused for the offence under section 307 IPC.

132. **2009 10 SCC 477; 2010 1 SCC(Cri) 302; VISHNU Vs STATE OF RAJASTHAN,** The common object my be commission of one offence while there may be likelihood of commission of yet another offence, the knowledge whereof is capable of being safely attributable to the members of the unlawful assembly. Whether a member of such unlawful assembly was aware as regards likelihood of commission of another offence or not would depend upon the facts and circumstances of each case. Background of the incident, the motive, the nature of the assembly, the nature of the arms carried by the members of the assembly, their common object and the behavior of the members soon before, at or after the actual commission of the crime would be relevant factors for drawing an inference in that behalf.

133. **2009 0 AIR(SC) 3265; 2009 2 Crimes(SC) 253; 2009 12 SCC 447; 2010 1 SCC(Cri) 275; Bhupendra Singh &Ors. Vs. State of U.P.** Criminal Trial –Interested witness – Merely because the eye-witnesses are family members their evidence cannot per se be discarded – The allegation of interestedness has to be established.

Indian Penal Code, 1860 – Section 149 – Emphasis in Section 149 IPC is on the common object and not on common intention – Scope and ambit of the provision discussed.

134. **2000 1 Crimes(SC) 1; 2000 1 SCC 471; 2000 0 SCC(Cri) 263; State of Maharashtra versus Suresh,** If potholes were to be ferreted out from the proceedings of the magistrate holding such parades possibly no Test

Identification Parade can escapte from one or two lapses. If a scrutiny is made from that angle alone and the result of the parade is treated as vitiatd every Test Identification Parade would become unusable. We remind ourselves that identification parades are not primarily meant for the court. They are meant for investigation purposes. The object of conducting test identification parade is two fold. First is to enable the witnesses to satisfy themselves that the prisoner whom they suspect is really the one who was seen by them in connection with the commission of the crime. Second is to satisfy the investigating authorities that the suspect is the real person whom the witnesses had seen in connection with the said occurrence. So the officer conducting the test identification parade should ensure that the said object of the parade is achieved. If he permits dilution of the modality to be followed in a parade, he should see to it that such relaxation would not impair the purpose for which the parade is held.

False answer offered by an accused when his attention is drawn to incriminating circumstance would render that circumstance capable of inculpating him. In a situation like this such a false answer can also be counted as providing “a missing link” for completing the chain.

There are three possibilities when an accused points out the place where a dead body or an incriminating material was concealed without stating that it was concealed by himself. One is that he himself would have concealed it. Second is that he would have seen somebody else concealing it. And the third is that he would have been told by another person that it was concealed there. But if the accused declines to tell the criminal court that his knowledge about the concealment was on account of one of the last two possibilities the criminal court can presume that it was concealed by the accused himself.

135. 2010 0 AIR(SC) 85; 2009 0 CrLJ 4454; 2009 9 SCC 152; Pannayar Vs. State of T. Nadu

The purpose of the re-examination is only to get the clarifications of some doubts created in the cross examination. One cannot supplement the examination-in-chief by way of a re-examination and for the first time, start introducing totally new facts, which have no concern with the cross examination

136. **2010 AIR(SC) 2119; 2010 CrLJ 2840; ABU THAKIR & ORS.Vs. STATE**

This Court in State of Karnataka Vs. K. Yarappa Reddy4 held that "even if the investigation is illegal or even suspicious the rest of the evidence must be scrutinized independently of the impact of it. Otherwise the criminal trial will plummet to the level of the investigating officers ruling the roost. ... Criminal justice should not be made a casualty for the wrongs committed by the investigating officers in the case. In other words, if the court is convinced that the testimony of a witness to the occurrence is true, the Court is free to act on it albeit the investigating officer's

suspicious role in the case". The ratio of the judgment in that case is the complete answer to the 4 (1999) 8 SCC 715 2 submission made by the learned senior counsel for the appellants.

Indian Penal Code, 1860-Section 302-Murder-Partial confirmation by High Court, Prosecution case fully corroborated by medical evidence and evidence of PWs-Mere fact that they were not examined during inquest is of no consequence-They are all independent witnesses, whose evidence cannot be rejected on any ground-Delay in despatch of statement of witnesses explained-Statements recorded under Section 161 CrP.C. could not be promptly dispatched to Court for reasons beyond control of Investigating Officer-No reason to interfere with concurrent findings of conviction recorded by Court-Appeal dismissed.

Criminal Law-Appreciation of evidence-Response of every and any human being cannot be similar on such occasions.

137. **1999 1 ALD(Cri) 930; 1999 2 ALT(Cri) 1; GERA PULLAIAH Vs. State INSPECTOR OF POLICE, NARASARAOPET,** It has been elicited from PW2 that while shifting the deceased to hospital, his clothes were also got btood stained but the police has not seized those blood stained clothes. The omission on the part of the police to seize the blood stained clothes on PW2 cannot be pressed into service as a circumstance to discredit PW2 when his presence was otherwise assured by dependable evidence on record.

It is true that a dying declaration purported to have been recorded by a Head Constable may not stand on the same footing as to its credibility as the one recorded by a Judicial magistrate. But, for that reason alone the evidence of dying declaration cannot be shut out from consideration.

138. 2001 0 AIR(SC) 979; 2001 1 Crimes(SC) 268; 2001 0 CrLJ 1231; 2001 0 SCC(Cri) 449; SANJAY @ KAKA Versus State (N. C. T.) of Delhi, The words do not implicate the accused with the commission of the crime but refer only to the nature of the property hidden by them which were ultimately recovered consequent upon their disclosure statements. Hypertechnical approach, as projected by the defence counsel would defeat the ends of justice and have disastrous effect. The property recovered consequent upon the making of the disclosure statements has been proved to be the property of the deceased, stolen after the commission of the offence of robbery and murder.

BESIDES Section 27, the courts can draw presumptions under Section 114, Illustration (a) and Section 106 of the Evidence Act.

failure of the Serologist to detect the origin of the blood due to disintegration of the serum in the meanwhile does not mean that the blood stuck on the axe would not have been human blood at all. Sometimes it happens, either because the stain is too insufficient or due to haematological changes and plasmatic coagulation that a serologist might fail to detect the origin of the blood.

139. **1997 2 ALD 754; 1997 1 ALD(Cri) 150; 1997 1 ALT(Cri) 235; 1997 2 APLJ 142; S.Narasingam Versus State OF A.P.** the constitutional mandate is that no person shall be forced to give evidence against his own case. Therefore, oiling the petitioner as LW-19 and at the same time accusing him of the offence under Section 211 IPC in the same case and showing him as A. 5, is in violation of the constitutional mandate and also in violation of the fundamental rights.

as stated supra, charge-sheet is laid for an offence under section 211 IPC against the petitioner and it is not indispute that complaint is not filed by the Munsif Magistrate, Luxettipet There is bar for taking cognizance of offence under section 195 (1) Cr. P. C. unless the complaint is filed as per the procedure prescribed under section 340 read with 195 Cr. P. C. So on this ground itself, the proceedings against the petitioner are liable to be quashed.

THAT there can be two categories of cases that fall under the protection of section 197 Cr. P. C. They are (i) the act complained of is one authorised by a statute or law but became questionable on account of the fact that it was done with fradulent or dishonest intention and (ii) the act complained of, though not authorised by statute or law, is intimately and integrally connected with his official or statutory duty and has thus a reasonable nexus to the discharge of duty. In finding whether or not a complaint falls under either or neither of the above two categories, the facts and circumstances of the case have to be appreciated so as to arrive at a balance between the protection available under Section 197 Cr. P. C. and the protection of the private citizen from the onslaughts under the colour of office. It is only when the act on such appreciation does not fall under either of the above two categories and amounts to an offence that no sanction under Section 197 Cr. P. C. is necessary for purposes of prosecution of the accused.

140. **2013 0 AIR(SC) 1085; 2012 0 CrLJ 4707; 2012 10 SCC 433; KURIA & ANR. Versus STATE OF RAJASTHAN,** Appreciation of evidence — Discrepancies, variation or improvements in statements — Significance and appreciation of — Discrepancies or improvements which do not materially affect the prosecution case and are insignificant cannot be made the basis for doubting the veracity of prosecution case — A principle of law is that every improvement or variation cannot be treated as an attempt to falsely implicate the accused by the witness — And approach of the Court should be reasonable and practical.

Single eye-witness — Testimony — Basing conviction — Propriety — No legal impediment in convicting an accused on the sole testimony of a single witness.

Relative witness — Testimony — Cannot be discarded merely because the eye witness is a relative of the deceased — Court may base its judgment on the statement of such witnesses, if his statement is fully corroborated or

supported by other ocular and documentary evidence. Appreciation of Evidence — In any event unless the oral evidence is totally irreconcilable with the medical evidence, it has primacy.
Words and expressions — Expression 'Sterling worth' — Such an expression in the context of criminal jurisprudence means a witness worthy of credence — Linguistically, 'sterling worth' means 'thoroughly excellent' or 'of great value'.
Criminal Trial – Appreciation of evidence – Medical and ocular evidence – Except totally irreconcilable with the medical evidence, oral evidence has primacy – Large number of accused persons assaulting one person – Witnesses not expected to see and remember role played by each accused precisely – No discrepancy in ocular and medical evidence – No infirmity in conviction.

141. **1998 2 ALD(Cri) 816; 1999 1 ALT(Cri) 1; NAGALLA MUKHALINGAM Versus State OF A.P.** When once a free fight between two groups resulting in injuries to both the groups is established, there is no scope to convict members of one of the groups for substantive offences with the aid of Section 149 IPC. "in such a case, the accused persons would be liable for their individual acts and would not be liable vicariously " vide the decision of the Supreme court in AnanthaKathod v. State of maharashtra, 1998 SCC (Crl.) 199. That in a case of free fight, Section 149 IPC cannot be applied was A1so laid down by the Supreme court in State of Haryana v. Chand Veer, 1996 SCC (Crl.) 728.

142. **2009 0 AIR(SC) 214; 2008 15 SCC 115; 2009 3 SCC(Cri) 736; Ravi versus State,** A court can and may act on the testimony of a single witness though uncorroborated. One credible witness outweighs the testimony of a number of other witnesses of indifferent character.

143. **2013 1 ALD(Cri) 8; 2013 2 ALT(Cri) 332; Angishetty Chandra Shekar Versus The State of Andhra Pradesh,** Penal Code 1860 - Section 420 - Criminal Procedure Code 1973, Section 482---Cheating - Agreement to sell immovable property – Land dispute cropped up after agreement of sale--- No prima facie evidence that petitioners were knowing that there was litigation and dispute regarding title of property before they entered into agreement with complainant---Criminal complaint quashed.

144. **2013 1 ALD(Cri) 366; 2013 1 ALT(Cri) 81; 2013 0 CrLJ 2764; D. Sudhakar Versus PanapuSreenivasulu @ Evone Water Sreenivasulu& Others;** Criminal Procedure Code 1973 - Sections 2(wa) and 372 Proviso – Meaning of victim - Expression 'legal heir' in S.2(wa) refers to a person who is entitled to property of victim under applicable law of inheritance - Parties being Hindus, law of heritance applicable to them is Hindu Succession Act - Appellant being a Class II heir would not inherit anything from his deceased brother, as he is survived by his wife, he is not entitled

to succeed property of victim—Even though word "victim" has been given a wide meaning in Declaration of United Nations, but Legislature has given a very narrow meaning.

145. 2013 0 AIR(SC) 3602; 2013 0 CrLJ 1540; 2013 12 SCC 689; 2014 4 SCC(Cri) 483; ChinnamKameswaraRao& Others Versus State of A.P.

Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of "flourishes of language" to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

The 'failure of justice' is an extremely pliable or facile expression, which can be made to fit into any situation in any case. The court must endeavour to find the truth. There would be 'failure of justice'; not only by unjust conviction, but also by acquittal of the guilty, as a result of unjust failure to produce requisite evidence. of course, the rights of the accused have to be kept in mind and also safeguarded, but they should not be over emphasized to the extent of forgetting that the victims also have rights. It has to be shown that the accused has suffered some disability or detriment in respect of the protections available to him under Indian Criminal Jurisprudence. 'Prejudice', is incapable of being interpreted in its generic sense and applied to criminal jurisprudence. The plea of prejudice has to be in relation to investigation or trial, and not with respect to matters falling outside their scope. Once the accused is able to show that there has been serious prejudice caused to him, with respect to either of these aspects, and that the same has defeated the rights available to him under jurisprudence, then the accused can seek benefit under the orders of the Court."

It is well settled that the common intention may develop during the course of the commission of the offence but the fact that the incident in instant case had a history behind it and that the appellants had not only threatened the deceased previously but were lying in wait for his arrival at the place of occurrence clearly showed that the commission of the offence was preconcerted.

146. 2012 0 AIR(SC) 3311; 2012 0 CrLJ 4550; 2012 8 SCC 651; 2012 3 SCC(Cri) 937; 2012 6 Supreme 571; 2012 0 Supreme(SC) 600; SHYAM BABU VERSUS STATE OF U.P.

(a) Code of Criminal Procedure, 1973 - Section 368 - While setting aside an order of acquittal the appellate court must specifically return a finding that the order of acquittal is perverse - Instantly trial court erring in disbelieving eye witnesses and doubting their presence at the place of occurrence - No infirmity in High Court order.

(b) Criminal Trial - Related witnesses - Eye witness account - Cannot be discarded only on ground of being related to deceased.

147. 2013 0 AIR(SC) 274; 2012 11 JT 165; 2012 10 SCC 383; 2012 0 Supreme(SC) 729; Murugesan& Others Versus State through Inspector of Police,

Code of Criminal Procedure, 1973 – Section 379 – Interference with order of acquittal is different from interfering with order of conviction – In case of appeal Supreme Court against order of interference with conviction requires leave of the Court – In case of appeal against interference with order of acquittal, requirement of leave is dispensed with.

148. 2009 1 ALD(Cri) 155; 2009 1 ALT(Cri) 279; 2008 0 Supreme(AP) 964; SammangiNagabhushanam Versus State of A.P.,

Indian Penal code, 1860—Sections 338, 417 and 307—Cheating and attempt to murder—Cheating in love affair—Appellant slapped and pushed the girl away from upstairs on account of which she fell down and became unconscious—It could not be shown that appellant had fraudulent intention to sexually exploit the girl—Similarly, it could not be proved that appellant had intention or knowledge so as to attract provisions of Section 307—Conviction of appellant u/s. 417 and 307 IPC set aside—Appellant convicted u/s 388 IPC—Sentence of imprisonment already undergone by appellant sufficient—Appellant directed to pay compensation of Rs. 25,000/- to the girl.

149. 2011 0 AIR(SC) 972; 2011 0 CrLJ 1693; 2011 3 SCC 530; 2011 1 SCC(Cri) 1199; 2011 2 Supreme 80; 2011 0 Supreme(SC) 200; Gurjinder Singh versus State of Punjab,

A police officer can be a reliable witness if the court finds him to be a truthful person and in that event there is no harm in relying upon his statement.

150. 2002 1 ALD(Cri) 812; 2002 1 ALT(Cri) 470; 2002 0 CrLJ 3201; 2002 1 LS 345; 2002 0 Supreme(AP) 186; V.Shankaraiah Versus State OF A.P., Hyderabad.

Various High Courts have taken a view that merely because a person committed suicide by feeling insulted or humiliated, due to the comments or utterances made by the accused, the accused cannot be said to be guilty of an offence under Section 306 IPC. In DEVRAJ VS. STATE OF H. P. 3, a partner in a firm committed suicide due to the other partners [accused] taking away large sums of money out of partnership fund for various purposes and their not rendering an account to the deceased, and for not permitting the deceased utilizing the profits. The other partners in the firm, who are accused of an offence under Section 306 IPC for the suicide of the deceased, were held to be not guilty of such offence. In ALKA

GREWAL VS. STATE OF M. P. 4, the woman was held to be not guilty of an offence under Section 306 IPC, for her husband committing suicide, after feeling insulted and humiliated due to her immoral conduct. The Court specifically held that though she may be the cause for suicide of her husband, she cannot be said to have abetted his suicide. In STATE OF GUJARAT VS. PRADYUMAN RAMANLAL MEHTA5, the publishers and others responsible for publication of a defamatory article are held to be not guilty an offence under Section 306 IPC, for the defamed persons suicide on feeling humiliated due to the defamatory publication. V. ADINARAYANA VS. STATE OF A. P. 6, is a case where a woman committed suicide when the accused threatened her that he would reveal her illicit connection to her husband. The accused was held to have not committed an offence under Section 306 of IPC. The Supreme Court in MAHENDRA SINGH VS. STATE OF M. P. 7, held that merely because the deceased woman stated in her dying declaration that she was harassed by the accused, the accused cannot be held guilty of an offence under Section 306 IPC.

151. 1996 1 ALD 328; 1996 1 ALD(Cri) 892; 1996 1 ALT(Cri) 200; 1996 1 APLJ 121; 1996 0 APLJ(Cri) 16; 1996 0 CrLJ 1249; 1996 2 DMC 162; 1996 1 LS 120; 1995 0 Supreme(AP) 541; SanagalaYagnaSree Versus State OF A.P.

INDIAN PENAL CODE, Secs.107, 306 & 498-A - EVIDENCE ACT Sec.113-A - Cruelty under Section 498-A - Defined - Ingredients to an abetment - Stated - Instigation by husband to wife for committing suicide not proved - Presumption under Sec.113-A cannot be drawn - Accused husband can be convicted only under Sec.498-A but not under Sec.306 of IPC.

152. 2014 0 AIR(SC) 384; 2014 0 CrLJ 540; 2013 16 SCC 651; 2014 6 SCC(Cri) 364; 2014 2 Supreme 542; 2013 0 Supreme(SC) 1043; State of U.P. Vs. Naushad

Indian Penal Code, 1860-Section 376 read with Section 90-Criminal Procedure Code, 1973-Section 378-Rape-Misconception of fact-If consent is given by prosecutrix under misconception of fact, it is vitiated-Accused had sexual intercourse with prosecutrix by giving false assurance to prosecutrix that he would marry her-After she got pregnant, he refused to do so-accused only wanted to indulge in sexual intercourse with her and was under no intention of actually marrying the prosecutrix-He never intended to marry her and procured her consent only for reason of having sexual relations with her which act of accused falls squarely under definition of rape-He brazenly raped her for two years giving her false assurance that he would marry her-High Court has gravely erred in fact and in law by reversing conviction of accused for offence of rape-Trial court was absolutely correct in appreciating evidence on record and convicting and sentencing accused for offence of rape-Trial court was correct in awarding maximum sentence of life imprisonment to accused as

he has committed a breach of trust that prosecutrix had in him-Impugned order set aside.

153. Bhupinder Sharma Vs. State of Himachal Pradesh - 2004(1)ACR573(SC), AIR2003SC4684, 2003(6)ALT44(SC), 2004CriLJ1, (2004)1GLR761, JT2003(Suppl2)SC493, 2003(8)SCALE735, (2003)8SCC551, [2003]4SuppSCR792, 2004(1)ShimLC150, 2004(1)UC379, 2004(1)UJ495

Indian Penal Code, 1860 - Section 376 (2) (i) (g) with Explanation (1)--Rape--Gang rape--Corroboration of evidence of victim not to be insisted on as it would be adding insult to injury--Trial court convicting and sentencing accused appellant for gang rape to 4 years on ground that he did not actually commit rape--High Court enhancing sentence to minimum 10 years as prescribed--Whether justified?--Held, "yes"--Ground for reducing sentence from minimum prescribed given by trial court untenable.

In the Indian setting, refusal to act on the testimony of the victim of sexual assault in the absence of corroboration as a rule, is adding insult to injury. A girl or a woman in the tradition bound non-permissive society of India would be extremely reluctant even to admit that any incident, which is likely to reflect on her chastity, had ever occurred. She would be conscious of the danger of being ostracized by the society and when in the face of these factors, the crime is brought to light, there is inbuilt assurance that the charge is genuine rather than fabricated. Just as a witness who has sustained an injury, which is not shown or believed to be self-inflicted, is the best witness in the sense that he is least likely to exculpate the real offender, the evidence of a victim of sex offence is entitled to great weight, absence of corroboration notwithstanding. A woman or a girl who is raped is not an accomplice. Corroboration is not the sine qua non for conviction in a rape case.

To insist on corroboration except in the rarest of rare cases is to equate one who is a victim of the lust of another with an accomplice to a crime and thereby insult womanhood. It would be adding insult to injury to tell a woman that her chain of rapewill not be believed unless it is corroborated in material particulars as in the case of an accomplice to a crime.

State of Maharashtra v. Chandra Prakash, 1990 ACR 212 (SC) : AIR 1990 SC 658, applied.Why should be the evidence of the girl or the woman who complains of rape or sexual molestation be viewed with the aid of spectacles fitted with lenses tinged with doubt, disbelief or suspicion? The plea of lack of corroboration is of no substance.

In cases of gang rape, the proof of completed act of rape by each accused on the victim is not required. The statutory intention in introducing Explanation 1 in relation to Section 376 (2) (g), I.P.C. appears to have been done with a view to effectively deal with the growingmenace of gang rape. In such circumstances, it is not necessary that the prosecution should adduce clinching proof of a completed act of rape by each one of the

accused on the victim or on each one of the victims where there are more than one in order to findthe accused guilty of gang rape and convict them under Section 376, I.P.C.
PramodMahto v. State of Bihar, 1989 ACR 622 (SC) : AIR 1989 SC 1475, relied on.Both in cases of sub-sections (1) and (2) of Section 376, I.P.C. the Court has the discretion to impose a sentence of imprisonment less than the prescribed minimum for 'adequate and special reasons'. Ifthe Court does not mention such reasons in the judgment, there is no scope for awarding a sentence lesser than the prescribed minimum.

154. Vishal Jeet Vs. Union of India and others - AIR1990SC1412, 1990(38)BLJR1384, 1990CriLJ1469, JT1990(2)SC354, (1990)3SCC318, [1990]2SCR861, 1990(2)UJ385
Criminal - Prostitution - Article 39 of Constitution of India - Petitioner filed public interest litigation seeking directions to Central Bureau of Investigation to institute enquiry against those police officers under whose jurisdiction red light areas are flourishing - Further sought direction to bring all the inmates of the red light areas who were engaged in 'flesh trade' to protective homes of the respective States and to provide them with proper medical aid shelter education and training in various disciplines of life so as to enable them to choose a more dignified way of life and (3) to bring the children of those prostitutes and other children found begging in streets and also the girls pushed into 'flesh trade' to protective homes and then to rehabilitate them - Objectives of Article 39 (e) is to see that children are not abused - Objective of Article 39 (f) was that State should direct its policy towards securing such childhood and youth against exploitation and against moral and material abandonment - Desired result had not been achieved despite stringent and rehabilitative provisons of law under various Act - - Held, a roving enquiry through the CBI throughout length and breadth of country was not practicable and possible and no useful purpose will be served by issuing such direction - Directed all State Governments and Government of Union Territories to take appropriate and speedy action under existing laws in eradicating child prostitution - Concerned members can constitute committee and can include any members in it

155. **MadanLalSarma Vs. The State - 1990 CriLJ 215 -** "If Accused has no knowledge that note in question is forged one, then he is not liable for conviction."

156. State of Haryana Vs. Surender and Ors. etc. - 2007(3)ACR2905(SC), AIR2007SC2312, 2008(1)ALT(Cri)28, JT2007(8)SC490, 2007(2)OLR486, 2007(II)OLR(SC)486, 2007(8)SCALE259, (2007)11SCC281, [2007]7SCR885
When admissible evidence is ignored it is the duty of appellate Court to re-appreciate the evidence where the accused had been acquitted for the

purpose of ascertaining as to whether any accused really committed any offence or not

157. Ananta Deb SinghaMahapatra and Ors. Vs. State of West Bengal - 2007(3)ACR2888(SC), AIR2007SC2524, 2007(2)ALD(Cri)710, 2008(1)ALT(Cri)215, JT2007(8)SC633, 2007(8)SCALE448, (2007)13SCC374, [2007]7SCR974, 2007(4)UC143

The right to private defense commences, as soon as a reasonable apprehension of danger to the body arises from an attempt, or threat, to commit the offence and lasts so long as the reasonable apprehension of the danger to the body continues."

Criminal Law--Right of private defence--Burden of proof--Held-- Accused need not prove the existence of right of private defence beyond reasonable doubt--It is enough for accused to show as in a civil case that preponderance of probabilities is in favour of his plea. [Para--11]

Criminal Law--"Right of private defence"--Justification of--Held-- There was not even a single injury on accused persons while prosecution witness sustained large number of injuries and was hospitalized for more than a month--A plea of right of private defence cannot be based on surmises and speculation. [Para--12]

158. GollaHanumanthu Vs. The State of A.P., Rep. by Public Prosecutor, High Court of A.P. - 2004(2)ALD(Cri)430, 2004(2)ALT(Cri)546, 2004CriLJ4009, I(2005)DMC144

Criminal - Conviction - Section 498-A IPC and 306 of Indian Penal Code, 1860 - Sessions Judge, convicted Appellant for offence under Section 498-A IPC and 306 IPC - Hence, this Appeal - Whether, Appellant was rightly convicted on appreciation of evidence - Held, P.Ws 4 and 5 had turnedhostile, and they had not supported case of prosecution - Therefore, prosecution intended to sustain its case that there was some material relating to harassment as she was not begetting children and such harassment would amount to intentional aiding - As per Section 107 of IPCand Section 306 of IPC, on careful scrutiny of oral and documentary evidence and also oral dying declaration, there was suspicion in relation thereto - Very cause of death was not proved in accordance with law - Thus, conviction could not be sustained - Hence, the appellant-accusedwas entitled for acquittal - Appeal allowed.

Ratio Decidendi: "Person cannot be held guilty of offence if prosecution does not prove his case as per provisions of Act."

159. Neelam @ BendilaLachaiah and Anr. Vs. State of Andhra Pradesh - 2002(2)ALT(Cri)186, 2002(1)APLJ291, II(2003)DMC268

Criminal - Benefit of Doubt - Sections 107 and 306 of Indian Penal Code, 1860(IPC) - Present revision filed against order whereby petitioners convicted under Section 306 of IPC - Held, considering 107 of IPC, it is clear that person must have been instigated by another person to do

particularthing - Similarly, person shall intentionally aid other person in doing of thing - According to evidence of witnesses ManthraBiyyam was administered by petitioners on deceased and theft was detected - Subsequently they made him naked - This had happened in other village- Whereas deceased committed suicide after one day of said incident in other village - From evidence of concerned witnesses, it is clear that there was some humiliation to deceased but it cannot be said that said humiliation caused by petitioners amounts to instigation whichprompted deceased to commit suicide - Therefore it is difficult to hold that petitioners have abetted commission of suicide by deceased - Therefore evidence is not sufficient to hold that petitioners have committed offence punishable under Section 306 of IPC - Therefore petitionersare entitled for acquittal - Hence, revision allowed and judgments of both Courts set aside.

160. **Smt. Shanti AndAnrvs State Of Haryana - 1991 AIR 1226, 1990 SCR Supl. (2) 675** - The view of the.High Court that Sections 304-B and 498-A I.P.C are mutually exclusive Is not correct. Sections 304-B and 498-A cannot be held to be mutually exclusive. These provisions deal with two distinct offences. It is true that "cruelty" is a common essential to both the Sections and that has to be proved. The Explanation to Section 498-A gives the meaning of "cruelty". In Section 304-B there is no such explanation about the meaning of "cruelty" but having regard to the common background to these offences, the meaning of "cruelty or harassment" will be the same as found in the explanation to Section 498-A under which "cruelty" by itself mounts to an offence and is punishable. Under Section 304-B, it is the "dowry death" that is punishable and such death should have occurred withinseven years of the marriage. No such period is mentioned in Section 498-A and the husband or his relativewould be liable for subjecting the woman to "cruelty" anytime after the marriage. Further a person charged and acquitted under section 304-B can be convicted under Section498-A without charge being there, if such a case, is madeout. But from the point of view of practice and procedureand to avoid technical defects it is necessary in such casesto frame charges under both the Section and if the case isestablished they can be convicted under both the Sectionsbut no separate sentence need be awarded under Section 498-Ain view of the substantive sentence being awarded for themajor offence under Section 304-B.

1.1 In the instant case, the High Court has not held that the prosecution has not established cruelty on the part of the appellants but on the other hand it considered the entire evidence and held that the element of cruelty which is also an essential of Section 304-B I.P.C. has been established. In these circumstances, therefore, the mere acquittal of the appellants under Section 498-A I.P.C. makes nodifference for the purpose of this case.

161. **Ram Badan Sharma vs State Of Bihar 2006(3)ACR2390(SC), AIR2006SC2855, 2006(2)ALD(Cri)606, 2007(1)ALT(Cri)162, 2006CriLJ4070, II(2006)DMC368SC, [2006(4)JCR215(SC)], JT2006(7)SC490, 2007-1-LW(Crl)391, 2006(4)PLJR86, 2006(8)SCALE210, (2006)10SCC115, [2006](4)SuppSCR795**

Indian Penal Code, 1860 - Sections 304B and 201--Evidence Act, 1872--Section 113B--Dowry death, etc.--Conviction and sentence--Whether justified?--Held, "yes"--Persistent demand of dowry--And harassment, humiliation, physical violence and beating by husband and in-laws of deceased-Deceased died under unnatural circumstances within seven years of marriage--Trial court properly analysed evidence and rightly convicted appellants--High Court also examined entire evidence on record--And came to same conclusion--No infirmity can be found with impugned judgment of High Court.

In cases where it is proved that it was neither a natural death nor an accidental death, then the obvious conclusion has to be that it was an unnatural death either homicidal or suicidal. But, even assuming that it is a case of suicide, even then it would be deathwhich had occurred in unnatural circumstances. Even in such a case, Section 304B, I.P.C. is attracted.

162. **State Of Punjab vsDaljit Singh And Others - 1999 CriLJ 2723** - after four or five years of marriage, the husband, being in some difficulty in his business, requests or demands some money from his father-in-law directly or through his wife, only with a view that he is able to advance in life. Can such a demand be termed as 'dowry' ? In our view, the answer has to be in negative. The demand and allegations for non-fulfilment of the same, are not necessarily dependent upon the financial status of the parties. This all depends upon the nature of the persons involved in the matter. Quite often, the poorest of poor have made no demand whereas in some cases, even the richest of rich have made such a demand. There is unimpeachable evidence on record, mention whereof has been made above, which unmistakably points towards the demand made by the appellants.

163. **Raj Kumar Prasad TamarkarVs. State of Bihar and Anr. - 2007(1)ACR566(SC), 2007(1)ALD(Cri)192, 2007(1)BLJR790, CLT(2007)Supplement886, 2007CriLJ1174, I(2007)DMC164SC, [2007(2)JCR80(SC)], JT2007(1)SC239, 2007(1)SCALE19, (2007)10SCC433, [2007]1SCR13, 2007(1)UJ0082**

"In case where High Court failed to take into consideration the relevant facts and misapplied the legal principles, then Supreme Court can exercise jurisdiction under Article 136 of the Constitution of India as otherwise there would be serious miscarriage of justice."

164. ArunGargVs. State of Punjab and Anr. - 2004(3)ACR2812(SC), 2004(2)ALD(Cri)941, 2005(1)ALT9(SC), 2004(5)CTC150, II(2004)DMC570SC, [2005(1)JCR157(SC)], JT2004(8)SC124, 2004(3)KLT435(SC), RLW2004(4)SC621, 2004(8)SCALE273, (2004)8SCC251, 2005(1)UC55, 2005(1)UJ235

Indian Penal Code, 1860-Section 304-B and 498-A-Scope of- Held-Not mutually exclusive- They deal with different and distinct offences-But cruelty is common-And a person charged and acquitted under Section 304-B can be convicted under Section 498-A-Without a specific charge being there. [Para-27]

Indian Penal Code, 1860- Section 304-B-Scope of-Fine- Not prescribed as a punishment. [Para-29]

Criminal Procedure Code, 1973-Section 357-Scope and ambit of-Discussed and explained. [Para-30 and 31]

165. Rajbir @ Raju and Anr. Vs. State of Haryana - AIR2011SC568, [2011(1)JCR287(SC)], JT2010(12)SC544, 2010(4)KLT751, 2011(1)OLR(SC)341, 2011(1)RCR(Criminal)69, 2010(12)SCALE319, 2011(1)UC76

Indian Penal Code, 1860--Section 304-B--Life sentence awarded by trial court but reduced to 10 years R.I. by High Court--Legality--Held--In the matters of crimes against woman a harsh punishment is to be given--Notices issued to petitioner as to why the life sentence be not enhanced to deathsentence--Directed trial courts in India that ordinarily add Section 302 I.P.C. to charge of Section 304-B, I.P.C., so that death sentence can be imposed in such heinous crime. [Para--5, 6, 7 and 11]

166. **SunkaraSuriBabu Vs. State of Andhra Pradesh - 1996(1)ALD40, 1996(1)ALD(Cri)366, 1996(1)ALT(Cri)165, 1998CriLJ1480, II(1996)DMC590 -** Criminal - suicide - Sections 201, 202, 304B, 306 and 498A of Indian Penal Code, 1860 and Sections 227, 397 and 401 of Criminal Procedure Code, 1973 - deceased committed suicide by burning herself - before death of deceased accused alleged had demanded dowry and subjected her to cruelty -- demand of dowry not proved - cremation of dead body without informing police and immediately after death attracted provisions of Section 201 - held, offence under Sections 304B and 498A could not be proved but accused liable to be convicted under Section 201.

167. **MODINSAB KASIMSAB KANCHAGAR VS STATE OF KARNATAKA - [2013] 0 AIR(SC) 1504 / [2013] 0 CrLJ 2056 / [2013] 4 JT 41 / [2013] 4 SCC 551 / [2013] 0 Supreme(SC) 228** – the demand of amount may not be a demand in connection with dowry but is certainly an unlawful demand for a property or valuable security.

168. VajreshVenkatrayAnvekar VS State of Karnataka - [2013] 0 AIR(SC) 329 / [2013] 2 JBCJ(SC) 350 / [2013] 1 JLJR(SC) 353 / [2013] 1 JT

238 / [2013] 3 SCC 462 / [2013] 1 Supreme 79 / [2013] 0 Supreme(SC) 4 –

Evidence of interested witnesses-Admissibility-It is true that chances of exaggeration by the interested witnesses cannot be ruled out- Witnesses are prone to exaggeration- It is for the trained judicial mind to find out the truth- If the exaggeration is of such nature as to make the witness wholly unreliable, the court would obviously not rely on him- If attendant circumstances and evidence on record clearly support and corroborate the witness, then merely because he is interested witness he cannot be disbelieved because of some exaggeration, if his evidence is otherwise reliable (Para 9)

Criminal Trial-Delay in lodging FIR- When a man looses his daughter due to cyanide poisoning, he is bound to break down- He would take time to recover from the shock- Six hours delay could not make his case untrue- It was also not proper to expect him to give all minute details at that stage- The F.I.R. contained sufficient details- It is not expected to be a treatise (Para 10)

169. Krishan Kumar Malik VS State of Haryana - [2011] 0 AIR(SC) 2877 / [2011] 0 AIR(SC) 2970 / [2011] 0 CrLJ 4274 / [2011] 7 JT 94 / [2011] 3 RCR(Cri) 589 / [2011] 7 SCC 130 / [2011] 3 SCC(Cri) 61 / [2011] 0 Supreme(SC) 584

The Prosecutrix admitted in her cross examination that she had come to know the namesof all the accused during the course of occurence, as they were taking each other's names. If thatbe so, then why she did not name the Appellant in the FIR is a million dollar question? These ommissions speak volumes against her and her credibility stands shaken.

6. Relevancy of facts forming part of same transaction ? Facts which, though not in issue, areso connected with a fact in issue as to form part of the same transaction, are relevant, whetherthey occurred at the same time and place or at different times and places. Black's Law Dictionarydefines Res Gestae as follows:

(Latin: "things done") The events at issue, or other events contemporaneous with them Inevidence law, words and statements about the res gestae are usually admissible under a hearsayexception (such as present sense impression or excited utterance).The said evidence thus becomes relevant and admissible as res gestae under Section 6 ofthe Act.

170. **A. Venkat Reddy VS UkantiJanardhan Reddy - [2003] 1 ALD(Cri) 248 / [2003] 1 ALT(Cri) 326 / [2003] 1 LS 21 / [2002] 0 Supreme(AP) 1319 - INDIAN PENAL CODE, Secs.306 & 107** - Abetment - Deceased committed suicide due to threats from accused - Accused charge sheeted for an offence u/S.306 - Assistant Sessions Judge passing order dismissing petition filed seeking discharge and framing charge u/S.306 IPC - Prosecution contends that accused not entitled to discharge, because of their intimidation only deceased seems to have committed suicide as per

suicide note and they are liable for offence of intimidation - Allegations in FIR and evidence collected by police show that accused coerced deceased and his father to abide by their decision holding out a threat - Threat cannot, by any stretch of imagination, be said to be an 'instigation' of deceased to commit suicide - No evidence to show that accused have had mensrea to 'abet' suicide of deceased - Three types of 'abetments' contemplated by Sec.107 IPC, not found in prosecution case - Necessary ingredients for attracting Sec.306 IPC, not found - Evidence on record does not warrant framing of charge u/S.306 IPC - Charge framed by Assistant Sessions Judge - Quashed.

171. Gita Ram VS State of H. P. - [2013] 0 AIR(SC) 641 / [2013] 2 BBCJ(SC) 329 / [2013] 2 JBCJ(SC) 279 / [2013] 1 JLJR(SC) 461 / [2013] 2 JT 354 / [2013] 2 SCC 694 / [2013] 1 Supreme 617 / [2013] 0 Supreme(SC) 116 –

Sec 292 IPC - "There are certain exceptions to this section with which we are not concerned. This section was amended by Act XXXVI when apart from enlarging the scope of the exceptions, the penalty was enhanced which was earlier up to three months or with fine or with both. By the amendment a dichotomy of penal treatment was introduced for dealing with the first offenders and the subsequent offenders. In the case of even a first conviction the accused shall be punished with imprisonment of either description for a term which may extend to two years and with fine which may extend to two thousand rupees. The intention of the legislature is, therefore, made clear by the amendment in 1969 in dealing with this type of offences which corrupt the minds of people to whom these objectionable things can easily reach and it needs not be emphasized that the corrupting influence of these pictures is more likely to be upon the younger generation who has got to be protected from being easy prey to these libidinous appeals upon which this illicit trade is based. We are, therefore, not prepared to accept the submission of the learned counsel to deal with the accused leniently in this case."

172. LahuKamlakarPatil VS State of Maharashtra - [2013] 1 BBCJ(SC) 232 / [2013] 0 CrLJ 603 / [2013] 1 OLR(SC) 1018 / [2013] 6 SCC 417 / [2012] 0 Supreme(SC) 934

Criminal Law-Appreciation of evidence-Human reaction-Court has to keep in mind that different witnesses react differently under different situations-It differs from individuals to individuals-There cannot be uniformity in human reaction-If conduct of witness is so unnatural and is not in accord with acceptable human behaviour allowing of variations, then his testimony becomes questionable and is likely to be discarded. (Para 26)

173. VIPIN JAISWAL VS STATE OF A. P. REP. BY PUB. PROSECUTOR - [2013] 0 AIR(SC) 1567 / [2013] 0 CrLJ 2095 / [2013] 3 JBCJ(SC) 86 /

[2013] 2 JLJR(SC) 440 / [2013] 4 JT 188 / [2013] 3 SCC 684 / [2013] 2 Supreme 485 / [2013] 0 Supreme(SC) 238

a. Indian Penal Code, 1860 - Section 304B - Dowry - Husband demanding money to purchase computer to start his own business - Not connected with marriage - Not a dowry demand. (Para 6)

b. Indian Evidence Act, 1872 - Sections 73 and 45 - Genuineness of document - Suicide note claimed to have been written by deceased - Court should compare sample with handwriting of deceased u/s 73 - Alternatively services of handwriting expert should be availed u/s 45. (Para 8)

INDIAN EVIDENCE ACT JUDGMENTS

Sec 113A Presumption.

Before the presumption may be raised, the foundation thereof must exist. A bare reading of Section 113A shows that to attract applicability of Section 113A, it must be shown that (i) the woman has committed suicide, (ii) such suicide has been committed with a period of seven years from the date of her marriage, (iii) the husband or his relatives, who are charged had subjected her to cruelty. On existence and availability of the above-said circumstances, the Court may presume that such suicide had been abetted by her husband or by such relatives of her husband. The Parliament has chosen to sound a note of caution. Firstly, the pre-sumption is not mandatory; it is only permissive as the employment of expression "may presume" suggests. Secondly, the existence and availability of the abovesaid three circumstances shall not, like a formula, enable the presumption being drawn; before the presumption may be drawn the Court shall have to have regard to `all the other circumstances of the case'. A consideration of all the other circum-stances of the case may strengthen the presumption or may dictate the conscience of the Court to abstain from drawing the presumption. The expression – 'The other circumstances of the case' used in Section 113A suggests the need to reach a cause and effect relationship between the cruelty and the suicide for the purpose of raising a presumption. Last but not the least the presumption is not an irrebuttable one. In spite of a presumption having been raised the evidence adduced in defence or the facts and circumstances otherwise available on record may destroy the presumption. The phrase `May presume' used in Section 113A is defined in Section 4 of the Evidence Act, which says —`whenever it is provided by this Act that Court may presume a fact, it may either regard such fact as proved, unless and until it is disproved or may call for proof of it.'

2001 4 Crimes(SC) 360; 2001 0 CrLJ 4724; 2002 0 SCC(Cri) 1088; 2001 7 Supreme 737; Ramesh Kumar versus State of Chhattisgarh

We are unable to accept the contention that wrong identification by one witness by itself would be fatal to the case of the prosecution. A case is required to be decided on the examination of entire evidence. Mere wrong identification by one of the eye-witnesses by itself cannot be fatal to the case of the prosecution. There can be variety of reasons for wrong identification. The witness may be won over. There may be loss of memory or any other reason.

Under Section 9 of the Indian Evidence Act, 1872, the identity of the accused persons is a relevant fact. We have no difficulty in accepting the contention that evidence of mere identification of an accused person at the trial for the first time is from its very nature inherently of a weak character. The purpose of a prior test identification is to test and strengthen the trustworthiness of that evidence. Courts generally look for corroboration of the sole testimony of the witnesses in court so as to fix the identity of the accused who are strangers to them in the form of earlier

identification proceedings. This rule of prudence, however, is subject to exceptions, when, for example, the court is impressed by a particular witness on whose testimony it can safely rely, without such or other corroboration. It has also to be borne in mind that the aspect of identification parade belongs to the stage of investigation, and there is no provision inthe Code of Criminal Procedure which obliges the investigating agency to hold, or confers a right upon the accused to claim a test identification parade. Mere failure to hold a test identification parade would not make inadmissible the evidence of identification in court. What weight is to be attached to such identification is a matter for the courts of fact to examine. In appropriate cases, it may accept the evidence of identification even without insisting on corroboration {see Malkhansingh & Ors. v. State of M.P. [(2003) 5 SCC 746]}.

It was pointed out that the evidence of these witnesses shows that each of the witness had to go close to the accused and then alone it was possible to identify them. We find no substance in the contention. The reason for going near the accused was that out of a large number of 50 accused present in the court, only the four appellants were identified and it was proper to identify them by going near them. It is quite difficult to identify an accused from a distance in a court hall by pointing out a finger towards the accused by the witness when the accused are large in number. It is in this context that the trial court has recorded that after going near the accused, the witness has identified them. It does not mean that testimony of witnesses in court becomes doubtful on their having identified the accused after going near them.

2004 0 AIR(SC) 2775; 2004 2 JT 124; 2004 2 Scale 112; 2004 2 SCC 694; 2004 1 Supreme 577; 2004 0 Supreme(SC) 113; Simon & Ors. Versus State of Karnataka.

(a) Criminal Trial - Related witnesses - Evidence - Presence established - Evidence reliable - Cannot be discarded merely because of relationship. (Paras 9 and 10)

(2010) 7 SCC 759; 2012 (3) SCALE 219; (2009) 13 SCC 790 - Relied upon

(b) Criminal Trial - Investigation - Medical doctor and investigating officer not discharging duties properly - Accused cannot draw any benefit therefrom. (Para 13)

AIR 2010 SC 3718 : (2010) 9 SCC 567 - Relied upon

(c) Criminal Trial - Investigating officer and medical doctor - Flagrant defaults and omissions - No prejudice to prosecution - Still cannot be ignored. (Para 16)

(d) Words and Phrases - Dereliction of duty and misconduct - Dereliction of duty or carelessness is an abuse of discretion under a definite law and misconduct is a violation of indefinite law - Misconduct is a forbidden act whereas dereliction of duty is the forbidden quality of an act and is necessarily indefinite - One is a transgression of some established and

definite rule of action, with least element of discretion, while the other is primarily an abuse of discretion. (Para 21)
(1992) 4 SCC 54; (1995) 6 SCC 31 - Relied upon
(e) Criminal Trial - Defective investigation - Evidence of defective investigation should be appreciated with circumspection - Accused however will not draw any advantage out of it. (Para 22)
(1972) 3 SCC 613; (2004) 3 SCC 654; AIR 1999 SC 644; (2006) 3 SCC 374; (2009) 6 SCC 767; 2000 SCC (Crl.) 61; (2004) 10 SCC 598; (1995) 5 SCC 518 - Relied upon
(f) Criminal Trial - Medical evidence cannot prevail over reliable eye witness accounts. (Para 29)
2004 Cri. LJ 28; (1992) 2 SCR 921: (1992) 3 SCC 204 - Relied upon
(g) Indian Penal Code, 1860 - Section 302 - Offence premeditated - Conviction not improper. (Para 38)
(h) Administrative Law - Dereliction of duty - Trial court censuring police officials and medical doctor for dereliction of duty - Still no action taken by higher authorities of these departments - Deprecated - Directions issued. (Paras 35, 36 and 39)
2012 0 AIR(SC) 3046; 2012 4 BBCJ(SC) 104; 2012 3 CCR(SC) 310; 2012 0 CrLJ 4323; 2012 7 JT 353; 2012 7 Scale 165; 2012 8 SCC 263; 2012 3 SCC(Cri) 838; 2012 6 SCJ 283; 2012 5 Supreme 260; 2012 0 Supreme(SC) 513; 2012 2 UD(SC) 137; Dayal Singh & Others Versus State of Uttaranchal

1.If a dying declaration is not elaborate but consists of only a few sentences and is in actual words of maker, the mere fact that it is not in question answer form cannot be ground against its acceptability or reliability.
2.It is not essential that a Dying Declaration should be made only before a magistrate.
3. It was contended that the evidence of the said three witnesses in court was inadmissible as there was no record of their statement under section 161 Cr.P.C. The contention was repelled and it was held that while the failure to comply with the requirements of section 161(3) Cr.P.C. might affect the weight to be attached to the evidence of the witnesses, it does not render it inadmissible.
2007 0 AIR(SCW) 3326; 2007 2 ALD(Cri)(SC) 326; 2007 3 ALT(Cri)(SC) 285; 2007 3 Crimes(Sc) 129; 2007 0 CrLJ 3265; 2007 6 JT 424; 2007 6 Scale 464; 2007 12 SCC 452; 2007 4 Supreme 1; 2007 0 Supreme(SC) 655; Dayal Singh Vs State of Maharashtra.

Injury on body of person of victim of rape is not sine-qua non to prove a charge of rape.
No law states that non-holding of Test Identification Parade would by itself disprove the prosecution case. To what extent and if at all the same would

adversely affect the prosecution case, would depend upon the facts and circumstances of each case.

2004 0 AIR(SC) 2884; 2004 2 CCR(SC) 34; 2004 2 Crimes(SC) 15; 2004 1 JCC 336; 2004 1 JT 635; 2004 2 Scale 8; 2004 3 SCC 106; 2004 0 SCC(Cri) 678; 2004 1 Supreme 918; 2004 0 Supreme(SC) 87; Dastagir Sab and Anr. Vs State of Karnataka

Where the transaction consists of different acts, in order that the chain of such acts may constitute same transaction, they must be connected together by -

(a) proximity of time, (b) proximity of unity of place, (c) continuity of action, and (d) community purpose or design

Where the incidents consist of declarations accompanying an act they are subject to three important qualifications

(1) They must not be made at such an interval as to allow of fabrication or to reduce them to the mere narrative of a past event;

(2) They must relate to, and can only be used to explain, the act they accompany and not independent facts prior or subsequent thereto; evidence as to other offences would be relevant and admissible, if there is a nexus between the offence charged with the other offences of the two acts forming part of the same transaction, so as to fall within this section

(3) Though admissible to explain, they are not always taken as proof of the truth of the matter stated, that is, as hearsay

Declaration to be admissible as res gestae should be contemporaneous with the transactions in issue, that is, the interval should not be such as to give time or opportunity for fabrication, and they should not amount to a mere narrative of a past occurrence

Of course, criminal jurisdiction does not contemplate the proof of fact by the accused. It is only for the prosecution to establish the case beyond reasonable doubt. However, in the case of circumstantial evidence, the Court could take into consideration the reply of the accused made in the statement under Section 313, Cr.P.C. also.

1997 2 ALT(Cri) 554; 1997 0 CrLJ 3854; 1997 0 Supreme(Mad) 357;Venkatesan Vs State (MAD)(DB)

It was contended that identification by photo is inadmissible in evidence and, therefore, the same cannot be used. No legal provision has been brought to our notice which inhibits the admissibility of such evidence. However, learned counsel invited our attention to the observations of the consti-tution bench in Kartar Singh v. State of Punjab(1994 1 Crimes(SC) 1031; 1994 0 CrLJ 3139; 1994 2 JT 423; 1994 Supp1 Scale 1; 1994 3 SCC 569; 1994 0 SCC(Cri) 899; 1994 0 Supreme(SC) 1) which struck down Section 22 of the Terrorist and Disruptive Activities (Pre-ven-tion) Act, 1987. By that provision the evidence of a witness regarding identifica-tion of a proclaimed offender in a terrorist case on the basis of

the photograph was given the same value as the evidence of a test identification parade.

1999 0 AIR(SC) 2562; 1999 0 AIR(SCW) 2732; 1999 3 Crimes(SC) 204; 1999 0 CrLJ 3972; 1999 2 JCC 388; 1999 5 JT 394; 1999 3 RCR(Cri) 658; 1999 4 Scale 497; 2000 1 SCC 138; 1999 6 Supreme 385; 1999 0 Supreme(SC) 815; Umar Abdul Sakoor Sorathia Vs Intelligence Officer, Narcotic Control Bureau.

In this case we get from the evidence of the I.O. (P.W.6) that there is no recorded version of the statement made by the accused persons in consequence whereof the stolen articles were recovered Mr. Talukdar complained that the practice of not recording statement is unwholesome and ought to be deprecated. In support of this contention he referred to the decision in the case of Nathu v. State, AIR 1958 All 467 : (1958 Cri LJ 821). That decision lays down that under Section 27 that part only of the information given by an accused is admissible as distinctly relates to the facts discovered. Unless therefore the exact words used by an accused person in giving the information are known the court is not in a position to decide to what extent the particular statement of the accused is admissible in evidence. The practice of not recording the actual words by the investigating agency was therefore disapproved. In the case of Panchugopal v. State, AIR 1968 Cal 38 : (1968 Cri LJ 40), somewhat similar observations were made. It was observed that it is only proper for prosecution if they want to adduce evidence under Section 27 of the Evidence Act which is an exception to the power enjoined by Section 25 of that Act, to prove by production of written record only of so much of the statement as led to the discovery of the article. It is unsafe to rely on the oral statement of witnesses without corroboration by any written record of any such statement contemporaneously made, even if admissible. The decision does not in terms say that an oral statement not recorded is on that score alone inadmissible. All that it says is that it may be unsafe to rely on such evidence. In the present case we have in evidence that the 4 petitioners made statements pursuant to which the I.O. was led to a tank close to the town of Rampurhat and that the stolen articles were recovered from under the water of the tank which was not an ordinary place for keeping objects like a sewing machine or a table fan. The evidence also indicates that the articles were brought out by the petitioners. The evidence of the I.O. in particular is that the suspects took him to Dhenuburi tank within Kalishar mouza and that the accused persons brought out 2 Usha sewing machines and 1 Usha deluxe table fan from the pond. He prepared a seizure-list in presence of witnesses which was signed by the. accused persons and one of whom being illiterate put his L.T.I. Mr. Talukdar drew our attention to the evidence of the search witnesses (P.Ws.2 and 3) who while admitting the fact of recovery in cross-examination said as if they did not see the accused persons there. To this extent their evidence stands condemned by the petitioners Nos.2 and 4 in

their statement under Section 313, Cr.P.C. They admitted that they were there at the time and that they were taken in a police jeep. The evidence of the I.O. that the accused persons made statements, led the police to the pond and brought out the articles from inside the pond was not even challenged in cross-examination. Part of it is admitted by at least two of the petitioners in their statement under Section 313, Cr.P.C. Even though the statements made by the accused persons were not recorded, the fact remains that the accused persons led the police to the tank and brought out the stolen articles from inside the tank. This is evidence of a conduct which is relevant under Section 8 of the Evidence Act even if it may be otherwise not admissible under Section 27 of the Evidence Act (See Prakash hand v. State, AIR 1979 SC 400 : (1979 Cri LJ 329).

1984 0 CrLJ 518; 1983 0 Supreme(Cal) 170; BEJOY MONDAL AND OTHERS VS STATE OF WEST BENGAL AND OTHERS

explanation to Section 30 of the Evidence Act clarifies that "offence" as used in the Section includes the abetment of, or attempt to commit, the offence. Dealing with the scope ofSection 30, this Court in State vs. Nalini [(1999) 5 SCC 253] has held that a plain reading thereof discloses that when the following conditions exist, namely, (i) more persons than one are being tried jointly; (ii) the joint trial of the persons is for the same offence; (iii) a confession is made by one of such persons (who are being tried jointly for the same offence); (iv) such a confession affects the maker as well as such persons (who are being tried jointly for the same offence); and (v) such a confession is proved in court, the court may take into consideration such confession against the maker thereof as well as against such persons (who are being jointly tried for the same offence). The Court further observed thus:-

"In Kashmira Singh vs.State of MP [1952 SCR 526] this Court approved the principles laid down by the Privy Council in Bhuboni Sahu vs. R. [AIR 1949 PC 257] and observed:

"But cases may arise where the Judge is not prepared to act on the other evidence as it stands even though, if believed, it would be sufficient to sustain a conviction. In such an event the Judge may call in aid the confession and use it to lend assurance to the other evidence and thus fortify himself in believing what without the aid of the confession he would not be prepared to accept."

In this case, the High Court has not relied upon the confessional statement as a substantive piece of evidence to convict accused no.1. It has been used for lending assurance to the proved circumstances. The High Court held that the proved circumstances would not involve accused no.2 for the offence punishable under Section 302 IPC and the circumstantial evidence does not establish that there was any common intention or conspiracy between the father and the son to commit the offence. However, the Court held that Sandeep had seen his father committing multiple murders and when he destroyed the evidence relating

to those murders by throwing the articles from Mhatre bridge on two separate occasions, it was absolutely clear that he did this with primary object of saving his father and, therefore, he would be liable to be convicted for the offence under Section 201 IPC. Hence, it cannot be said that confessional statement is wholly exculpatory.

Prakash Dhawal Khairnar (Patil) vs State Of Maharastra 2002 0 AIR(SC) 340; 2001 0 AIR(SCW) 5111; 2002 1 CCR(SC) 40; 2002 1 Crimes(SC) 18; 2002 0 CrLJ 928; 2002 1 RCR(Cri) 212; 2001 8 Scale 482; 2002 2 SCC 35; 2001 8 Supreme 709; 2001 0 Supreme(SC) 1666; 2002 1 UJ 137;

If the statement is one of an incriminating nature, it would also be ruled out as a confession under s. 25 of the Evidence Act. " Confession " is not defined. But, upon the authorities, it appears that if the statement of the accused proves facts which are part of the incriminating facts of the prosecutions case, if the accused says something which can fairly be construed as " I committed the offence," his statement would be a confession. If the statement is a mere admission which simply provides a fact which is not sinister, then it is not a confession.

In this case the words themselves declare the intention of the Legislature. It therefore appears inadmissible to con sider the advantages or disadvantages of applying the plain meaning whether in the interests of the prosecution or the accused. It would appear that one of the difficulties that has been felt in some of the Courts in India in giving the words their natural construction has been the supposed effect on ss. 25, 26 and 27 of the Indian Evidence Act, 1872. Sect. 25 provides that no confession made to a police officer shall be proved against an accused. Sect. 26 No confession made by any person whilst he is in the custody of a police officer shall be proved as against such person. Sect. 27 is a proviso that when any fact is discovered in consequence of information received from a person accused of any offence whilst in the custody of a police officer, so much of such information, whether it amounts to a confession or not, may be proved. It is said that to give s. 162 of the Code the construction contended for would be to repeal s. 27 of the Evidence Act, for a statement giving rise to a discovery could not then be proved. It is obvious that the two sections can in some circumstances stand together. Sect. 162 is confined to statements made to a police officer in course of an investigation. Sect. 25 covers a confession made to a police officer before any investigation has begun or otherwise not in the course of an investigation. Sect. 27 seems to be intended to be a proviso to s. 26, which includes any statement made by a person whilst in custody of the police, and appears to apply to such statements to whomsoever made, e.g., to a fellow prisoner, a doctor, or a visitor. Such statements are not covered by s. 162. Whether to give to s. 162 the plain meaning of the words is to leave the statement still inadmissible, even though a discovery of fact is made such as is contemplated by s. 27, it does not seem necessary to decide. In

the present case the declarant was not in the custody of the police, and no alleged discovery was made in consequence of his statement. The words of s. 162 are in their Lordships view plainly wide enough to exclude any confession made to a police officer in course of investigation, whether a discovery is made or not. They may therefore pro tan to repeal the provisions of the section which would otherwise apply. If they do not, presumably it would be on the ground that s. 27 of the Evidence Act is a " special law " within the meaning of s. 1, sub-s. 2, of the Code of Criminal Procedure, and that s. 162 is not a specific provision to the contrary. Their Lordships express no opinion on this topic, for whatever be the right view, it is necessary to give to s. 162 the full meaning indicated. It only remains to add that any difficulties to which either the prosecution or the defence may be exposed by the construction now placed on s. 162 can in nearly every case be avoided by securing that statements and confessions are recorded under s. 164. In view of their Lordships decision that the alleged statement was inadmissible by reason of s. 162, the appellants contention that it was inadmissible as a confession under s. 25 of the Evidence Act becomes unnecessary. As the point was argued, however, and as there seems to have been some discussion in the Indian Courts on the matter, it may be useful to state that in their Lordships view no statement that contains self exculpatory matter can amount to a confession, if the exculpatory statement is of some fact which if true would negative the offence alleged to be confessed. Moreover, a confession must either admit in terms the offence, or at any rate substantially all the facts which constitute the offence. An admission of a gravely incriminating fact, even a conclusively incriminating fact, is not of itself a confession, e.g., an admission that the accused is the owner of and was in recent possession of the knife or revolver which caused a death with no explanation of any other mans possession. Some confusion appears to have been caused by the definition of confession in art. 22 of Stephens Digest of the Law of Evidence which defines a confession as an admission made at any time by a person charged with a crime stating or suggesting the inference that he committed that crime. If the surrounding articles are examined, it will be apparent that the learned author after dealing with admissions generally is applying himself to admissions in criminal cases, and for this purpose defines confessions so as to cover all such admissions, in order to have a general term for use in the three following articles— confession secured by inducement, made upon oath, made under a promise of secrecy. The definition is not contained in the Evidence Act, 1872 and in that Act it would not be consistent with the natural use of language to construe con fession as a statement by an accused u suggesting the "inference that he committed " the crime.

PAKALA NARAYANA SWAMI Vs THE KING-EMPEROR; 1939 0 AIR(PC) 47; 1938 66 LawReportsInd.App. 66; 1939 0 Supreme(SC) 1;

The section is manifestly in two parts. Whereas the word used in the first part is "may", the second part uses "shall". In consequences, the first part gives purely discretionary authority to a Criminal Court and enables it at any stage of an enquiry, trial or proceeding under the Code (a) to summon any one as a witness, or (b) to examine any person present in Court, or (c) to recall and re-examine any person whose evidence has already been recorded. On the other hand, the second part is mandatory and compels the Court to take any of the aforementioned steps if the new evidence appears to it essential to the just decision of the case. This is a supplementary provision enabling, and in certain circumstances imposing on the Court the duty of examining a material witness who would not be otherwise brought before it. It is couched in the widest possible terms and calls for no limitation, either with regard to the stage at which the powers of the Court should be exercised, or with regard to the manner in which it should be exercised. It is not only the prerogative but also the plain duty of a Court to examine such of those witnesses as it considers absolutely necessary for doing justice between the State and the subject. There is a duty cast upon the Court to arrive at the truth by all lawful means and one of such means is the examination of witnesses of its own accord when for certain obvious reasons either party is not prepared to call witnesses who are known to be in a position to speak important relevant facts. The object underlying Section 311 of the Code is that there may not be failure of justice on account of mistake of either party in bringing the valuable evidence on record or leaving ambiguity in the statements of the witnesses examined from either side. The determinative factor is whether it is essential to the just decision of the case. The section is not limited only for the benefit of the accused, and it will not be an improper exercise of the powers of the Court to summon a witness under the Section merely because the evidence supports the case for the prosecution and not that of the accused. The section is a general section which applies to all proceedings, enquiries and trials under the Code and empowers Magistrate to issue summons to any witness at any stage of such proceedings, trial or enquiry. In Section 311 the significant expression that occurs is "at any stage of inquiry or trial or other proceeding under this Code". It is, however, to beborne in mind that whereas the section confers a very wide power on the Court on summoning witnesses, the discretion conferred is to be exercised judiciously, as the wider the power the greater is the necessity for application of judicial mind. As indicated above, the Section is wholly discretionary. The second part of it imposes upon the Magistrate an obligation: it is, that the Court shall summon and examine all persons whose evidence appears to be essential to the just decision of the case. It is a cardinal rule in the law of evidence that the best available evidence should be brought before the Court. Sections 60, 64 and 91 of the Indian Evidence Act, 1872 (in short, ‘Evidence Act’) are based on this rule. The Court is not empowered under the provisions of the Code to compel either the prosecution or the defence to examine any particular

witness or witnesses on their side. This must be left to the parties. But in weighing the evidence, the Court can take note of the fact that the best available evidence has not been given, and can draw an adverse inference. The Court will often have to depend on intercepted allegations made by the parties, or on inconclusive inference from facts elicited in the evidence. In such cases, the Court has to act under the second part of the section. Sometimes the examination of witnesses as directed by the Court may result in what is thought to be "filling of loopholes". That is purely a subsidiary factor and cannot be taken into account. Whether the new evidence is essential or not must of course depend on the facts of each case, and has to be determined by the Presiding Judge. The object of the Section 311 is to bring on record evidence not only from the point of view of the accused and the prosecution but also from the point of view of the orderly society. If a witness called by Court gives evidence against the complainant he should be allowed an opportunity to cross-examine. The right to cross-examine a witness who is called by a Court arises not under the provision of Section 311, but under the Evidence Act which gives a party the right to cross-examine a witness who is not his own witness. Since a witness summoned by the Court could not be termed a witness of any particular party, the Court should give the right of cross-examination to the complainant. (Paras 25 to 28)

2006 0 AIR(SC) 1367; 2006 0 AIR(SCW) 1340; 2006 3 BBCJ(SC) 151; 2006 2 Crimes(SC) 36; 2006 0 CrLJ 1694; 2006 1 JCC 374; 2006 3 JLJR(SC) 96; 2006 3 JT 399; 2006 3 PLJR(SC) 83; 2006 2 RCR(Cri) 448; 2006 3 SBR 262; 2006 3 Scale 104; 2006 3 SCC 374; 2006 2 SCC(Cri) 8; 2006 5 SCJ 536; 2006 2 Supreme 598; 2006 0 Supreme(SC) 218; Zahira Habibullah Sheikh & Anr. Vs State of Gujarat & Ors

The position therefore is that in this case evidence has been admitted which ought not to have been admitted, and the duty of the Court in such circumstances is stated in Section 167 of the Indian Evidence Act which provides:

The improper admission or rejection of evidence shall not be ground of itself for a new trial or reversal of any decision in any case, if it shall appear to the Court before which such objection is raised that, independently of the evidence objected to and admitted, there was sufficient evidence to justify the decision, or that, if the rejected evidence had been received, it ought not to have varied the decision.

Section 27, which is not artistically worded, provides an exception to the prohibition imposed by the preceding section, and enables certain statements made by a person in police custody to be proved. The condition necessary to bring the section into operation is that the discovery of a fact in consequence of information received from a person accused of any offence in the custody of a Police officer must be deposed to, and thereupon so much of the information as relates distinctly to the fact

thereby discovered may be proved. The section seems to be based on the view that if a fact is actually discovered in consequence of information given, some guarantee is afforded thereby that the information was true, and accordingly can be safely allowed to be given in evidence; but clearly the extent of the information admissible must depend on the exact nature of the fact discovered to which such information is required to relate. Normally the section is brought into operation when a person in police custody produces from some place of concealment some object, such as a dead body, a weapon, or ornaments, said to be connected with the crime of which the informant is accused. Mr. Megaw, for the Crown, has argued that in such a case the "fact discovered" is the physical object produced, and that any information which relates distinctly to that object can be proved. Upon this view information given by a person that the body produced is that of a person murdered by him, that the weapon produced is the one used by him in the commission of a murder, or that the ornaments produced were stolen in a dacoity would all be admissible. If this be the effect of Section 27, little substance would remain in the ban imposed by the two preceding sections on confessions made to the police, or by persons in police custody. That ban was presumably inspired by the fear of the legislature that a person under police influence might be induced to confess by the exercise of undue pressure. But if all that is required to lift the ban be the inclusion in the confession of information relating to an object subsequently produced, it seems reasonable to suppose that the persuasive powers of the police will prove equal to the occasion, and that in practice the ban will lose its effect. On normal principles of construction their Lordships think that the proviso to Section 26, added by Section 27, should not be held to nullify the substance of the section. In their Lordships' view it is fallacious to treat the "fact discovered" within the section as equivalent to the object produced; the fact discovered embraces the place from which the object is produced and the knowledge of the accused as to this, and the information given must relate distinctly to this fact. Information as to past user, or the past history, of the object produced is not related to its discovery in the setting in which it is discovered. Information supplied by a person in custody that "I will produce a knife concealed in the roof of my house" does not lead to the discovery of a knife; knives were discovered many years ago. It leads to the discovery of the fact that a knife is concealed in the house of the informant to his knowledge; and if the knife is proved to have been used in the commission of the offence, the fact discovered is very relevant. But if to the statement the words be added "with which I stabbed A", these words are inadmissible since they do not relate to the discovery of the knife in the house of the informant. **Pulukuri Kottaya vs King-Emperor AIR 1947 PC 67; AIR 1947 PC 67**

The witnesses, who were treated as hostile by the Prosecution were confronted with their earlier statements to the Police and their evidence

was rejected as it was contradicted by their earlier statements. Such use of the statements is permissible under Section 155 of the Evidence Act and the proviso to S.162 (1) of the Code of Criminal Procedure read with S.145, Evidence Act.

There is a clear distinction between the conduct of a person against whom an offence is alleged, which is admissible under Section 8 of the Evidence Act, if such conduct is influenced by any fact in issue or relevant fact and the statement made to a Police Officer in the course of an investigation which is hit by Section 162 Criminal Procedure Code. What is excluded by Section 162 Criminal Procedure Code is the statement made to a Police Officer in the course of investigation and not the evidence relating to the conduct of an accused person (not amounting to a statement) when confronted or questioned by a Police Officer during the course of an investigation. For example, the evidence of the circumstance, simpliciter, that an accused person led a Police Officer and pointed out the place where stolen Articles or weapons which might have been used in the commission of the offence were found hidden, would be admissible as conduct, under Section 8 of the Evidence Act, irrespective of whether any statement by the accused contemporaneously with or antecedent to such conduct falls within the purview of section 27 of the Evidence Act (vide Himachal Pradesh Administration v. Om Prakash (AIR 1972 SC 975)).**1979 0 AIR(SC) 400; 1979 0 CrLJ 329; 1979 3 SCC 90; 1979 0 SCC(Cri) 656; 1979 2 SCR 330; 1978 0 Supreme(SC) 365; 1979 0 UJ 17; Prakash Chand, Appellant Vs State (Delhi Admn.),**

To establish a charge of conspiracy knowledge about indulgence in either an illegal act or a legal act by illegal means is necessary and the prosecution has not to establish that a particular unlawful use was intended, so long as the goods or service in question could not be put to any lawful use.

If on the basis of materials on record, a court could come to the conclusion that commission of the offence is a probable consequence, a case for framing of charge exists.**1996 2 Crimes(SC) 64; 1996 0 CrLJ 2448; 1996 0 SCC(Cri) 920; 1996 3 Supreme 539;State of Maharashtra. Vs Sam Nath Thapa; 1996 0 AIR(SC) 1744; 1996 0 AIR(SCW) 1977; 1996 4 JT 615; 1996 2 RCR(Cri) 480; 1996 3 Scale 449; 1996 4 SCC 659; 1996 0 SCC(Cri) 820; 1996 0 Supreme(SC) 767**

Section 120B - Criminal conspiracy-meeting of minds of two or more persons for doing an illegal act or an act by illegal means is sine quo non of the criminal conspiracy-It is well settled that an offence of conspiracy is a substantive offence and renders the mere agreement to commit an offence punishable even if an offence does not take place pursuant to the illegal agreement**YOGESH @ SACHIN JAGDISH JOSHI Vs. STATE OF MAHARASHTRA; 2008 0 AIR(SC) 2991; 2008 0 AIR(SCW) 5043; 2008 4 BBCJ(SC) 329; 2008 0 CrLJ 3872; 2008 6 JT 299; 2008 2 RCR(Cri)**

896; 2008 6 Scale 469; 2008 10 SCC 394; 2009 1 SCC(Cri) 51; 2008 0 Supreme(SC) 707;

To constitute a conspiracy, meeting of mind of two or more persons for doing an illegal act or an act by illegal means is the first and primary condition and it is not necessary that all the conspirators must know each and every detail of conspiracy. Neither it is necessary that every one of the conspirators takes active part in the commission of each and every conspiratorial acts. The agreement amongst the conspirators can be inferred by necessary implications. In most of the cases, the conspiracies are proved by the circumstantial evidence, as the conspiracy is seldom an open affair. The existence of conspiracy and its objects are usually deducted from the circumstances of the case and the conduct of the accused involved in the conspiracy. While appreciating the evidence of the conspiracy, it is incumbent on the Court to keep in mind the well-known rule governing circumstantial evidence viz., each and every incriminating circumstance must be clearly established by reliable evidence and the circumstances proved must form a chain of events from which the only irresistible conclusion about the guilt of the accused can be safely drawn, and no other hypothesis against the guilt is possible. The criminal conspiracy is an independent offence in Indian Penal Code. The unlawful agreement is sine quo non for constituting offence under Indian Penal Code and not an accomplishment. Conspiracy consists of the scheme or adjustment between two or more persons which may be express or implied or partly express and partly implied. Mere knowledge, even discussion, of the Plan would not per se constitute conspiracy. The offence of conspiracy shall continue till the termination of agreement.**K.R. Purushothaman Vs State of Kerala; 2006 0 AIR(SC) 35; 2005 0 AIR(SCW) 5437; 2006 1 BBCJ(SC) 454; 2005 4 Crimes(SC) 191; 2005 9 JT 38; 2005 4 RCR(Cri) 848; 2005 8 Scale 618; 2005 7 Supreme 323; 2005 0 Supreme(SC) 1395**

It is true that all these witnesses were to some extent interested and inimical because they belonged to the faction headed by the deceased. But that by itself was no ground to reject their testimony in toto. The High Court rightly observed that in view of the fact that these witnesses were interested, their evidence should be scrutinized with great caution. **Babu and others Vs State of U.P 1980 0 AIR(SC) 443; 1980 0 CrLJ 392; 1979 4 SCC 483; 1980 0 SCC(Cri) 99; 1979 0 Supreme(SC) 33;**

NON-EXAMINATION of Anari has been explained which would be evident from the order dated 13-1-1999 of the learned Judge. He was given-up the prosecution on the ground that he was gained over by the accused persons. In such a situation, his non-examination shall not affect the case of the prosecution in any way and in that view of the matter, the authority relied on by Sri Dutt is clearly distinguishable.

Here the eye-witnesses who are related to the deceased have consistently stated about the participation of the accused persons in the crime, which finds support from the medical evidence and corroborated by the material seized from the place of occurrence. The evidence of these witnesses inspire confience and the same cannot be discarded on the ground that they are related to the deceased and non-examination of all the witnesses collected at the place of occurrence. **STATE OF M.P. Vs PATTU ALIAS PRATAP SINGH; 2001 0 CrLJ 3217; 2001 0 Supreme(MP) 55;**

Section 162, Criminal Procedure Code does not impair the special powers of the Court under Sec. 165, Indian Evidence Act. It is certainly quite arguable that Section 162, Criminal Procedure Code does amount to a prohibition against the use even by the Court of statements mentioned there. Nevertheless, the purpose of the prohibition of Section 162, Criminal Procedure Code being to prevent unfair use by the prosecution of statements made by witnesses to the Police during the course of investigation, while the proviso is intended for the benefit of the defence, it could also be urged that, in order to secure the ends of justice, which all procedural law is meant to subserve, the prohibition by taking into account its purpose and the mischief it was designed to prevent as well as its context must be confined in its scope to the use by parties only to a proceeding of statements mentioned there. **1974 0 AIR(SC) 463; 1974 0 CrLJ 453; 1974 4 SCC 186; 1974 0 SCC(Cri) 355; 1974 3 SCR 92; 1974 0 Supreme(SC) 7; Ganga Sahai and others Vs State of U.P.**

Before the Courts exercise their jurisdiction under Section 311 of the Code of Criminal Procedure for calling or summoning a new witness or recalling or re-examining a witness who has earlier been examined, the Courts have to satisfy themselves that recalling or calling of such a witness is essential to the just decision of the case. Such a satisfaction can only be recorded by the Courts if facts are brought to the notice of the Court suggesting that recalling of a particular witness would be necessary in order to reach to the just decision of the Court. In the application no reason as such was given by the petitioners. It was only stated that some questions needed to be asked with regard to the F. I. R. and it was also stated that since the lawyer was changed by the parties, therefore, the witnesses are need to be re-examined.
1998 2 ALD(Cri) 627; 1998 2 ALT(Cri) 353; 1998 3 APLJ 162; 1998 2 APLJ(Cri) 489; 1999 0 CrLJ 1713; 1998 2 LS 296; 1998 0 Supreme(AP) 599; Beagari Pentaiah and others Vs State OF A.P.

THE prosecution agency may afford to be unmindful of the importance of examining a prosecution witness, but if the Court finds that the evidence of such a witness is material, essential for just decision of the case, the Court is certainly empowered to examine such a witness though not summoned by the prosecution. The prosecution may afford to close its

evidence being unmindful of the importance of the evidence of a particular witness or witnesses but it does not mean that by such act on the part of the prosecution, the Court is prohibited from examining such a witness or witnesses if the Court finds that the evidence of such a witness or witnesses is essential for just decision of the case. After all, the Court has to give just decision in the case placed before it and tried by it, by considering the material collected during the investigation keeping in view the legal provisions. The Court has also to keep in mind the golden principle of innocence and it has also to see that no prejudice is caused to the defence of accused. After examination of such a witness or witnesses, the accused should be given opportunity to cross-examine him/them. The Court is also entitled to put questions to such a witness or witnesses if the Court finds proper in the interest of justice.

1997 0 CrLJ 1879; 1996 0 ILR(MP) 560; 1997 2 MPLJ 271; 1997 4 RCR(Cri) 664; 1996 0 Supreme(MP) 886; LALU ALIAS LAL SINGH AND ANOTHER Vs STATE OF M.P.

Criminal Procedure Cod, 1973 - Section 278 - Correction of the recorded evidence of any witness-Procedure in regard to-Correction slip not filed when the day to day evidence of P.W. 34 was recorded and read over to him-Nor was it filed on the last day of recording his evidence-It does not bear any signature or the date-Held: trial court was right in not tinkering with the substantive part of the evidence on the basis of an unsigned correction slip.

Held: The object of section 278 is two fold:, firstly to ensure that the evidence of the witness as recorded, is accurate and secondly to give the witness concerned an opportunity to point out mistakes, if any. If the correction suggested by the witness is one which the Judge considers necessary he will make it atonce as required by sub-section (1) but if the correction is such that the Judge does not consider necessary, sub-section' (2) requires that a memorandum of the objection be made and the Judge add his remarks, if any, thereto. In the present case, the learned trial Judge corrected all the typographical errors which he considered necessary but refused to carry out the substantive part of his deposition. The section is not intended to permit a witness to resile from his statement in the name of correction. The learned trial Judge was justified in refusing to effect the change which he thought was intended to change t, e earlier version. He did not make a memorandum as the correction slip was unsigned and was not properly filed. (Para 12)

Criminal Procedure Code, 1973 - Section 313 - Examination of the accused under -. Prosecution has closed the evidence-Prosecution did not at any stage move the trial Judge for recalling P.W. 34 for further examination-Liberty reserved to the prosecution to recall P.W. 34 for re-examination is not sustainable-It is, however, open to the prosecution to invite the attention of the court if any incriminating circumstance is left out and not put to the accused. (Paras 13 and 14) **1989 0 AIR(SC) 1785;**

1989 2 Crimes(SC) 698; 1989 0 CrLJ 2070; 1989 3 JT 316; 1989 2 RCR(Cri) 346; 1989 2 Scale 292; 1989 4 SCC 436; 1989 0 SCC(Cri) 750; 1989 3 SCR 735; 1989 0 Supreme(SC) 394; Mir Mohd. Omar and others Vs State of West Bengal

On a reading of the language that has been introduced in Sections 154 and 155 of the Indian Evidence Act it can be said that the grant of leave to cross-examine their own witnesses at any stage has been left completely to the discretion of the trial Court, and such exercise is not fettered by or dependant upon the hostility or adverseness of the witness. Even after the cross-examination is over and even in the last sentence if any statement is made inconsistently or an improved statement or a statement which destroys the prosecution case, the prosecution which has called the witness is entitled to ask the Court and the Court is competent to grant permission and such permission cannot be treated as an act on the part of the Sessions Judge that he has made up his mind or he has biased towards one party or the other **1989 APLJ (Crl.) 378 A.P. Rao v. State**

Section 137 of the Evidence Act gives only the three stages, in the examination of a witness, namely mination-in-chief, cross-examinationexa and re-examination. This is a routine sequence in the examination of a witness. This has no relevance to the question when a party calling a witness can be permitted to put to him questions under S. 154 of the Evidence Act: that is governed by the provisions of S. 154 of the said Act, which confers a discretionary power on the court to permit a person who calls a witness to put any questions to him which might be put in cross-examination by the adverse party. Section 154 does not in terms, or by necessary implication confine the exercise of the power by the court before the examination-in-chief is concluded or to any particular stage of the examination of the witness. It is wide in scope and the discretion is entirely left to the court to exercise the power when the circumstances demand. To confine this power to the stage of examination-in-chief is to make it ineffective in practice. A clever, witness in his examination-in-chief faithfully conforms to what he stated earlier to the police or in the committing court, but in the cross-examination introduces statements in a subtle way contradicting in effect what he stated in the examination-in-chief. If his design is obvious, we do not see why the court cannot, during the course of his cross-examination, (sic-re-examination) permit the person calling him as witness to put questions to him which might be put in cross-examination by the adverse party. To confine the operation of S. 154 of the Evidence Act to a particular stage in the examination of a witness is to read words in the section which are not there. We cannot also agree with the High Court that if a party calling a witness is permitted to put such questions to the witness after he has been cross-examined by the adverse party, the adverse party will not have any opportunity to further

cross-examine the witness on the answers elicited by putting such questions. In such an event the court certainly, in exercise of its discretion, will permit the adverse party to cross-examine the witness on the answers elicited by such questions. The court, therefore, can permit a person, who calls a witness, to put questions to him which might be put in the cross-examination at any stage of the examination of the witness, provided it takes care to give an opportunity to the accused to cross-examine him on the answers elicited which do not find place in the examination-in-chief.**Dahyabhai Chhaganbhai Thakker vs State Of Gujarat 1964 0 AIR(SC) 1563; 1964 0 CrLJ 472; 1964 7 SCR 361; 1964 0 Supreme(SC) 91;**

"ATTESTED" - Defined - Neither Sec.3 of T.P Act nor Sec.68 of Evidence Act stipulates qualifications or disqualifications, for persons to figure as attesting witness - Only requirement is that attestor must have seen executant of document, sign, or affix his mark on document, or has seen some other person sign instrument, in presence and on directions of executant, and thereafter must have signed instrument, in presence of executant.

The rule of the common law is that no evidence shall be admitted but what is or might be under the examination of both parties. But if the adverse party has had liberty to cross-examine and has not chosen to exercise it, the case is then the same in effect as if he had crossexamined. Here then the question is whether the defendant had an opportunity of cross-examining. **2007 0 AIR(AP) 137; 2007 2 ALD 817; 2007 4 ALT 260; 2007 1 LS 217; 2006 0 Supreme(AP) 1581; Peddavandla Narayanamma Vs. Peddasani Venkata Reddy**

The offence of cheating is made of two ingredients. Deception of any person and fraudulently or dishonestly inducing that person to deliver any property to any person or to consent that any person shall retain any property. To put it differently, the ingredients of the offences are that the person deceived delivers to some one a valuable security or property, that the person so deceived was induced to do so, that such person acted on such inducement in consequence of his having been deceived by the accused and that the accused acted fraudulently or dishonestly when so inducing the person. To constitute the offence of cheating, it is not necessary that the deception should be by express words, but it may be by conduct or implied in the nature of the transaction itself.

In dealing with the aspect of criminal conspiracy, it was observed by the Supreme Court in Nazir khan v. State of Delhi, 2003 (2) ALD (Crl.) 651 (SC) = AIR 2003 SCW 5068, as follows:"as noted above, the essential ingredient of the offence of criminal conspiracy is the agreement to commit an offence. In a case where the agreement is for accomplishment of an act which by itself constitutes an offence, then in that event no overt act is

necessary to be proved by the prosecution because in such a situation, criminal conspiracy is established by proving such an agreement.
Public Prosecutor, High Court of A.P., Hyd Vs. Gopichetty Rajendran; 2004 1 ALD(Cri) 833; 2004 2 ALT(Cri) 462; 2003 0 Supreme(AP) 1531;

MOTIVE for doing a criminal act is generally a difficult area for the Prosecution. One cannot normally see into the mind of another. Motive is the emotion which impels a man to do a particular act. In some cases it maybe difficult to establish motive through direct evidence while in some cases inference from circumstances may help in discerning the mental propensity of the person concerned. Though motive established is a weak one, it does not mean that it is by itself sufficient to lead any inference against the prosecution.
THERE cannot be any dispute that the burden of proof of the plea of alibi is on the person pleading it. In this case, it is for the accused to establish his plea. The plea of alibi postulates the physical impossibility of the accused at the scene of occurrence by reasons of his presence at some other place. Accused must be so far away at the relevant time that he could not be present at the place where the crime was committed.
Public Prosecutor, High Court of A.P., Hyd Vs. Dasari Siva Prasad Reddy; 2003 2 ALD(Cri) 347; 2004 1 ALT(Cri) 178; 2003 0 Supreme(AP) 848;

A criminal trial is not like a fairy tale wherein one is free to give fight to ones 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
This Court again in State of Himachal Pradesh v. Lekh Raj & Sons [JT 1999 (9) SC 43] reiterated the position of law and while reminding the criminal courts of their obligations held: "The criminal trial cannot be equated with a mock scene from a stunt film. The legal trial is conducted to ascertain the guilt or innocence of the accused arraigned. In arriving at a conclusion about the truth, the Courts are required to adopt rational approach and judge the evidence by its intrinsic worth and the animus of the witnesses. The hypertechnicalities or figment of imagination should not be allowed to divest the court of its responsibility of sifting and weighing the evidence to arrive at the conclusion regarding the existence or otherwise of a particular circumstances keeping in view the peculiar

facts of each case, the social position of the victim and the accused, the larger interests of the society particularly the law and order problem and degrading values of life inherent in the prevalent system. The realities of life have to be kept in mind while appreciating the evidence for arriving at the truth. The courts are not obliged to make efforts either to give latitude to the prosecution or loosely construe the law in favour of the accused. The traditional dogmatic hypertechnical approach has to be replaced by rational, realistic and genuine approach for administering justice in a criminal trial. Criminal jurisprudence cannot be considered to be a Utopian thought but have to be considered as part and parcel of the human civilization and the realities of life. The courts cannot ignore the erosion in values of life which are a common feature of the present system. Such erosions cannot be given a bonus in favour of those who are guilty of polluting society and the mankind."

Defective investigation-Cannot be made basis for acquitting accused if despite such defects and failures of investigation, a case is made out.

State Of U.P vs Hari Mohan & Ors 2001 0 AIR(SC) 142; 2000 0 AIR(SCW) 4012; 2001 1 BBCJ(SC) 102; 2001 1 CHN(SC) 9; 2000 4 Crimes(SC) 234; 2001 0 CrLJ 170; 2001 1 JLJR(SC) 22; 2000 Supp2 JT 467; 2001 1 PLJR(SC) 68; 2000 4 RCR(Cri) 667; 2000 7 Scale 348; 2000 8 SCC 598; 2000 7 Supreme 516; 2000 0 Supreme(SC) 1747; 2001 1 UJ 293;

Discovery of incriminating articles - Reliability of-Actual words in verbatim leading to recovery not recorded by investigating officer-Statement as recorded cannot be treated as statement of accused leading to recovery-Witnesses to recovery co-drivers of deceased driver-Recoveries not legally acceptable.

Mujeeb & Anr.Vs State of Kerala; 2000 0 AIR(SC) 591; 2000 0 AIR(SCW) 15; 1999 4 CCR(SC) 294; 2000 0 CrLJ 742; 2000 1 JCC 108; 1999 9 JT 299; 2000 1 RCR(Cri) 156; 1999 7 Scale 249; 2000 10 SCC 315; 2000 0 SCC(Cri) 78; 2000 1 SCJ 183; 1999 10 Supreme 8; 1999 0 Supreme(SC) 1386;

Delayed examination of witness during investigation—Unless Investigating Officer is categorically asked why there was delay, -defence cannot gain any advantage there-from.

Where a case rests squarely on circumstantial evidence, inference of guilt could be justified only when all incriminating facts and circumstances are found to be incompatible with the innocence of accused or the guilt of any other person.

In an appeal against acquittal, appellate Court has the power to revise evidence but scope of revision is to be guided by the principle that miscarriage of justice is prevented.

State of U.P. Vs Satish; 2005 0 AIR(SC) 1000; 2005 0 AIR(SCW) 905; 2005 2 BBCJ(SC) 183; 2005 1 Crimes(SC) 146; 2005 0 CrLJ 1428;

2005 1 JCC 408; 2005 2 JT 153; 2005 2 Scale 33; 2005 3 SCC 114; 2005 0 SCC(Cri) 642; 2005 5 SCJ 471; 2005 2 Supreme 13; 2005 0 Supreme(SC) 213; 2005 1 UJ 367;

INDIAN PENAL CODE - Sec. 302 - Dying declaration - Accused convicted for offence causing death of deceased by pouring kerosene on the body and set her fire with intention to kill - Deceased alleged to have been made an oral dying declaration at first instance before neighbour, P.W2 stating that as her husband was not providing food she herself had set fire to her body - P.P did not avail opportunity of discarding evidence of P.W2 bringing contradictions on record in accordance with Sec.145 Cr.P.C. - In subsequent dying declaration recorded by Magistrate it is stated by deceased that accused poured kerosene on her and set fire to her body as she refused to have sexual intercourse with him - When there are two sets of dying declarations inconsistant with each other, then dying declaration which is in favour of accused has to be accepted.

Subsequent dying declaration involving accused in the Crime appears to be after thought - Prosecution failed to establish guilt of accused - Conviction set aside. **1999 2 ALD(Cri) 942; 1999 2 ALT(Cri) 460; 1999 3 LS 502; 1999 0 Supreme(AP) 854; CHINNAPATTUNAGAN Vs State OF A.P.**

Statement made to police officer by an alleged rape victim, after 11 days of incident, who allegedly committed suicide after 5½ months of alleged incident but had not disclosed her mind at or about the time of making the statement for committing suicide on account of humiliation could not be treated/relied upon as dying declaration especially when prosecution even did not disclose cause of action for death. **Sudhakar & Anr.Vs State of Maharashtra 2000 0 AIR(SC) 2602; 2000 0 AIR(SCW) 2630; 2000 3 CCR(SC) 66; 2000 3 Crimes(SC) 122; 2000 0 CrLJ 3490; 2000 2 JCC 657; 2000 8 JT 184; 2000 3 PLJR(SC) 225; 2000 3 RCR(Cri) 383; 2000 5 Scale 157; 2000 6 SCC 671; 2000 0 SCC(Cri) 1250; 2000 5 Supreme 205; 2000 0 Supreme(SC) 1080; 2000 2 UJ 1234;**

If the said statement had been made when the deceased was under expectation of death it becomes dying declaration in evidence after her death. Nonetheless, even if she was nowhere near expectation of death, still the statement would become admissible under Section 32(1) of the Evidence Act, though not as dying declaration as such, provided it satisfies one of the two conditions set forth in the sub-section. This is probably the one distinction between English law and the law in India on dying declaration. In English law, unless the declarant is under expectation of death his statement cannot acquire the passport of admissibility. , **AIR1997SC768, 1997(1)ALD(Cri)410, 1997CriLJ833, 1996(4)Crimes282(SC), JT1996(11)SC218, RLW1997(1)SC73,**

1996(9)SCALE258, (1997)4SCC161, [1996]Supp9SCR938 :Rattan Singh Vs. State of Himachal Pradesh

IN Sanju alias Sanjay Singh Sengar v. State of M. P. , 2002 (1) ALD (Crl) 956 (SC) = (2002) 5 SCC 371, the Supreme court while considering the ingredients of section 107 held that instigating a person to do a thing denotes incitement or urging to do some drastic or inadvisable action or to stimulate or incite, and, further held that presence of mens rea is the necessary concomitant for instigation. The Supreme court also held that words uttered in a quarrel or on the spur of moment, such as "to go and die" cannot be taken to be uttered with mens rea.
IN Neelam @ Bondila Lachaiah v. State of A. P. , 2002 (1) ALD (Crl) 539 (A. P.), where the deceased committed suicide due to humiliation by the appellants and appellants suspecting toe deceased for the offence of theft humiliated him on the previous day, that does not by itself amount to abetting the suicide by the deceased on the next day and the conviction was set aside and appellants were acquitted.
The words "as to any of the circumstances of the transaction which resulted in his death"appearing in Section 32 must have some proximate relations to the actual occurrence. In other words the statement of the deceased relating to the cause of death or the circumstances of the transaction which resulted in his death must be sufficiently or closely connected with the actual transaction. To make such statement as substantive evidence, the person or the agency relying upon it is under a legal obligation to prove the making of such statement as a fact. If it is in writing, the scribe must be produced in the Court and if it is verbal, it should be proved by examining the person who heard the deceased making the statement. **2005 1 ALD(Cri) 163; 2006 1 ALT(Cri) 234; 2004 0 Supreme(AP) 783; Shaik Ibrahim Vs State OF A.P.**

INDIAN PENAL CODE, Sec.306 - Asst. Sessions Judge convicting accused for abusing deceased with filthy language by making false accusation of theft and sexual advances resulting committing suicide by deceased - Sessions Judge confirming conviction.
In dying declaration, deceased stated that accused attributed theft and sexual advances to him and on account of false allegations made by accused and threat that police case would be filed, caused fear and he felt death is only solution and as such he set fire himself.
It may be on account of attempted theft or on account of deceased making some advances towards accused, accused scolded deceased - It cannot be believed that without there being any incident, accused abused deceased - When attempted theft or attempted sexual assault has taken place and when victim scolds are abuses or threatens culprit of giving police complaint on account of which deceased committed suicide would not constitute offence u/Sec.306 IPC.

In this case, by no stretch of imagination it can be held that there was mens rea and abusing would amount to instigation - No offence
2006 1 ALT(Cri) 455; 2006 1 LS 480; 2005 0 Supreme(AP) 1155;Allaveni Rajeshwari Vs State OF A.P.

DRUGS AND COSMETICS ACT, 1940, Secs27(d) and 18(a) (i), 20 & 21 - Petitioners/accused convicted for alleged stocking for sale of Gelusil MPS not of standard quality - Sessions Judge confirmed conviction and sentence passed by trial Court - Contention that there is no material filed by prosecution to show that Drug Inspector appointed for area in which samples were taken and that sample analyzed by the Analyst is duly appointed by Govt
In this case, inspite of objection taken by petitioners/accused, prosecution not come forward with any such notification in Official Gazette for purpose of showing appointment of public analyst - There is evidence on record to show that at relevant point of time of incident PW1 working as Drug Inspector in Hayatnagar Zone and he cannot have jurisdiction to lift samples of Koti Zone in Hyderabad
Provisions of Secs20 & 21 of Act relating to appointment of analyst and Inspectors have not been complied with inspite of fact that petitioner/accused raised objection before trial Court as well as appellate Court - Prosecution is expected to produce Gazette notifications in this regard - Since, Gazette notifications as published in Official Gazette not placed before Courts below, illegal and improper findings were given - Judgment impugned liable to be set aside - Criminal Revision, allowed
2006(1) ALD (Crl) 980; 2007 2 Crimes(HC) 358; 2006 3 LS 367; 2006 0 Supreme(AP) 479;M/s. Gaba Pharmaceuticals Hyd., & Anr.Vs. State of A.P.

THE Hon ble Supreme Court made the following further observations : against the concurrent findings of fact, the High Court has interfered in its revisional Jurisdiction and that too without even noticing the findings recorded by the court s below and giving reasons for disagreeing with the conclusions reached by them. As it is, the revisional Jurisdiction of the High Court in such cases is limited and only in cases where there appears a manifest illegality or injustice, or the order suffers from any error of law the High Court would be Justified in exercising its revisional jurisdiction. Even if a wider jurisdiction is assumed in favour of the High Court in revisional jurisdiction, it cannot be wider than the power of the High Court exercising appellate jurisdiction.
306 IPC case law Discussed.
2006 1 ALD(Cri) 66; 2006 1 ALT(Cri) 250; 2006 0 CrLJ 27; 2005 0 Supreme(AP) 920; Pothyamsetti Satyanarayana Reddy Vs State OF A.P.

Pendency of Insolvency not a bar for criminal proceedings

1997(2)ALD(Cri)249, 1997((2))ALT(Cri)626, 1997(2)APLJ418, 1998CriLJ903 Sri Srinivasa Trading Co. and Ors. Vs. Respondent: State of Andhra Pradesh and Anr.

an infirmity arising from investigation by a Head Constable who was himself the person to whom the bribe was alleged to have been offered and who lodged the First Information Report as informant or complainant. This is an infirmity which is bound to reflect on the credibility of the prosecution case.

1976 0 AIR(SC) 985; 1976 0 CrLJ 713; 1976 1 SCC 15; 1975 0 SCC(Cri) 737; 1975 0 Supreme(SC) 278; 1975 0 UJ 680; Bhagwan Singh,Vs.The State of Rajasthan,

Evidence Act, 1872—Sections 17, 23, 24 to 30—Confessions—Law regarding—Confessions are considered highly reliable—Evidentiary value of confessions which are retracted.

Held : It is trite to say that every confession must necessarily be an admission, but, every admission does not necessarily amount to a confession. While Section 17 to 23 deals with admissions, the law as to confessions is embodied in Sections 24 to 30 of the Evidence Act. Section 25 bars proof of a confession made to a police officer. Section 26 goes a step further and prohibits proof of confession made by any person while he is in the custody of a police officer, unless it be made in the immediate presence of a Magistrate. Section 24 lays down the obvious rule that a confession made under any inducement, threat or promise becomes irrelevant in a criminal proceeding. Such inducement, threat or promise need not be proved to the hilt. If it appears to the court that the making of the confession was caused by any induce-ment, threat or promise proceeding from a person in authority, the confession is liable to be excluded from evidence. The ex-pression 'appears' connotes that the Court need not go to the extent of holding that the threat etc. has in fact been proved. If the facts and circumstances emerging from the evidence adduced make it reasonably probable that the confession could be the result of threat, inducement or pressure, the court will refrain from acting on such confession, even if it be a confession made to a Magistrate or a person other than police officer. Confessions leading to discovery of fact which is dealt with under Section 27 is an exception to the rule of exclusion of confession made by an accused in the custody of a police officer. Consideration of a proved confession affecting the person making it as well as the co-accused is provided for by Section 30. Briefly and broadly, this is the scheme of the law of evidence vis-a-vis confessions. (Para 8)

Confessions are considered highly reliable because no rational person would make admission against his interest unless prompted by his conscience to tell the truth. "Deliberate and voluntary confessions of guilt, if clearly prove are among the most effec-tual proofs in law". (vide Taylor's

Treatise on the Law of Evi-dence Vol. I). However, before acting upon a confession the court must be satisfied that it was freely and voluntarily made. A confession by hope or promise of advantage, reward or immunity or by force or by fear induced by violence or threats of violence cannot constitute evidence against the maker of confes-sion. The confession should have been made with full knowledge of the nature and consequences of the confession. If any reasonable doubt is entertained by the court that these ingredients are not satisfied, the court should eschew the confession from considera-tion. So also the -authority recording the confession - be it a Magistrate or some other statutory func-tionary at the pre-trial stage, must address himself to the issue whether the accused has come forward to make the confession in an atmosphere free from fear, duress or hope of some advantage or reward induced by the persons in authority. Recognizing the stark reality of the ac-cused being enveloped in a state of fear and panic, anxiety and despair while in police custody, the Indian Evidence Act has excluded the admissibility of a confession made to the police officer. Section 164 of Cr.P.C. is a salutary provision which lays down certain precautionary rules to be followed by the Magistrate a confession so as to ensure the voluntariness of the confession and the accused being placed in a situation free from threat or influence of the police. (Para 8)

The crucial expression used in Section 30 is "the Court may take into consi-deration such confession". These words imply that the confession of a co-accused cannot be elevated to the status of substantive evidence which can form the basis of conviction of the co-accused

According to Section 63, secondary evidence means and includes, among other things, "copies made from the original by mechanical processes which in themselves ensure the accuracy of the copy, and copies compared with such copies". Section 65 enables secondary evidence of the contents of a document to be adduced if the original is of such a nature as not to be easily movable. It is not in dispute that the information contained in the call records is stored in huge servers which cannot be easily moved and produced in the Court. That is what the High Court has also observed at para 276. Hence, printouts taken from the computers/servers by mechanical process and certified by a responsible official of the service providing Company can be led into evidence through a witness who can identify the signatures of the certifying officer or otherwise speak to the facts based on his personal knowledge. Irrespective of the compliance of the requirements of Section 65B which is a provision dealing with admissibility of electronic records, there is no bar to adducing secondary evidence under the other provisions of the Evidence Act, namely Sections 63 & 65. It may be that the certificate containing the details in sub-Section (4) of Section 65B is not filed in the instant case, but that does not mean that secondary evidence cannot be given even if the law permits such evidence to be given in the circumstances mentioned in the relevant provisions, namely Sections 63 & 65. (Para 15)

There is one more point which we would like to discuss i.e. whether pointing out a material object by the accused furnishing the information is a necessary concomitant of Section 27. We think that the answer should be in the negative. Though in most of the cases the person who makes the disclosure himself leads the Police Officer to the place where an object is concealed and points out the same to him, however, it is not essential that there should be such pointing out in order to make the information admissible under Section 27. It could very well be that on the basis of information furnished by the accused, the Investigating Officer may go to the spot in the company of other witnesses and recover the material object. By doing so, the Investigating Officer will be discovering a fact viz., the concealment of an incriminating article and the knowledge of the accused furnishing the information about it. In other words, where the information furnished by the person in custody is verified by the Police Officer by going to the spot mentioned by the informant and finds it to be correct, that amounts to discovery of fact within the meaning of Section 27. Of course, it is subject to the rider that the information so furnished was the immediate and proximate cause of discovery. If the Police- Officer chooses not to take the informant-accused to the spot, it will have no bearing on the point of admissibility under Section 27, though it may be one of the aspects that goes into evaluation of that particular piece of evidence. (Para 13) **2005 0 AIR(SC) 3820; 2005 0 AIR(SCW) 4148; 2005 0 AIR(SCW) 4146; 2006 1 BBCJ(SC) 96; 2005 3 Crimes(SC) 87; 2005 0 CrLJ 3950; 2005 3 JCC 1404; 2005 7 JT 1; 2005 6 Scale 177; 2005 11 SCC 600; 2005 0 SCC(Cri) 1715; 2005 6 SCJ 210; 2005 5 Supreme 414; 2005 0 Supreme(SC) 985; State (N.C.T. of Delhi) Vs. Navjot Sandhu @ Afsan Guru**

the revision cannot be entertained by both the High Court and Sessions Judge and when the learned Sessions Judge refused to interfere with the order of Magistrate, the High court has no power to set aside the order of the Magistrate in view of the bar under Section 397 (3) Cr. P. C. and that the said bar cannot be circumvented by treating the revision application as directed against the order of the Sessions Judge. So from the facts of the cited case, it is clear that the application filed before the high Court was a second revision filed against the orders of the Sessions Judge under Section 397 Cr. P. C. As there is a bar to entertain a second revision, the Apex Court held that the High Court has no power to entertain the second revision. But, in the instant case, the application is not filed under Section 397 Cr. P. C. but filed under Section 482 Cr. P. C. invoking the inherent jurisdiction of the High Court. Even otherwise, the decision of the Apex Court relied on by the counsel for the petitioners (Jitender Kumar Jain s Case 2 supra) is the later decision this Court has to follow the later decision of the Apex Court. **2006 2 ALT(Cri) 337; 2006 0 Supreme(AP) 455; Revensasiddesehwara Traders Vs. State OF A.P.**

Held, that it is true that the court must make an attempt to separate grain from the chaff, the truth from the falsehood, yet this could only be possible when the truth is seperable from the falsehood. When the grain can not be separated from the chaff because the grain and chaff are so inextricably mixed up that in the process of separation the Court would have to reconstruct an absolutely new case for the prosecution by divorcing the essential details presented by the prosecution completely from the context and the background against which they are made, then this principle will not apply. Having regard to the partisan and interested evidence of the prosecution witnesses who can implicate appellants and the four accused equally with regard to assault on the deceased it is not possible to reject the prosecution with respect to the four accused and accept it with respect to the appellants. If all the witnesses in one breath implicate the four accused who appear to be innocent, then one can not vouchsafe for the fact that even the acts attributed to the appellants may have been conveniently made to suit the needs of the prosecution case.....If the case against the four accused fails, then the entire prosecution case will have to be discarded.
1975 0 AIR(SC) 1962; 1975 0 BBCJ(SC) 559; 1975 0 CrLJ 1734; 1975 4 SCC 511; 1975 0 SCC(Cri) 601; 1975 Supp SCR 129; 1975 0 Supreme(SC) 160; 1975 0 UJ 529; Balaka Singh and others.Vs.The State of Punjab,

The recovery of a bloodstained spear becomes incriminating not because of its recovery at the instance of the accused but the element of criminality tending to connect the accused with the crime lies in the authorship of concealment, namely, that the appellant who gave information leading to its discovery was the person who concealed it. And in this case Bhamta was another co-accused. The appellant may have only the knowledge of the place where it was hidden. To make such a circumstance incriminating it must be shown that the appellant himself had concealed the bloodstained spear which was the weapon of offence and on this point the language used in the contemporaneous record Ext. 28 is not free from doubt and when two constructions are possible in a criminal trial, the one beneficial to the accused will have to be adopted. Therefore, this linchpin of the prosecution case ceases to provide any incriminating evidence against the appellant. **1979 0 AIR(SC) 1949; 1979 0 CrLJ 1310; 1980 1 SCC 530; 1980 0 SCC(Cri) 261; 1979 0 Supreme(SC) 275; Pohalya Motya Valvi Vs. State of Maharashtra,**

The role of the police and the Investigating Officer in this case has been most unfortunate. It is the duty of the investigating agency to bring before the courts the accused persons and see that justice is done, but it is equally the duty of the investigating officers to see that no innocent person is implicated in an offence. The investigating agencies can also commit mistakes and those can be pardoned. Once the Investigating agency comes

to a conclusion that a particular person is innocent person but still implicates in a charge like charge of murder, it is not pardonable. Although the Investigating agency knew that atleast two of the accused were innocent still they prefer a charge-sheet against them which shows that there was a hidden hand at work at whose instance the prosecuting agency was working along with the projected eye- witnesses. In these circumstances, it could be dangerous to rely on the evidence of the so called eye-witnesses even for other accused. **2004 1 ALD(Cri) 510; 2004 1 ALT(Cri) 433; 2003 0 Supreme(AP) 1141; High Court of A.P., Hyderabad Vs Chinnakkagari Nagi Reddy**

(a) Code of Criminal procedure, 1973 – Section 195(a)(i) – Exception to section 190 – Bars cognizance of any offence punishable under section 188 IPC or abetment or attempt to commit the same, unless, there is a written complaint by the public servant concerned for contempt of his lawful order – Similarly sections 196 and 198 also bar cognizance unless some requirements are complied with. (Para 20)

AIR 1971 SC 1708; AIR 1971 SC 1935; (1996) 3 SCC 533; (1998) 2 SCC 391; (2005) 7 SCC 352; AIR 2005 SC 2119 – Relied upon

(b) Indian Penal Code, 1860 – Section 188 r/w section 195, Code of Criminal procedure, 1973 – Section 195 being mandatory, cognizance cannot be taken u/s 188 unless the public servant whose orders have not been complied with files a complaint in writing – Non-compliance of section 195 would render trial and conviction void ab initio – Instantly no such complaint filed – Charge could not be framed u/s 188 IPC – Even if charges u/s 188 are quashed, charges for other offences will remain unaffected. (Para 25, 27)

AIR 1953 SC 293; AIR 1966 SC 1775; AIR 2000 SC 168; (1998) 2 SCC 493; AIR 1962 SC 1206 – Relied upon

(c) Criminal Trial – Clubbing of cases – One occurrence fall out of the other – They would be one and the same occurrence – Damage caused to the public transport vehicles and consequential burning of the University bus – Part of one and the same incident – Merely lodging of two separate complaints will not bar clubbing together of these cases – No infirmity in filing one charge sheet. (Para 28)

(2001) 6 SCC 181 – Relied upon

(d) Indian Evidence Act, 1872 – Section 9 – TI Parade – Part of the investigation – Very useful where the accused are not known before-hand to the witnesses – Used only to corroborate the evidence recorded in the court – Therefore not substantive evidence – Accused should not be shown to any of the witnesses after arrest, and before holding the Test Identification Parade, he is required to be kept "baparda" – Witnesses identifying accused in jail as well as in court – No infirmity. (Para 36, 39, 40)

AIR 2004 SC 299; AIR 1994 SC 2420; AIR 2003 SC 2669; (2009) 6 SCC 667; (2009) 9 SCC 719; AIR 1998 SC 1922; (2003) 12 SCC 666;

(2004) 3 SCC 106; (2007) 12 SCC 654; (2008) 9 SCC 227; (2006) 12 SCC 512; AIR 1999 SC 3916; (2010) 3 SCC 508; AIR 1971 SC 1050; AIR 1973 SC 2190; (1994) 3 SCC 569; AIR 1999 SC 2562 – Relied upon

(e) Criminal Trial – Hostile witness – One witness turning hostile – In view of consistent evidence of other witnesses, on witness turning hostile does not affect the prosecution case. (Para 42)

(f) Criminal trial – Defective investigation – Occurrence ugly and awful – Investigation in highly charges atmosphere – Some irregularities bound to occur – Investigation transferred to CBCID – Irregularities committed in investigation lose relevance – However, defect in investigation by itself cannot be a ground for acquittal. (Para 43, 44)

AIR 1974 SC 220; (1995) 5 SCC 518; AIR 1998 SC 1850; AIR 1999 SC 644; AIR 2000 SC 185; AIR 2003 SC 1164; AIR 2002 SC 1051; AIR 2004 SC 2329 – Relied upon

(g) Criminal trial – Extra judicial confession – Only admissible part of such statement can be exhibited – Instantly, full statement exhibited in court – Not permissible – However in view of sufficiency of other materials on record it did not prejudice the accused. (Para 67, 68)

(2007) 12 SCC 230; AIR 1947 PC 67; AIR 2000 SC 1691; AIR 2004 SC 2865 – Relied upon

(h) Criminal trial – Hostile witness – Evidence of a hostile witness cannot be discarded as a whole – Relevant parts thereof, admissible in law, can be used by the prosecution or the defence. (Para 70)

AIR 1976 SC 202; AIR 1977 SC 170; AIR 1979 SC 1848; AIR 1991 SC 1853 – Relied upon

(i) Criminal trial – Appreciation of evidence – Discrepancies – Minor or trivial omissions or discrepancies – Ought to be ignored. (Para 71)

AIR 1972 SC 2020; AIR 1985 SC 48; AIR 1983 SC 753; AIR 2007 SC 2257; (2009) 11 SCC 588; (2009) 9 SCC 626; AIR 2009 SC 151 – Relied upon

(j) Indian Penal Code, 1860 – Section 302 – Appellants may have had a grievance and a right of peaceful demonstration, but they cannot claim a right to cause grave inconvenience and humiliation to others, merely because a competent criminal court has handed down a judicial pronouncement that is not to their liking – Some of the appellants had evil designs to cause damage to a greater extent so that people may learn a "lesson" – No provocation – Accused sprinkling petrol in a bus full of girl students and setting it on fire with the students still inside the bus – As a result three girls burnt alive – Offence committed after previous planning and with extreme brutality – Murders of helpless, innocent, unarmed, young girl students in a totally unprovoked situation – Death sentence rightly awarded. (Para 77)

AIR 1980 SC 898; AIR 1983 SC 957; AIR 2002 SC 1661; JT 2010 (8) SC 372; AIR 1987 SC 1346; AIR 2009 SC 391; (2009) 11 SCC 798; (2008) 11 SCC 113; AIR 1991 SC 1463 – Relied upon

2010 0 AIR(SC) 3178; 2010 3 CalCriLR 698; 2010 3 CCR(SC) 391; 2010 9 JT 95; 2010 4 RCR(Cri) 268; 2010 4 RLW(SC) 3096; 2010 9 SCC 567; 2010 3 SCC(Cri) 1402; 2010 6 SCJ 822; 2010 0 Supreme(SC) 796; C. Muniappan & Others Vs. State of Tamil Nadu

(i) Indian Evidence Act, 1872 – Section 118 – Chance witness – Evidence of a chance witness requires a close scrutiny. (Para 36)

(2004) 11 SCC 253 – Relied upon.

(ii) Indian Penal Code, 1860 – Section 302/149 r/w Section 7, Indian Evidence Act, 1972 – A3 and A6 were identified by the child witnesses, but they were not included in the TI parade – There was un-explained delay in conducting the TI parade and it was conducted in a slipshod manner – accused are entitled to benefit of doubt. (Paras 40 and 41)

(iii) Code of Criminal Procedure, 1973 – Section 231 – It would be too much to expect of any person to say everything in his statement before the police – To see a person by face is one thing but to know him by his name is different – Some improvements in the testimony of a witness would not lead to rejection thereof in its entirety. (Para 46)

(iv) Indian Evidence Act, 1872 – Section 118 – It is also an accepted norm that 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 child witnesses – The opinion of the learned Judge had been recorded and, thus, it satisfies the test laid down by this Court – On the said premise the child witness was believed – PW5, therefore, had been corroborated by PWs 3, 4 and 6 – This is a case where the children have shown a rare and strong courage, which their teachers have failed to show. It was expected that the teachers would speak out the truth but they did not – The prosecution witnesses are also supported by the medical evidence.(Paras 53, 56, 60, 62)

AIR 1952 SC 54; (2004) 1 SCC 64; 2006 (10) SCALE 369; (2003) 5 SCC 746 – Relied upon.

(v) Indian Penal Code, 1860 – Section 302/149 – Testimonies of PWs 3 to 6 so far as A1 is concerned being trustworthy and can be believed notwithstanding delayed and defective investigation – Defective investigation by itself may not lead to a conclusion that the accused is innocent – The case of A1 cannot be said to be a rarest of rare case warranting imposition of the extreme punishment – Death penalty converted to rigorous imprisonment of life. (Paras 69, 70, 73 and 75)

(2003) 6 SCC 73; (2003) 10 SCC 414; Criminal Appeal Nos. 867-868 of 2005 – Relied upon.

2007 0 AIR(SCW) 2140; 2007 2 BBCJ(SC) 67; 2007 1 RCR(Cri) 928; 2008 1 SCC(Cri) 241; 2006 8 Supreme 1014; 2006 0 Supreme(SC) 1317; Acharaparambath Pradeepan & Anr. Vs. State of Kerala

Indian Penal Code, 1860 – Section 302 – The prosecution case in our opinion stands proved from the evidence of the first informant and PW. 2 –

The manner in which the occurrence had taken place is clearly corroborated by the medical evidence, the correctness whereof is not in question – As regards lapse of time since death, it is now well settled that the same cannot be accurately stated – First Information Report was lodged at the quickest possible time and essential material facts were disclosed therein – Only because P.W. 8 in his evidence did not state that the recovered empty cartridge was sealed at the spot, the same would not mean that it was planted later on, particularly when recovery of the gun and the report of the expert has not been disputed – The very fact that the FIR was recorded almost immediately after taking place of the occurrence, the question of its being an ante timed one would not arise – A defective investigation by itself cannot be a ground for acquittal – There being no ground to differ from the concurrent findings of the trial and the High Court, appeal dismissed. (Paras 11, 12, 14, 20 to 23 and 26).

AIR 2007 SC 132; AIR 2006 SC 1656; 2006 (8) SCALE 440; 2006(12) SCALE 354; (1994) 5 SCC 188 – Relied upon.

(2002) 9 SCC 408; AIR 2004 SC 1169 – Distinguished

2007 3 AD(Cr) 420; 2007 Supp AIR(SC) 267; 2007 0 AIR(SCW) 4196; 2007 2 ALD(Cri)(SC) 620; 2007 4 BBCJ(SC) 362; 2007 3 RCR(Cri) 256; 2007 10 SCC 496; 2008 1 SCC(Cri) 64; 2007 4 Supreme 528; 2007 0 Supreme(SC) 826;Budh Singh Vs. State of M.P.

(a) Criminal Trial – FIR – Recording of – Chain of sequences showing two hours was actually taken in filing the FIR – Cannot be inferred that the time was utilized for falsely implicating the accused. (Para 15)

(2009) 13 SCC 480 – Distinguished

(b) Judicial Review – No need to interfere with concurrent findings of the Courts below supported by evidence. (Para 21)

(2010) 5 SCC 63 – Relied upon

(c) Evidence Act – Section 154 – Hostile Witness – Evidence of a hostile witness is admissible evidence – Open to the court to rely upon its dependable and acceptable part duly corroborated by some other reliable evidence available on record. (Para 23)

(2010) 8 SCC 536 – Relied upon

2011 1 JCR(SC) 281; 2011 1 RCR(Cri) 405; 2011 2 SCC 36; 2011 1 SCC(Cri) 593; 2011 1 Supreme 33; 2011 0 Supreme(SC) 12;Himanshu @ Chintu Vs. State of NCT of Delhi

(a) Indian Penal Code, 1860 – Section 96 – Self defence – Injuries on accused persons superficial and self-sustained – Case of self defence not made out. (Para 15)

(b) Indian Penal Code, 1860 – Section 302 – Altercation in early morning and appellant threatening to kill deceased – Appellant following deceased to place of occurrence, armed with knife – Inflicting two knife blows, first in the back and second on chest with full force with intention to kill – Held, guilty of offence u/s 302. (Para 16)

(c) Indian Penal Code, 1860 – Section 304 Part I – Ingredients discussed – Instantly, premeditation between the appellant and his father to cause the death of the deceased – Appellant carrying lethal weapon like knife – Inflicting second blow of knife with full force to cause death of deceased – All ingredients of section 304 Part-I not satisfied – Instead ingredients of section 302 satisfied – Held guilty of offence u/s 302. (Para 17)

(d) Indian Penal Code, 1860 – Section 307 and 308 – Appellant injuring witness while he was attempting to save the deceased – Conviction u/s 308 not justified – Appellant held guilty of offence u/s 307. (Para 18)

2010 2 ACR(SC) 2096; 2010 2 CCR(SC) 423; 2010 0 CrLJ 1310; 2010 4 JT 314; 2010 7 RCR(Cri) 1356; 2010 5 SCC 68; 2010 2 SCC(Cri) 1238; 2010 0 Supreme(SC) 352; Shaukat & Another Vs . State of Uttaranchal & Another

Criminal Trial – Evidence – The evidence of an injured witness lends more credence, because normally he would not falsely implicate a person thereby protecting the actual assailant – Trial Court and the High Court rightly placing reliance on the evidence of the eye-witnesses as their evidence was clear and cogent – No interference warranted. (Paras 9 to 11)

2008 0 AIR(SC) 1198; 2008 2 BBCJ(SC) 186; 2008 2 BBCJ(SC) 52; 2008 0 CrLJ 1632; 2008 2 RCR(Cri) 847; 2008 1 Scale 379; 2008 2 SCC 670; 2008 1 SCC(Cri) 535; 2008 1 Supreme 294; 2008 0 Supreme(SC) 64; Vijay Shankar Shinde & Ors. Vs. State of Maharashtra

The border line between abetment of the offence and giving false information to screen the offender is rather thin in her case, but it is prudent to err on the safe side, and hold her guilty only of an offence under Section 201. It was held by the Privy Council in Begu v. Emperor , 1925 AIR(PC) 130 (L), that in a charge of murder under Section 302, a conviction under Section 201, without a further charge being made was warranted by the provisions of Section 237, Criminal P. C. **1957 0 AIR(HP) 15; 1955 0 CrLJ 679; 1955 0 Supreme(HP) 1; RUP DEVI AND ANR V/S STATE OF HIMACHAL PRADESH**

AS regards the framing of a charge under Section 420 of IPC. , it has to be stated that in view of Sections 78 and 79 of the said Act providing penalty for applying false trade descriptions etc. , and selling goods to which a false Trade Mark or false trade description is applied, a charge under Section 420 of IPC becomes wholly inapt,

The scope and ambit of Sections 105 and 106 of the Trade and Merchandise Marks Act, 1958 are altogether different from Chapter X of the Trade and Merchandise Marks, Act, 1958. Sections 105 and 106 of the said Act do not affect the jurisdiction of the criminal Courts to punish the

persons committing offences under Chapter X of the said Trade and Merchandise Marks Act, 1958. Therefore, there is no substance in the contention of the learned counsel for the petitioner that in view of Section 105 of the Trade and Merchandise Marks Act, 1958 the aggrieved party has to approach only a Civil Court and not a Criminal Court.
On the other hand, a property mark under Section 479 of IPC means a mark for denoting that a moveable property belongs to a particular person, whereas Trade Mark denotes manufacture or quality of goods to which it is attached, the property mark denotes the ownership in them. It is not clear either from the complaint or the impugned order whether the complainant had got his Trade Mark registered. However, in State of Uttar Pradesh v. Ramanath, AIR 1972 SC 232 : (1972 Cri LJ 52) the Supreme Court held that a Trade Mark includes a registered as well as unregistered Trade Mark and an offence under Sections 78 and 79 therefore relates to a Trade Mark whether it is registered or unregistered. The offences under these Sections consist in deception and application of a Trade Mark which is in use and which signifies a particular type of goods contained in the Mark.
1993 1 ALT(Cri) 64; 1993 0 CrLJ 232; 1992 0 ILR(Kar) 2614; 1992 3 KarLJ 581; 1992 0 Supreme(Kar) 227; Syed Kaleem Vs. Mysore Lakshmi Beedi Works

Under S. 161 of the Code, the police officer may examine orally any person supposed to be acquainted with the facts and circumstances of the case. He may also reduce into writing any statement made to him in the course of such examination, and if he does so, he must make a separate record of the statement of each such person.

44. The legislature has, however, put restrictions upon the use of such statements at the inquiry or trial of the offence. The first restriction is that no statement made by any person to a police officer, if reduced into writing, be signed by the person making it. The intention behind the provision is easy to understand. The legislature probably thought that the making of statements by witnesses might be thwarted, if the witnesses were led to believe that because they had signed the statements they were bound by them, and that whether the statements were true or not, they must continue to stand by them. The legislature next provides that a statement, however recorded, or any part of it shall not be used for any purpose (save as provided in the section) at the inquiry or trial in respect of any offence under investigation at the time such statement is made. The object here is not easily discernible, but perhaps is to discourage overzealous police officers who might otherwise exert themselves to improve the statements made before them. The Privy Council considered the intention to be :

"If one had to guess at the intention of the legislature in framing a section in the words used, one would suppose that they had in mind to encourage the free disclosure of the information or to protect the person

making the statement from a supposed unreliability of police testimony as to alleged statements or both."

It is possible that the legislature had also in mind that the use of statements made under the influence of the investigating agency might, unless restricted to a use for the benefit of the accused, result in considerable prejudice to him. But whatever the intention which, led to the imposition of the restrictions, it is manifest that the statements, however recorded, cannot be used except to the extent allowed by the section. The prohibition contained in the words "'any purpose" is otherwise absolute.

45. Then follow two provisos. The first gives the right to the accused to make use of the statements for contradicting a witness for the prosecution in the manner provided by S. 145 of the Indian Evidence Act. It also gives a right to the prosecution to use the statement for purposes of re-examination of the same witness but only to explain any matter referred to in the cross-examination of the witness.

46. The first proviso, when analysed, gives the following ingredients :

(i) A prosecution witness is called for the prosecution ;

(ii) whose statement has previously been reduced to writing;

(iii) The accused makes a request;

(iv) The accused is furnished with a copy of the previous statement;

(v) In order that any part of such statement, if duly proved, may be used to contradict such witness in the manner provided by S. 145 of the Indian Evidence Act.

If the accused exercises the right in (v) above in any instance, then the prosecution has the right to use the statement in the re-examination of the witness but only to explain any matters referred to by him in cross-examination.

47. Section 145 of the Indian Evidence Act reads :

"Cross-examination as to previous statements in writing: A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him, or being proved; but, if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him."

The section analysed gives the following result :

(1) Witnesses can be cross-examined as to previous statements in writing or reduced into writing;

(2) These writings need not be shown to the witnesses or proved beforehand;

(3) But if the intention is to contradict them by the writings,

(a) their attention must be drawn to those parts which are to be used for contradiction;

(b) This should be done before proving the writings.

47a. Our learned brother, Subba Rao, J. restricts the use by the accused of the previous statements to the mechanism of contradiction as

detailed in (3) above, but says that the accused has no right to proceed under (1) and (2). He deduces this from the words of S. 162 of the Code of Criminal Procedure, where it is provided :

"in order that any part of such statement, if duly proved, may be used to contradict such witness in the manner provided by S. 145 of the Indian Evidence Act 1872."

The fact that the accused can use the previous statement for the purpose of contradicting, shows that the previous statement cannot be used for corroborating the witness. Also there must be some basis for contradicting. This may arise, because of there being a contrary statement, irreconcilable statement or even material omissions. The accused can establish a contradiction by cross-examining the witness but only so as to bring out a contradiction and no more. We regret we cannot agree (and we say this with profound respect) that the accused is not entitled to cross-examine but only to contradict. In our opinion, the reference to S. 145 of the Indian Evidence Act brings in the whole of the manner and machinery of S. 145 and not merely the second part. In this process, of course, the accused cannot go beyond S. 162 or ignore what the section prohibits but cross-examination to establish a contradiction between one statement and another is certainly permissible.

48. This question loses much of its importance when there are patent contradictions and they can be put to the witness without any cross-examination as in the two statements :

(a) I saw A hit B,

(b) I did not see A hit B.

But there are complex situations where the contradiction is most vital and relevant but is not so patent. There are cases of omissions on a relevant and material point. Let us illustrate our meaning by giving two imaginary statements :

(a) When I arrived at the scene I saw that X was running away, chased by A and B who caught him.

(b) When I arrived at the scene I saw X take out a dagger from his pocket, stab D in his chest and then take to his heels. He was chased by A and B who caught him.

There is an omission of two facts in the first Statement, viz., (a) X took out a dagger from his pocket, and (b) he stabbed D in the chest. These two statements or their omission involve a contradiction as to the stage of the occurrence, when the observation of the witness began.

49. What S. 145 of the Indian Evidence Act provides is that a witness may be contradicted by a statement reduced into writing and that is also the use to which the earlier statement can be put under S. 162 of the Code of Criminal Procedure. When some omissions occur, there is contradiction in one sense but not necessarily on a relevant matter. The statements of witnesses may and do comprise numerous facts and circumstances, and it happens that when they are asked to narrate their version over again they omit some and add others. What use can be made of such omissions or

additions is for the accused to decide, but it cannot be doubted that some of the omissions or additions may have a vital bearing upon the truth of the story given. We do not think that by enacting S. 162 in the words used, the legislature intended a prohibition of cross-examination to establish which of the two versions is an authentic one of the events as seen by the witness. The use of the words "re-examination" and "cross-examination" in the same proviso shows that cross-examination is contemplated or in other words, that the manner of contradiction under S. 145 of the Indian Evidence Act comprises both cross-examination and contradiction. Indeed, the second part is only the final stage of the contradiction, which includes the earlier stages. Re-examination is only permissible where there is cross-examination.

50. It must not be overlooked that the cross-examination must be directed to bringing out a contradiction between the statements and must not subserve any other purpose. If the cross-examination does anything else, it will be barred under S. 162, which permits the use of the earlier statement for contradicting a witness and nothing else. Taking the example given above, we do not see why cross-examination may not be like this :

Q. I put it to you that when you arrived on the scene X was already running away and you did not actually see him stab D as you have deposed today?

A. No. I saw both the events,

Q. If that is so, why is your statement to the police silent as to stabbing?

A. I stated both the facts to the police.

The witness can then be contradicted with his previous statement. We need hardly point out that in the illustration given by us, the evidence of the witness in Court is direct evidence as opposed to testimony to a fact suggesting guilt. The statement before the police can only be called circumstantial evidence of complicity and not direct evidence in the strict sense.

51. Of course, if the questions framed were :

Q. What did you state to the police? or

Q. Did you state to the police that D stabbed X?

they may be ruled out as infringing S. 162 of the Code of Criminal Procedure, because they do not set up a contradiction but attempt to get a fresh version from the witnesses with a view to contradicting him. How the cross-examination can be made must obviously vary from case to case, counsel to counsel and statement to statement. No single rule can be laid down and the propriety of the question in the light of the two sections can be found only when the facts and questions are before the Court. But we are of opinion that relevant and material omissions amount to vital contradictions, which can be established by cross-examination and confronting the witness with his previous statement.

52. The word "contradict" has various meanings, and in the Oxford English Dictionary it is stated as "To be contrary to in effect, character, etc.; to be directly opposed to; to go counter to, go against" as also "to affirm the contrary of; to declare untrue or erroneous; to deny categorically" and the word "contradiction" to mean "A state or condition of opposition in things compared; variance; inconsistency, contrariety". In Shorter Oxford English Dictionary, "contradict" is said to mean "To speak against; to oppose in speech; to forbid ; to oppose; to affirm the contrary of; to declare untrue or erroneous; to deny; to be contrary to; to go counter to and go against" and "contradiction" to mean "A state of opposition in things compared; variance; inconsistency". The meaning given to the words "contradict" and "contradiction" in these Dictionaries must at least include the case of an omission in a previous statement which by implication amounts to contradiction and therefore such an omission is a matter which is covered by the first proviso to S. 162 and questions in cross-examination can be put with respect to it in order to contradict the witness. It is difficult to say as an inflexible rule that any other kind of omission cannot be put to a witness in order to contradict him, when the proper foundation had been laid for putting such questions. The words "to contradict him" appearing in S. l45 of the Evidence Act must carry the same meaning as the words "to contradict such witness" in S. 162 of the Code. In a civil suit, where the provisions of S. 162 of the Code of Criminal Procedure have no application, would it be correct to say that only questions concerning omissions of the kind suggested by our learned brother could be put and none other? We cannot see why a question of the nature of cross-examination regarding an omission with respect to a matter which the witness omitted to make in his previous statement and which, if made, would have been recorded, cannot be put. The facts and circumstances of each case will determine whether any other kind of omission than that referred to by our learned brother could be put to a witness in order to contradict him. It would be for the Judge to decide in each case whether in the circumstances before him the question could be put. The purpose of cross-examination is to test the veracity of the statement made by a witness in his examination-in-cheif as also to impeach his credit. Not only is it the right of the accused to shake the credit of a witness, but it is also the duty of the Court trying an accursed to satisfy itself that the witnesses are reliable. It would be dangerous to lay down any hard and fast rule.

53. We pause to look at the matter from another angle. We shall assume that the interpretation which the State claims should be put upon S. 162(1) is correct and compare the respective rights of the accused and the prosecution. According to this interpretation, the accused has no right of, cross-examination in respect of the contradiction. This means that no question can be put about the previous statement but only the part in which there is a contradiction can be brought to the witness's notice and his explanation, if any, obtained. In other words, there is only

"contradiction" and no more. But when the accused has used the statement to contradict the witness - it may be only on one point - what are the rights of the prosecution? The prosecution can use any part of the statement in the re-examination not only to explain the 'contradiction' but also to explain any matter referred to in the cross-examination of the witness.

54. If 'contradiction' does not include the right of cross-examination, the right of the prosecution must necessarily extend to re-examination in respect of any other matter needing explanation in the cross-examination at large. Thus, the accused cannot ask a single question of the nature of cross-examination but because he sets up a 'contradiction' in the narrow sense, the prosecution can range all over the previous statement and afford the witness a chance of explaining any matter in his cross-examination by re-examining him which right includes the possibility of asking leading questions with the permission of the Court.

55. Thus, the accused makes a 'contradiction' at his own peril. By making single 'contradiction', the accused places the entire statement in the hands of the prosecution to explain away everything with its assistance. One wonders if the legislature intended such a result, for it is too great a price for the accused to pay for too small a right. Fortunately, that is not the meaning of S. 162 of the Code of Criminal Procedure, and it is not necessary to read the word "cross-examination" in the proviso in a sense other than what it has.

56. The right of both the accused and the prosecution is limited to contradictions. It involves cross-examination by the accused as to that contradiction within S. 145 of the Indian Evidence Act and re-examination in relation to the matters 'referred to in the cross-examination of the witness'. The prosecution cannot range at will to explain away every discrepancy but only such as the accused under his right has brought to light. In our opinion, reading the section in this way gives effect to every part and does not lead to the starting and, if we may say so, the absurd results which we have endeavoured to set out above.

57. The question may be asked, how is there to be a cross-examination about a previous statement? It is difficult to illustrate one's meaning by entering into such an exposition. Any one interested to see the technique is invited to read Mrs. Maybrick's trial in the Notable English Trials (1912) at pages 77-79, the trial of William Palmer pages 35-36, 50-51. Examples will be found in every leading trial. The question is, did the legislature intend giving this right? In our opinion, the legislature did and for the very obvious reason that it gave the prosecution also a chance to re-examine the witness, to explain 'any matter referred to in the cross-examination of the witness.'

58. We respectfully do not agree that the section should be construed in the way our learned brother has construed it. Though we agree as to the result, our opinion cannot be left unexpressed. If the section is construed too narrowly, the right it confers will cease to be of any real protection to

the accused, and the danger of its becoming an impediment to effective cross-examination on behalf of the accused is apparent.

59. This brings us to the consideration of the questions, which were asked and disallowed. These were put during the cross-examination of Bankey, P. W. 30. They are :

Q. Did you state to the investigating officer that the gang rolled the dead bodies of Nathi, Saktu, and Bharat Singh and scrutinized them, and did you tell him that the face of Asa Ram resembled that of the deceased Bharat Singh?

Q. Did you state to the investigating offcer about the presence of the gas lantern?

These questions were defective, to start with. They did not set up a contradiction but attempted to obtain from the witness a version of what he stated to the police, which is then contradicted. What is needed is to take the statement of the police as it is, and establish a contradiction between that statement and the evidence in Court. To do otherwise is to transgress the bounds set by S. 162 which, by its absolute prohibition; limits even cross-examination to contradictions and no more. The cross-examination cannot even indirectly subserve any other purpose. In the questions with which we illustrated our meaning, the witness was not asked what he stated to the police, but was told what he had stated to the police and asked to explain the omission. It is to be borne in mind that the statement made to the police, 'duly proved' either earlier or even later to establish what the witness had then stated.

1959 0 AIR(SC) 1012; 1959 0 CrLJ 1231; 1959 Supp2 SCR 875; 1959 0 Supreme(SC) 88; Tahsildar Singh and another Vs.State of U.P.

It is to be noted that the offences punishable under Sections 304-B and 302 read with Section 498-A IPC are distinct. Nevertheless, the offence under Section 304-B IPC is slightly inferior to Section 302 IPC. Even though there was no charge framed under Section 304-B IPC and the charge was under Sections 302 and 498-A IPC only, in the event of the Court coming to the conclusion that the offence allegedly committed by the accused does not amount to the offence punishable under Section 302 IPC, but amounts to an offence punishable under Section 304-B IPC, it is imperative for the trial court to put the accused while examining him under Section 313 Cr.P.C., which is in a way giving the accused an opportunity of audi alterim partem to explain whether he was liable for the said offence.

Section 222(1) of the Code deals with a case "when a person is charged with an offence consisting of several particulars." The Section permits the Court to convict the accused "of the minor offence, though he was not charged with it." Sub-section (2) deals with a similar, but slightly different situation. "When a person is charged with an offence and facts are proved which reduce it to a minor offence, he may be convicted of the minor offence although he is not charged with it."

16. What is meant by "a minor offence" for the purpose of Section 222 of the Code? Although the said expression is not defined in the Code it can be discerned from the context that the test of minor offence is not merely that the prescribed punishment is less than the major offence. The two illustrations provided in the section would bring the above point home well. Only if the two offences are cognate offences, wherein the main ingredients are common, the one punishable among them with a lesser sentence can be regarded as minor offence vis--vis the other offence.
2008 1 ALT(Cri) 22; 2008 0 CrLJ 206; 2007 0 Supreme(AP) 765; Godugula Adellu s/o Malkanna Vs The State of Andhra Pradesh

If a lawyer was falsely implicated and if he was not a member of the unlawful assembly, he could have examined defence witnesses to prove his purported alibi. He is presumed to know his rights. Presumably he knows as to how to establish a fact in a court of law.
We may notice that in Munivel v. State of Tamil Nadu [(2006) 9 SCC 394], this Court held :

"36. Section 149 of the Penal Code provides for vicarious liability. If an offence is committed by any member of an unlawful assembly in prosecution of a common object thereof or such as the members of that assembly knew that the offence to be likely to be committed in prosecution of that object, every person who at the time of committing that offence was member would be guilty of the offence committed. The common object may be commission of one offence while there may be likelihood of commission of yet another offence, the knowledge whereof is capable of being safely attributable to the members of the unlawful assembly. Whether a member of such unlawful assembly was aware as regards likelihood of commission of another offence or not would depend upon the facts and circumstances of each case. Background of the incident, the motive, the nature of the assembly, the nature of the arms carried by the members of the assembly, their common object and the behaviour of the members soon before, at or after the actual commission of the crime would be relevant factors for drawing an inference in that behalf. (See Rajendra Shantaram Todankar v. State of Maharashtra)"
2008 3 AD(CR) 353; 2008 0 AIR(SC) 1860; 2008 0 AIR(SCW) 2608; 2008 0 CrLJ 2992; 2008 4 JT 477; 2008 6 Scale 17; 2008 11 SCC 337; 2009 1 SCC(Cri) 143; 2008 0 Supreme(SC) 559; Shivappa & Ors. Vs. State of Karnataka

In terms of section 113b of the Indian Evidence Act, onus of proof was upon the appellant. [see State of Karnataka v. M. V. Manjunathegowda and Anr. , (2003) 2 SCC 188] As the defence taken by the appellant has not been established, he cannot be held to have discharged the said onus.
2008 0 AIR(SC) 890; 2008 0 CrLJ 1400; 2008 2 JCR(SC) 13; 2008 3 JLJR(SC) 340; 2008 1 RCR(Cri) 382; 2009 1 Scale 452; 2007 14 SCC

696; 2009 3 SCC(Cri) 237; 2007 0 Supreme(SC) 1624; RAMESHWAR DASS Vs. STATE OF PUNJAB

In the former case it has been held that if two cases exclusively triable by the Court of Sessions arising out of the same transaction, are tried by two different Courts, there is a risk of two Courts coming to conflicting findings and to obviate such a risk, it is ordinarily desirable that the two cases should be tried separately but by the same Court. In the latter case, it has been held by their Lordships that even where one case is sessions triable and the other is triable by the Magistrate but they having arisen out of the same transaction, it is the salutary principle that such two cases, sometimes called case and counter-case, should be tried by the same Court because according to their Lordships, when two criminal cases relate to the same incident, if they are not tried and disposed of by the same Court by pronouncing the judgment on the same day, two different versions may come out in case of their separate trial by separate Courts. Hence it was the mandate of their Lordships that in such an exigency such pair of cases arising out of the same transaction must be heard and disposed of by the same Court and the judgments are to be pronounced on the same day, although however there is no necessity that they should be tried analogously or together.

2005 2 AllCriR 287; 2005 0 CrLJ 433; 2005 2 RCR(Cri) 226; 2002 0 Supreme(Cal) 635; BADAL CHOWDHURY Vs. STATE OF WEST BENGAL.

At the stage of Sections 203 and 204, Criminal Procedure Code in a case exclusively triable by the Court of Session, all that the Magistrate has to do is to see whether on a cursory perusal of the complaint and the evidence recorded during the preliminary inquiry under Sections 200 and 202, Criminal Procedure Code, there is prima facie evidence in support of the charge levelled against the accused. All that he has to see is whether or not there is "sufficient ground for proceeding" against the accused. At this stage, the Magistrate is not to weigh the evidence meticulously as if he were the trial court. The standard to be adopted by the Magistrate in scrutinising the evidence is not the same as the one which is to be kept in view at the stage of framing charges. This Court has held in Ramesh Singhs case (ibid), that even at the stage of framing charges the truth, veracity and effect of the evidence which the complaint produces or proposes to adduce at the trial, is not to be meticulously judged. The standard of proof and judgment, which is to be applied finally before finding the accused guilty or otherwise, is not exactly to be applied at the stage of framing charges. A fortiori, at the stage of Sections 202/204, if there is prima facie evidence in support of the allegations in the complaint relating to a case exclusively triable by the Court of Session, that will be a sufficient ground for issuing process to the accused and committing them for trial to the Court of Session. **1980 0 AIR(SC) 1780; 1980 0 CrLJ**

1271; 1980 Supp1 SCC 499; 1981 1 SCC(Cri) 438; 1980 0 Supreme(SC) 330; Kewal Krishan Vs. Suraj Bhan and another

In the Law Lexicon by P. Ramanatha Aiyar (2nd Edition), the word impound has been defined to mean

"to take possession of a document or thing for being held in custody in accordance with law".

Thus, the word "impounding" really means retention of possession of a good or a document which has been seized.

16. Hence, while the police may have power to seize a passport under Section 102 Cr.P.C. if it is permissible within the authority given under Section 102 of Cr.P.C., it does not have power to retain or impound the same, because that can only be done by the passport authority under Section 10(3) of the Passports Act. Hence, if the police seizes a passport (which it has power to do under Section 102 Cr.P.C.), thereafter the police must send it along with a letter to the passport authority clearly stating that the seized passport deserves to be impounded for one of the reasons mentioned in Section 10(3) of the Act. It is thereafter the passport authority to decide whether to impound the passport or not. Since impounding of a passport has civil consequences, the passport authority must give an opportunity of hearing to the person concerned before impounding his passport. It is well settled that any order which has civil consequences must be passed after giving opportunity of hearing to a party vide State of Orissa Vs. Binapani Dei [Air 1967 SC 1269].

17. In the present case, neither the passport authority passed any order of impounding nor was any opportunity of hearing given to the appellant by the passport authority for impounding the document. It was only the CBI authority which has retained possession of the passport (which in substance amounts to impounding it) from October, 2006. In our opinion, this was clearly illegal. Under Section 10A of the Act retention by the Central Government can only be for four weeks. Thereafter it can only be retained by an order of the Passport authority under Section 10(3).

18. In our opinion, even the Court cannot impound a passport. Though, no doubt, Section 104 Cr.P.C. states that the Court may, if it thinks fit, impound any document or thing produced before it, in our opinion, this provision will only enable the Court to impound any document or thing other than a passport. This is because impounding a "passport" is provided for in Section 10(3) of the Passports Act. The Passports Act is a special law while the Cr.P.C. is a general law. It is well settled that the special law prevails over the general law vide G.P. Singh's Principles of Statutory Interpretation (9th Edition pg. 133). This principle is expressed in the maxim "Generalia specialibus non derogant". Hence, impounding of a passport cannot be done by the Court under Section 104 Cr.P.C. though it can impound any other document or thing. **2008 0 AIR(SC) 1414; 2008 0 CrLJ 1599; 2008 2 JLJR(SC) 117; 2008 2 JT**

174; 2008 1 RCR(Cri) 897; 2008 2 Scale 46; 2008 3 SCC 674; 2008 2 SCC(Cri) 121; 2008 0 Supreme(SC) 119; SURESH NANDA Vs. C.B.I.

The perusal of Section 197 of the Code of Criminal Procedure would show that this Section would apply in those cases where the public servant is removable with the sanction of the State Government. In the present case, it is not the case of the accused that at the time of commission of the offence, he was removable by the State Government. Moreover, it was not part of the duty of the accused while acting as Police Officer to commit offence of the nature for which he was tried and hence for prosecuting accused for the offence under Section 376, IPC no sanction is required under Section 197, Cr. P.C. The act for which the appellant was tried and stands convicted has no relation, even the remotest, with his duties and functions as a public servant. Section 197, Cr. P.C. comes into play when the offence is committed while acting or purporting to act in the discharge of one's official duty. Here the appellant committed the act of gratifying his sexual lust, which had no link with the discharge of his duties as Investigating Officer. In this view of the matter, we are supported by a judgment of the Apex Court in Parkash Singh Badal v. State of Punjab (2007) 1 SCC 1 : AIR 2007 SC 1274. In any case, the objection of want of sanction under Section 197, Cr. P.C. is for the benefit of the accused, which he was required to take at an early stage. In the preset case he never took this objection during trial, therefore, in appeal this objection is not available to him. Hence, this submission of the learned counsel for the accused is rejected. **2008 0 CrLJ 1350; 2007 0 Supreme(HP) 356;Gulzar Muhamad Vs. State of H. P. and Anr.**

we have found from the record that no plea of alibi was raised. Although some suggestions were put to some of the witnesses that the accused was a farm servant and he was working in the farms of one Vittal Reddy, even that Vittal Reddy was not produced as a witness, and as a matter of fact, no proof was produced before the Court that the accused was not present in the house when the occurrence took place. Even in his examination under S. 313, Cr. P. C. , such a plea was not raised. It is a settled law that when a plea of alibi is taken, it is for the person raising the plea of alibi, to prove such a plea. **2007 1 ALD(Cri) 891; 2007 2 ALT(Cri) 210; 2007 3 Crimes 234; 2007 0 CrLJ 1572; 2006 0 Supreme(AP) 1577; RAVELLI YELLAIAH Vs. P. S. TOOPRAN**

Dying declaration – Clause (1) of Section 32 of the Evidence Act makes relevant what is generally described as dying declaration, though such an expression has not been used in any Statute – It essentially means statements made by a person as to the cause of his death or as to the circumstances of the transaction resulting in his death – Such statements are admitted on two grounds – Firstly, necessity for the victim being generally the only principal eye-witness to the crime, the exclusion of the

statement might deflect the ends of justice – Secondly, the sense of impending death, which creates a sanction equal to the obligation of an oath – The general principle on which this species of evidence is admitted is that they are declarations made in extremity; a situation so solemn and so lawful is considered by the law as creating an obligation equal to that which is imposed by a positive oath administered in a Court of justice – The principle on which dying declaration is admitted in evidence is indicated in legal maxim "nemo moriturus proesumitur mentiri, a man will not meet his maker with a lie in his mouth." (Para 7)

(1789) 1 Leach 500 – Relied upon.

The Indian Evidence Act, 1872 – Section 32 – Dying declaration – The situation in which a person is on deathbed is so solemn and serene when he is dying that the grave position in which he is placed, is the reason in law to accept veracity of his statement – Besides, should the dying declaration be excluded it will result in miscarriage of justice because the victim being generally the only eye-witness in a serious crime, such exclusion would leave the Court without a scrap of evidence – Because in case of dying declaration, the accused is deprived of cross-examination, the dying declaration should be of such a nature as to inspire full confidence of the Court in its correctness – However it cannot be laid down as an absolute rule of law that the dying declaration cannot form the sole basis of conviction unless it is corroborated. (Paras 8, 9,

AIR 1992 SC 1817 – Relied upon.

Indian Evidence Act, 1872 – Section 32 – If after careful scrutiny the Court is satisfied that the dying declaration is true and free from any effort to induce the deceased to make a false statement and if it is coherent and consistent, there shall be no legal impediment to make it basis of conviction, even if there is no corroboration. (Para 10)

JT 1992 (2) SC 417; JT 1993 (5) SC 87; JT 1994 (3) SC 232; JT 1996 (2) SC 595 – Relied upon.

Indian Evidence Act, 1872 – Section 32 – There being no material showing the dying declaration to be result of product of imagination, tutoring or prompting; rather the same appearing to have been made by the deceased voluntarily; it is trustworthy, credible and believable. (Para 11 and 12)

2007 0 CrLJ 3747; 2007 3 RCR(Cri) 925; 2007 5 Supreme 668; 2007 0 Supreme(SC) 1004; 2007 4 AD(Cr) 349; 2007 0 AIR(SC) 2709; 2007 0 AIR(SCW) 4895; 2008 1 BBCJ(SC) 273; 2007 4 Crimes(Sc) 315; 2007 3 Crimes(Sc) 265; 2007 9 JT 433; 2007 9 Scale 423; 2007 10 SCC 168; 2007 8 Supreme 155; 2007 0 Supreme(SC) 1003;Smt. Shakuntala Vs. State of Haryana

The contention of the learned counsel for the accused that the presumption enumerated under Section 113A of the Indian Evidence Act is not attracted in the present case does not merit acceptance. It is well-settled law that presumption with respect to the procedural matters is

normally to be construed as prospective. Section 113A does not create any new offence or make it punishable. It only deals with presumption which the Court may draw in particular facts situation. This Court in Gurbachan Singh v. Satpal Singh reported in AIR 1990 SC 2009 held in para 36 as under:- 36. The provisions of the said Section do not create any new offence and as such it does not create any substantial right but it is merely a matter of procedure of evidence and as such it is retrospective and will be applicable to this case. It is profitable to refer in the connection to Halsbury s Laws of England, (Fourth Edition), Volume 44 page 570 wherein it has been stated that:
The general rule is that all statutes, other than those which are merely declaratory or which relate only to matters or procedure or of evidence, are prima facie prospective and retrospective effect are not to be given to them unless, by express words or necessary implication, it appears that this was the intention of the legislature. **2007 5 AD(Cr) 490; 2007 0 AIR(SC) 2674; 2007 0 AIR(SCW) 4830; 2007 0 CrLJ 3741; 2007 9 JT 398; 2007 3 RCR(Cri) 885; 2007 9 Scale 325; 2007 12 SCC 681; 2007 0 Supreme(SC) 993; Arvind Kumar & Anr Vs State of Madhya Pradesh.**

(i) Explosive Act, 1884-Section 9B(i)(b)-Conviction for possession of explosive without licence-Prior sanction for prosecution as provided for under Explosive Substances Act was not a requirement under the Act-Conviction could not be challenged on the ground. (Para 5)

(ii) Explosive Act, 1884-Section 4(d)-Explosive-Appellants were found in possession of detonators-Courts below on evidence found that Ammonium tubes with electrical red wire were recovered-Articles were covered by Class-6 of Schedule I of the Act. (Paras 7 & 8)

(iii) Explosive Act, 1884-Section 9B(i)(b)-Recovery of 180 detonators from possession of appellants-Sentence-Value of detonators was Rs. 900/--Quantity seized disproved plea that seized articles were intended to be used for digging wells-Fact that accused tried to run away on seeing police was significant factor-Sentence of one year imprisonment with file could not be interfered with. (Para 9) **2004 0 AIR(SC) 4645; 2004 4 BBCJ(SC) 382; 2004 4 Crimes(SC) 18; 2004 0 CrLJ 4241; 2004 8 JT 226; 2005 1 PLJR(SC) 60; 2004 4 RCR(Cri) 374; 2004 7 Scale 644; 2004 7 SCC 566; 2004 0 SCC(Cri) 1996; 2004 6 Supreme 525; 2004 0 Supreme(SC) 1045; Lopchand Naruji Jat & Anr. Versus State of Gujarat**

Non explanation of injuries of the accused is one of the factors that could be taken into account in evaluating the prosecution evidence and the intrinsic worth of the defence version. **2004 0 AIR(SC) 4488; 2004 4 BBCJ(SC) 160; 2004 3 CCR(SC) 100; 2004 3 Crimes(SC) 298; 2004 3 JCC 1266; 2004 6 JT 217; 2004 3 RCR(Cri) 973; 2004 7 Scale 3; 2004 7 SCC 408; 2004 0 SCC(Cri) 1932; 2004 6 Supreme 248; 2004 0 Supreme(SC) 877;Dashrath Singh Versus State of U.P**

A plethora of decisions by this Court as referred to above would show that once the statement of prosecutrix inspires confidence and accepted by the courts as such, conviction can be based only on the solitary evidence of the prosecutrix and no corroboration would be required unless there are compelling reasons which necessitate the courts for corroboration of her statement. Corroboration of testimony of the prosecutrix as a condition for judicial reliance is not a requirement of law but a guidance of prudence under the given facts and circumstances. It is also noticed that minor contradictions or insignificant discrepancies should not be a ground for throwing out an otherwise reliable prosecution case. Non-examination of doctor and non-production of doctors report would not cause fatal to the prosecution case, if the statements of the prosecutrix and other prosecution witnesses inspire confidence. It is also noticed that the Court while acquitting the accused on benefit of doubt should be cautious to see that the doubt should be a reasonable doubt and it should not reverse the findings of the guilt on the basis of irrelevant circumstances or mere technicalities. **2005 0 AIR(SC) 3570; 2005 0 AIR(SCW) 4839; 2006 1 BBCJ(SC) 47; 2005 4 Crimes(SC) 92; 2005 0 CrLJ 4375; 2005 12 JT 150; 2006 1 PLJR(SC) 69; 2005 7 Scale 663; 2005 8 SCC 122; 2005 0 SCC(Cri) 1988; 2005 6 Supreme 583; 2005 0 Supreme(SC) 1263; State of M.P. Versus Dayal Sahu**

There is no material to show that the accused were determined to have sexual intercourse in all events. In the aforesaid background, the offence cannot be said to be an attempt to commit rape to attract culpability under Section 376/511 IPC. But the case is certainly one of indecent assault upon a woman. Essential ingredients of the offence punishable under Section 354 IPC are that the person assaulted must be a woman, and the accused must have used criminal force on her intend-ing thereby to outrage her modesty. What constitutes an outrage to female modesty is nowhere defined. The essence of a woman's modesty is her sex. The culpable intention of the accused is the crux of the matter. The reaction of the woman is very relevant, but its absence is not always decisive. Modesty in this Section is an attribute associat-ed with female human beings as a class. It is a virtue which attaches to a female owing to her sex. The act of pulling a woman, removing her dress coupled with a request for sexual intercourse, is such as would be an outrage to the modesty of a woman, and knowledge, that modesty is likely to be outraged, is sufficient to constitute the offence without any deliberate intention having such outrage alone for its object. As indicated above, the word 'modesty' is not defined in IPC. The Shorter Oxford Dictionary (Third Edn.) defines the word 'modesty' in relation to woman as follows :

"Decorous in manner and conduct; not forward or lowe; Shame-fast; Scrupulously chast."

14. Modesty can be described as the quality of being modest; and in relation to woman, "womanly propriety of behaviour; scrupulous chasti-ty of thought, speech and conduct." It is the reserve or sense of shame proceeding from instinctive aversion to impure or coarse sugges-tions. As observed by Justice Patterson in Rex v. James Lloyd (1876) 7 C&P 817. In order to find the accused guilty of an assault with intent to commit a rape, court must be satisfied that the accused, when he laid hold of the prosecutrix, not only desired to gratify his passions upon her person but that he intended to do so at all events, and notwithstanding any resistance on her part. The point of distinction between an offence of attempt to commit rape and to commit indecent assault is that there should be some action on the part of the accused which would show that he was just going to have sexual connection with her. **2004 2 Crimes(SC) 66; 2004 0 CrLJ 1399; 2004 0 SCC(Cri) 1266; 2004 2 Supreme 5;Aman Kumar & Anr. Versus State of Haryana.**

To insist on corroboration except in the rarest of rare cases is to equate one who is a victim of the lust of another with an accomplice to a crime and thereby insult womanhood. It would be adding insult to injury to tell a woman that her chain of rape will not be believed unless it is corroboration in material particulars as in the case of an accomplice to a crime. (See State of Maharashtra v. Chandra Prakash Kewalchand Jain (AIR 1990 SC 658). Why should be the evidence of the girl or the woman who complains of rape or sexual molestation be viewed with the aid of spectacles fitted with lenses tinged with doubt, disbelief or suspicion? The plea about lack of corroboration has no substance.

13. It is unfortunate that respect for womanhood in our country is on the decline and cases of molestation and rape are steadily growing. Decency and morality in public and social life can be protected only if Courts deal strictly with those who violate the social norms. Two alternative custodial punishments are provided; one is imprisonment for life or with imprisonment of either description for a term which may extend to ten years. The latter is the minimum, subject of course to the proviso which authorizes lesser sentence for adequate and special reasons.

14. In cases of gang rape the proof of completed act of rape by each accused on the victim is not required. The statutory intention in introducing Explanation (1) in relation to Section 376 (2) (g) appears to have been done with a view to effectively deal with the growing menace of gang rape. In such circumstances, it is not necessary that the prosecution should adduce clinching proof of a completed act of rape by each one of the accused on the victim or on each one of the victims where there are more than one in order to find the accused guilty of gang rape and convict them under Section 376 IPC. (See Promod Mahto and Ors. v. The State of Bihar (AIR 1989 SC 1475). **2003 4 Crimes(SC) 327; 2004 0 CrLJ 1; Bhupinder Sharma Versus State of Himachal Pradesh.**

Absence of injuries on the person of the prosecutrix is not necessarily an evidence of falsity of the allegation or an evidence of consent on the part of the prosecutrix. It will all depend on the facts and circumstances of each case.
Even assuming that the victim was previously accustomed sexual intercourse, that is not a determinative question. On the contrary, the question which was required to be adjudicated was did the accused commit rape on the victim on the occasion complained of. Even if it is hypothetically accepted that the victim had lost her virginity earlier, it did not and cannot in law give license to any person to rape her. It is the accused who was on trial and not the victim. Even if the victim in a given case has been promiscuous in her sexual behaviour earlier, she has a right to refuse to submit herself to sexual intercourse to anyone and everyone because she is not a vulnerable object or prey for being sexually assaulted by anyone and everyone. **2004 0 AIR(SC) 1290; 2003 0 AIR(SCW) 6947; 2004 1 CCR(SC) 41; 2004 1 Crimes(SC) 149; 2004 1 JCC 55; 2003 10 JT 416; 2003 2 Scale 645; 2003 10 SCC 675; 2004 0 SCC(Cri) 307; 2003 8 Supreme 791; 2003 0 Supreme(SC) 1290;State Of Punjab Versus Ramdev Singh**

1. While dealing with judgments and orders of the lower courts, the High Court should exercise judicial restraint as unsavoury remarks against a judicial personage of the lower hierarchy should be avoided.
2. The right of private defence would not enure to an aggressor and any step resorted the thwart an act of aggression is regarded as defensive act.
Evidence Act, 1872, Sec. 9, 3 – Identification – Trial Court disbelieved the statements of eye-witnesses, due to failure of Investigating Officer to conduct Test Identification parade – Held – Failure to hold Test Identification parade can not vitiate the evidence. **1998 1 Crimes(SC) 187; 1998 0 AIR(SC) 1185; 1998 0 AIR(SCW) 1005; 1998 1 Crimes(SC) 187; 1998 0 CrLJ 1617; 1998 1 RCR(Cri) 801; 1998 1 Scale 577; 1998 2 SCC 700; 1998 0 SCC(Cri) 673; 1998 2 Supreme 65; 1998 0 Supreme(SC) 216; Pammi @ Brijendra Singh Versus Government of Madhya Pradesh**

1. Information which an accused furnishes leading to recovery of weapon is admissible in evidence under Section 27 of the Evidence Act, but admissibility alone would not render the evidence, pertaining to the above information, reliable. While testing the reliability of such evidence the Court has to see whether it was voluntarily stated by the accused.
2. Re-examination need not be confined to clarification of ambigui-ties. Questions to elicit new matters can be put with permission of Court. Re-examination is not limited to one or two questions. Any number of questions can be asked if exigency so requires. If the Court thinks new matters are necessary, Court must be liberal in granting permission to put necessary questions.

3. It is only when discrepancies in the evidence of a witness are so incompatible with the credibility of his version that the Court is justified in jettisoning his evidence.
4. To contradict a witness must be to discredit the particular version of the witness. Unless the former statement has the potency to discredit the present statement, even if the latter is at variance with the former to some extent it would not be helpful to contradict that witness. **1999 4 Crimes(SC) 32; 1999 0 AIR(SC) 3544; 1999 0 AIR(SCW) 3546; 1999 0 CrLJ 4561; 1999 7 JT 247; 1999 4 RCR(Cri) 246; 1999 6 Scale 69; 1999 8 SCC 649; 1999 8 Supreme 364; 1999 0 Supreme(SC) 1087; Rammi @ Rameshwar etc. Versus State of Madhya Pradesh.**

While drawing the presumption under Section 114 on the basis of recent possession of belongings of the victim with the accused, the Court must adopt a cautious approach and have an assurance from all angles that the accused not merely committed theft or robbery but also killed the victim.
The case rests on circumstantial -evidence of recovery of ornaments worn by deceased, pursuant to information furnished by the accused to the police u/s.27 of Evidence Act, 1872. But High Court was not right to press into service Section 114(9) of Evidence Act in support of its conclusion that accused can be held guilty u/s. 302 r/w 34 IPC on that basis. **2002 0 AIR(SC) 491; 2002 0 AIR(SCW) 22; 2002 1 CCR(SC) 1; 2002 1 Crimes(SC) 63; 2002 0 CrLJ 590; 2002 1 JCC 294; 2001 Supp2 JT 79; 2002 1 RCR(Cri) 266; 2001 8 Scale 822; 2001 10 SCC 340; 2001 8 Supreme 722; 2001 0 Supreme(SC) 1678; 2002 1 UJ 307; 2002 1 Crimes(SC) 63; 2002 0 SCC(Cri) 1044; 2001 8 Supreme 722; Limbaji & Others Versus State of Maharashtra**

We have no difficulty in accepting the contention that evidence of mere identification of an accused person at the trial for the first time is from its very nature inherently of a weak character. The purpose of a prior test identification is to test and strengthen the trustworthiness of that evidence. Courts generally look for corroboration of the sole testimony of the witnesses in court so as to fix the identity of the accused who are strangers to them in the form of earlier identification proceedings. This rule of prudence, however, is subject to exceptions, when, for example, the court is impressed by a particular witness on whose testimony it can safely rely, without such or other corroboration. It has also to be borne in mind that the aspect of identification parade belongs to the stage of investigation, and there is no provision in the Code of Criminal Procedure which obliges the investigating agency to hold, or confers a right upon the accused to claim a test identification parade. Mere failure to hold a test identification parade would not make inadmissible the evidence of identification in court. What weight is to be attached to such identification is a matter for the courts of fact to examine. In appropriate cases, it may accept the evidence of identification even without insisting on

corroboration (Para 14) **2004 0 AIR(SC) 2775; 2004 2 JT 124; 2004 2 Scale 112; 2004 2 SCC 694; 2004 1 Supreme 577; 2004 0 Supreme(SC) 113; 2004 0 Supreme(SC) 115; Simon & Ors. Vs. State of Karnataka.**

"19. An extra-judicial confession, if voluntary and true and made in a fit state of mind, can be relied upon by the court. The confession will have to be proved like any other fact. The value of the evidence as to confession, like any other evidence, depends upon the veracity of the witness to whom it has been made. The value of the evidence as to the confession depends on the reliability of the witness who gives the evidence. It is not open to any court to start with a presumption that extra- judicial confession is a weak type of evidence. It would depend on the nature of the circumstances, the time when the confession was made and the credibility of the witnesses who speak to such a confession. Such a confession can be relied upon and conviction can be founded thereon if the evidence about the confession comes from the mouth of witnesses who appear to be unbiased, not even remotely inimical to the accused, and in respect of whom nothing is brought out which may tend to indicate that he may have a motive of attributing an untruthful statement to the accused, the words spoken to by the witness are clear, unambiguous and unmistakably convey that the accused is the perpetrator of the crime and nothing is omitted by the witness which may militate against it. After subjecting the evidence of the witness to a rigorous test on the touchstone of credibility, the extra-judicial confession can be accepted and can be the basis of a conviction if it passes the test of credibility. **State of Rajasthan v. Raja Ram, (2003) 8 SCC 180; 2003 0 AIR(SC) 3601; 2003 0 AIR(SCW) 4097; 2003 3 BBCJ(SC) 228; 2003 3 Crimes(SC) 346; 2003 0 CrLJ 3901; 2003 7 JT 399; 2003 4 RCR(Cri) 238; 2003 6 Scale 489; 2003 8 SCC 180; 2003 8 SCC(Cri) 1965; 2003 6 Supreme 11; 2003 0 Supreme(SC) 749; 2003 2 UJ 1501;**

EVIDENCE ACT : S.137, INDIAN PENAL CODE : S.302:- The appeal against the concurrent findings of conviction and sentence for murder under Section 302 is rejected stating that there is no ground for interference including the reliance on the extra-judicial confessions made to P.W.No:10 in view of the absence of any denial it is he who has produced them to the police during the investigation. **2011 0 AIR(SC) 1777; 2011 0 CrLJ 2633; 2011 3 JCR(SC) 108; 2011 4 JT 512; 2011 8 RCR(Cri) 1120; 2011 5 SCC 258; 2011 2 SCC(Cri) 608; 2011 0 Supreme(SC) 401;Kulvinder Singh & Anr. Versus State of Haryana**

When it is according to the medical evidence, that the deceased received ante mortem injuries and also post mortem burns, there was no need to mention that, if the burn injuries were ante mortem in nature there would be redness over the corresponding margins. In any case, nothing was

elicited from the medical evidence, which is in favour of the defence. Thereby it is established that her death was caused by means of axphyxia due to throttling and after her death, the post mortem burns were caused to the dead body.

In the decision Trimukh Maroti Krikhan, it is further held:

"12. If an offence takes place inside the privacy of a house and in such circumstances where the assailants have all the opportunity to plan and commit the offence at the time and in circumstances of their choice, it will be extremely difficult for the prosecution to lead evidence to establish the guilt of the accused if the strict principle of circumstantial evidence, as noticed above, is insisted upon by the Courts. A Judge does not preside over a criminal trial merely to see that no innocent man is punished. A Judge also presides to see that a guilty man does not escape. Both are public duties. (See Striland v. Director of Public Prosecution 1944 AC 315 - quoted with approval by Arijit Pasayat, J. in State of Punjab v. Karnail Singh (2003) 11 SCC 271). The law does not enjoin a duty on the prosecution to lead evidence of such character which is almost impossible to be led or at any rate extremely difficult to be led. The duty on the prosecution is to lead such evidence which it is capable of leading, having regard to the facts and circumstances of the case. Here it is necessary to keep in mind Section 106 of the Evidence Act which says that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. Illustration (b) appended to this section throws same light an the content and scope of this provision and it reads:

(b) A is charged with traveling on a railway without ticket. The burden of proving that he had a ticket is an him."

Where an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly 151 be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot ~e of the same degree as is required in other cases of circumstantial evidence. The burden would be of a comparatively lighter character. In view of Section 106 of the Evidence Act there will be a corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed. The inmates of the house cannot get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case lies entirely upon the prosecution and there is no duty at all on an accused to offer any explanation. **2012 1 ALD(Cri) 48; 2011 3 ALT(Cri) 269; 2011 0 Supreme(AP) 763; Pedda Tayanna Vs State of A.P.**

a director was clearly in the position of a trustee and being a trustee of the assets which has come into his hand he had dominion and control over the same. **1980 0 AIR(SC) 439; 1980 0 CrLJ 388; 1980 2 SCC 465; 1980 1 SCC(Cri) 493; 1979 0 Supreme(SC) 421; Shivanarayan Laxminarayan Joshi and others Versus State of Maharashtra and others**

Evidence of close relation witnesses—No ground to reject it—Normal discrepancies in evidence were those which were due to normal error of observation, normal error of memory due to lapse of time, due to mental disposition such as shock and horror—Normal discrepancies would not corrode the credibility of the case.

Exaggerated devotion to the rule of benefit of doubt must not nurture fanciful doubts or lingering suspicion and thereby destroy social defence. Justice cannot be made sterile on the plea that it is better to let hundred guilty escape than punish an innocent. Letting guilty escape is not doing justice according to law. [See: Gurbachan Singh v. Satpal Singh and Others [AIR 1990 SC 209]. Prosecution is not required to meet any and every hypothesis put forward by the accused. [See State of U.P. v. Ashok Kumar Srivastava [AIR 1992 SC 840]. A reasonable doubt is not an imaginary, trivial or merely possible doubt, but a fair doubt based upon reason and common sense. It must grow out of the evidence in the case. If a case is proved perfectly, it is argued that it is artificial; if a case has some flaws inevitable because human beings are prone to err, it is argued that it is too imperfect. One wonders whether in the meticulous hypersensitivity to eliminate a rare innocent from being punished, many guilty persons must be allowed to escape. Proof beyond reasonable doubt is a guide-line, not a fetish. [See Inder Singh and Anr. v. State (Delhi Admn.) (AIR 1978 SC 1091)]. Vague hunches cannot take place of judicial evaluation. "A judge does not preside over a criminal trial, merely to see that no innocent man is punished. A judge also presides to see that a guilty man does not escape. Both are public duties." (Per Viscount Simon in Stirland v. Director of Public Prosecution (1944 AC (PC) 315) quoted in State of U.P. v. Anil Singh (AIR 1988 SC 1998). Doubts would be called reasonable if they are free from a zest for abstract speculation. Law cannot afford any favourite other than truth. (See: Shivaji Sahebrao Bobade & Anr. v. State of Maharashtra (1974 (1) SCR 489), State of U.P. v. Krishna Gopal and Anr. (AIR 1988 SC 2154), and Gangadhar Behera and Ors. v. State of Orissa (2002 (7) Supreme 276). (Para 12)

Conviction by trial Court set aside in appeal by High Court—State appeal—No embargo on appellate Court reviewing evidence—Paramount consideration of Court is to ensure that miscarriage of justice in prevented. **2003 3 Crimes(SC) 292; 2003 0 CrLJ 3822; 2003 5 Supreme 508; 2003 0 AIR(SC) 3609; 2003 3 CCR(SC) 261; 2003 0 CrLJ 3892; 2003 3 JCC 1313; 2003 7 JT 543; 2004 1 RCR(Cri) 156; 2003 6 Scale 434; 2003 11 SCC 271; 2003 5 Supreme 508; 2003 0 Supreme(SC) 760; State of Punjab Versus Karnail Singh**

Code of Criminal Procedure 1973, Sec. 360-Release on Probation-Principles. **1978 0 AIR(SC) 1091; 1978 0 BBCJ(SC) 53; 1978 0 CrLJ 766; 1978 4 SCC 161; 1978 0 SCC(Cri) 564; 1978 3 SCR 393; 1978 0**

Supreme(SC) 81; Inder Singh and another Versus State (Delhi Administration),

Where an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence. The burden would be of a comparatively lighter character. In view of Section 106 of the Evidence Act there will be a corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed. The inmates of the house cannot get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case lies entirely upon the prosecution and there is no duty at all on an accused to offer any explanation.(Para 12)

In a case based on circumstantial evidence where no eye-witness account is available, there is another principle of law which must be kept in mind. The principle is that when an incriminating circumstance is put to the accused and the said accused either offers no explanation or offers an explanation which is found to be untrue, then the same becomes an additional link in the chain of circumstances to make it complete. This view has been taken in a catena of decisions of this Court. [See State of Tamil Nadu v. Rajendran (1999) 8 SCC 679 (para 6); State of U.P. v. Dr. Ravindra Prakash Mittal AIR 1992 SC 2045 (para 40); State of Maharashtra v. Suresh (2000) 1 SCC 471 (para 27); Ganesh Lal v. State of Rajasthan (2002) 1 SCC 731 (para 15) and Gulab Chand v. State of M.P. (1995) 3 SCC 574 (para 4)].(Para 16)

2006 0 AIR(SCW) 5300; 2007 1 BBCJ(SC) 68; 2006 4 Crimes(SC) 212; 2007 0 CrLJ 20; 2006 2 DMC 757; 2007 1 JCR(SC) 293; 2006 9 JT 50; 2006 10 Scale 190; 2006 10 SCC 681; 2007 1 SCC(Cri) 80; 2006 8 Supreme 58; 2006 0 Supreme(SC) 939;Trimukh Maroti Kirkan Versus State of Maharashtra

Criminal Procedure Code, 1973 - Sections 164 and 463 - Whether the confession of accused Satwant Singh being not made, in the manner prescribed under section 164 of Criminal Procedure Code is admissible in evidence and whether the same can be relied upon? (Yes)

Held, that where the High Court has reached conclusions based on partly inadmissible evidence and partly on circumstances which are not justified on the basis of evidence, or partly on facts which are not borne out from the evidence on record it cannot be contended that in an appeal under Article 136 this Court will not go into the facts of the case and come to its own conclusions.

Commission of Enquiry Act, 1951 - Section 6 - Evidence Act, 1872 - Section 145 read with Sections 155(3) and 157 - Thakkar Commission appointed to enquire into, inter alia, sequence of events and facts leading

to assassination of Late Prime Minister Smt. Indira Gandhi and any conspiracy-Appellants i.e., accused before trial court whether were entitled to copies of statements of those prosecution witnesses who were, examined by Thakkar Commission.? (No) - Or summoning the Commission. Report? (No).
Held, the language (of Section 327, Cr. P.C.) itself indicates that even if a trial is held in a private house or is held inside Jailor anywhere no sooner it becomes a venue of trial of a criminal case it is deemed to be in law an open place and everyone who wants to go and attend the trial has a right to go and attend the trial except the only restriction contemplated is number of persons which could be contained in the premises where the Court sits. It appears that the whole argument advanced on behalf of the appellants is on the basis of an assumption inspite of the provisions of Section 327 that as the trial was shifted from the ordinary place where the Sessions Courts are sitting to Tihar Jail it automatically became a trial, which was not open to public but in our opinion in view of Section 327 this assumption, the basis of the argument itself is without any foundation and cannot be accepted and argument on the basis of the foreign decisions loses all its significance. So far as this country is concerned the law is very clear that as soon as a trial of a criminal case is held whatever may be the place it will be an open trial. The only thing that is necessary for the appellant is to point out that in fact that it was not an open trial. It is not disputed that there is no material at all to suggest that anyone who wanted to attend the trial was prevented from so doing or one who wanted to go into the Court room was not allowed to do so and in-. absence of any such material on actual facts all these legal arguments loses its significance.
1988 0 AIR(SC) 1883; 1988 2 Crimes(SC) 981; 1988 3 Crimes(SC) 209; 1989 0 CrLJ 1; 1988 3 JT 191; 1988 2 Scale 117; 1988 3 SCC 609; 1988 0 SCC(Cri) 711; 1988 Supp2 SCR 24; 1988 0 Supreme(SC) 475; Kehar Singh & ors Vs State Delhi Administration.

It is trite to say that every confession must necessarily be an admission, but, every admission does not necessarily amount to a confession. While Section 17 to 23 deals with admissions, the law as to confessions is embodied in Sections 24 to 30 of the Evidence Act. Section 25 bars proof of a confession made to a police officer. Section 26 goes a step further and prohibits proof of confession made by any person while he is in the custody of a police officer, unless it be made in the immediate presence of a Magistrate. Section 24 lays down the obvious rule that a confession made under any inducement, threat or promise becomes irrelevant in a criminal proceeding. Such inducement, threat or promise need not be proved to the hilt. If it appears to the court that the making of the confession was caused by any induce-ment, threat or promise proceeding from a person in authority, the confession is liable to be excluded from evidence. The ex-pression 'appears' connotes that the Court need not go to

the extent of holding that the threat etc. has in fact been proved. If the facts and circumstances emerging from the evidence adduced make it reasonably probable that the confession could be the result of threat, inducement or pressure, the court will refrain from acting on such confession, even if it be a confession made to a Magistrate or a person other than police officer. Confessions leading to discovery of fact which is dealt with under Section 27 is an exception to the rule of exclusion of confession made by an accused in the custody of a police officer. Consideration of a proved confession affecting the person making it as well as the co-accused is provided for by Section 30. Briefly and broadly, this is the scheme of the law of evidence vis-a-vis confessions. (Para 8)

Confessions are considered highly reliable because no rational person would make admission against his interest unless prompted by his conscience to tell the truth. "Deliberate and voluntary confessions of guilt, if clearly prove are among the most effec-tual proofs in law". (vide Taylor's Treatise on the Law of Evi-dence Vol. I). However, before acting upon a confession the court must be satisfied that it was freely and voluntarily made. A confession by hope or promise of advantage, reward or immunity or by force or by fear induced by violence or threats of violence cannot constitute evidence against the maker of confes-sion. The confession should have been made with full knowledge of the nature and consequences of the confession. If any reasonable doubt is entertained by the court that these ingredients are not satisfied, the court should eschew the confession from considera-tion. So also the -authority recording the confession - be it a Magistrate or some other statutory func-tionary at the pre-trial stage, must address himself to the issue whether the accused has come forward to make the confession in an atmosphere free from fear, duress or hope of some advantage or reward induced by the persons in authority. Recognizing the stark reality of the ac-cused being enveloped in a state of fear and panic, anxiety and despair while in police custody, the Indian Evidence Act has excluded the admissibility of a confession made to the police officer. Section 164 of Cr.P.C. is a salutary provision which lays down certain precautionary rules to be followed by the Magistrate a confession so as to ensure the voluntariness of the confession and the accused being placed in a situation free from threat or influence of the police. (Para 8)

The crucial expression used in Section 30 is "the Court may take into consi-deration such confession". These words imply that the confession of a co-accused cannot be elevated to the status of substantive evidence which can form the basis of conviction of the co-accused. (Para 8)

There is one more point which we would like to discuss i.e. whether pointing out a material object by the accused furnishing the information is a necessary concomitant of Section 27. We think that the answer should be in the negative. Though in most of the cases the person who makes the disclosure himself leads the Police Officer to the place where an object is concealed and points out the same to him, however, it is not essential that

there should be such pointing out in order to make the information admissible under Section 27. It could very well be that on the basis of information furnished by the accused, the Investigating Officer may go to the spot in the company of other witnesses and recover the material object. By doing so, the Investigating Officer will be discovering a fact viz., the concealment of an incriminating article and the knowledge of the accused furnishing the information about it. In other words, where the information furnished by the person in custody is verified by the Police Officer by going to the spot mentioned by the informant and finds it to be correct, that amounts to discovery of fact within the meaning of Section 27. Of course, it is subject to the rider that the information so furnished was the immediate and proximate cause of discovery. If the Police- Officer chooses not to take the informant-accused to the spot, it will have no bearing on the point of admissibility under Section 27, though it may be one of the aspects that goes into evaluation of that particular piece of evidence. (Para 13)

(viii) Evidence Act, 1872—Sections 65B and 63—Call details of mobile phones—Proof and authenticity—Printouts taken from computers/servers by mechanical process—Whether can be led into evidence—(Yes)—There is no bar to adducing secondary evidence under Sections 63 and 65 of Evidence Act.

2005 0 AIR(SC) 3820; 2005 0 AIR(SCW) 4148; 2005 0 AIR(SCW) 4146; 2006 1 BBCJ(SC) 96; 2005 3 Crimes(SC) 87; 2005 0 CrLJ 3950; 2005 3 JCC 1404; 2005 7 JT 1; 2005 6 Scale 177; 2005 11 SCC 600; 2005 0 SCC(Cri) 1715; 2005 6 SCJ 210; 2005 5 Supreme 414; 2005 0 Supreme(SC) 985; State (N.C.T. of Delhi) Vs Navjot Sandhu @ Afsan Guru.

Evidence – Special court taking contents of Jankiraman Committee as evidence to indict accused 6 – Committee not a court, merely a fact finding committee – Contents of the report could not be admitted in evidence without formal proof. (Para 77, 80)

Criminal conspiracy – Independent offence punishable separately – Must be proved independently – Ingredients – Prosecution must establish meeting point of two or more persons for doing or causing to be done an illegal act or an act by illegal means – Conspiracy may be general or separate – May develop in successive stages – A smaller conspiracy may be a part of a larger conspiracy.

Indian Penal Code, 1860 – Section 43 – Illegal – What is? – Everything constituting an offence; everything prohibited by law; and everything furnishing ground for civil action.

Indian Penal Code, 1860 – Section 409 – CBI initiating action on basis of Janakiraman Committee report – Concerned Banks are not required by law to make a complaint – It is also not the requirement that the Banks must have ultimately suffer some loss – Commission of criminal breach of

trust attracts section 409 – That apart, such act may amount to temporary embezzlement of public money.
Criminal and civil breach of trust – Breach of trust simpliciter involves civil wrong – Can be redressed by damages – Breach of trust with mens rea is criminal breach of trust giving rise to criminal prosecution as well – Misappropriation with a dishonest intention, even temporary misappropriation – Most essential ingredient of proof of criminal breach of trust
2010 0 AIR(SC) 1812; 2009 3 CCR(SC) 658; 2009 10 JT 597; 2009 4 RCR(Cri) 140; 2009 11 SCC 737; 2010 1 SCC(Cri) 164; 2009 0 Supreme(SC) 1417; R.Venkatakrishnan Vs C.B.I.

It is now well settled that the discovery of fact referred to in Section 27 of the Evidence Act is not the object recovered but the fact embraces the place from which the object is recovered and the knowledge of the accused as to it.
It is not the requirement of law that unless prosecution establishes a motive of the accused to murder the deceased prosecution must necessarily fail. No doubt it is a sound principle to remember that every criminal act was done with a motive but its corollary is not that no criminal offence would have been committed if prosecution has failed to prove the precise motive of the accused to commit it.
There is nothing in Section 27 of the Evidence Act which renders the statement of the accused inadmissible if re-covery of the articles was made from any place which is 'open or accessible to others'; the crucial question is not whether the place was accessible to others or not but whether it was ordinarily visible to others. If it is not, then it is immaterial that the concealed place is accessible to others. **1999 0 AIR(SC) 1293; 1999 0 AIR(SCW) 982; 1999 1 BBCJ(SC) 177; 1999 2 CCR(SC) 8; 1999 1 CHN(SC) 103; 1999 2 Crimes(SC) 31; 1999 0 CrLJ 2025; 1999 1 JCC 215; 1999 2 JT 99; 1999 2 KLT(SC) 902; 1999 2 RCR(Cri) 167; 1999 2 Scale 19; 1999 4 SCC 370; 1999 0 SCC(Cri) 539; 1999 3 Supreme 230; 1999 0 Supreme(SC) 312; State of H.P. Vs Jeet Singh.**

Evidence Act, 1872 - Sections 32 and 62, Explanation 2 - Offence of rape The Doctor was not available for giving evidence as she had proceeded on long leave-Carbon copy of the medical certificate was admissible in evidence. (Para 4)
Indian Penal Code, 1860 -Section 376 -Conviction under-Appeal-Medical evidence showing signs of inflammation around the vulva; the vagina bleeding, the hymen absent with the edges torn, and tenderness and around-Hymen was bleeding on touch and the vagina admitted one finger with difficulty-The appellant, 18 years of age was fit to indulge in sexual intercourse-Radiological examination-Prosecutrix was between 8½ and 12 years of age-Human blood on her salwar-No spermatozoa detected-Prosecution case of profuse bleeding - Longstanding enmity between two

families-Possibility of false implication ruled out-Conviction is legally sustainable. (Para 10)

1989 1 Crimes(SC) 384; 1989 0 CrLJ 841; 1989 0 SCC(Cri) 702; 1989 1 JT 106; 1989 1 Scale 74; 1989 1 SCC 432; 1989 0 SCC(Cri) 206; 1989 1 SCR 123; 1989 0 Supreme(SC) 28; Prithi Chand Vs State of H.P.

Indian Penal Code, 1860 - Section 376 - Prosecutrix a poor labourer, working in factory, taken & lifted to machine room & raped by appellant - Prosecutrix had no reason to falsely involve appellant - Semen stains on her petticoat & in vagina lend corroboration to her evidence - Absence of injury explained by her that she was laid on minute sand found acceptable - It is safe to place reliance on her testimony - Conviction calls for no interference. (Para 7)

Indian Penal Code, 1860 - Section 376 - Delay in lodging FIR - In such cases no inference can be drawn that complaint is false. (Para 6)

Indian Penal Code 1860 - Section 376 Defective investigation - Two independent witnesses who could have corroborated prosecutrix not examined - I.O. not referring to attachment of semen stained chaddi of accused - Court however would not be right in acquitting accused solely on account of such defects. (Paras 3 to 5)

1995 0 AIR(SC) 2472; 1995 0 AIR(SCW) 3644; 1995 4 CCR(SC) 10; 1995 3 Crimes(SC) 527; 1995 0 CrLJ 4173; 1995 6 JT 437; 1996 1 PLJR(SC) 11; 1995 3 RCR(Cri) 526; 1995 4 Scale 752; 1995 5 SCC 518; 1995 0 SCC(Cri) 977; 1995 0 Supreme(SC) 805; 1995 2 UJ 646; Karnel Singh Vs State of M.P.

The probative value of the evidence is the weight to be given to it which has to be judged having regard to the facts and circumstances of each case.

2. Generally, the dying declaration u/s. 32(1) of Evidence Act, 1872 ought to be recorded in the form of questions-answers but if a dying declaration is not elaborate but consists of only a few sentences and is in the actual words of the maker, the mere fact that it is not in question-answer form cannot be a ground against its acceptability or reliability.

3. The mental condition of the maker of the dying declaration, alert-ness of mind, memory and understanding of what he is saying, are matters which can be observed by any person. But to lend assurance to those factors having regard to the importance of the dying declara-tion, the certificate of a medically trained person is insisted upon. In the absence of availability of a doctor to certify the above-men-tioned factors, if there is other evidence to show that the recorder of the statement has satisfied himself about those requirements before recording the dying declaration, there is no reason as to why the dying declaration u/s. 32(1) of Evidence Act, 1872 should not be accepted.

1998 0 AIR(SC) 1850; 1998 0 AIR(SCW) 1647; 1998 0 BBCJ(SC) 198; 1998 2 Crimes(SC) 254; 1998 0 CrLJ 2515; 1998 3 JT 290; 1998 2 PLJR(SC) 169; 1998 2 RCR(Cri) 403; 1998 3 Scale 200; 1998 4 SCC 517; 1998 4 Supreme 178; 1998 0 Supreme(SC) 503; Ram Bihari Yadav Vs State of Bihar.

Where Statements of the deceased to several witnesses including Police Sub-Inspector who recorded the statement consistently and clearly stated manner of assault and identified the accused, conviction treat-ing statements as dying declarations was justified.
1999 0 AIR(SC) 644; 1999 0 AIR(SCW) 296; 1999 1 CCR(SC) 1; 1999 0 CrLJ 1122; 1999 1 JCC 70; 1999 1 JT 25; 1999 1 PLJR(SC) 66; 1999 1 RCR(Cri) 627; 1999 1 Scale 26;; 1999 0 SCC(Cri) 85; 1999 1 SCJ 299; 1999 1 Supreme 2; 1999 0 Supreme(SC) 22; (1999 2 SCC 1260 : 1999 SCC (Crl.) 104 : 1999 Crl. L.J. 1122 : 1999(1) JT 25 : 1999(1) CCR 1 : 1999(1) SCJ 299 Paras Yadav & Ors. v. State of Bihar,

that invariably the witnesses and embroidery to prosecution story, perhaps for the fear of being disbelieved. But that is no ground to throw the case overboard, if true, in the main. If there is a ring of truth in the main, the case should not be rejected. It is the duty of the Court to cull out the nuggets of truth from the evidence unless there is reason to believe that the inconsistencies or falsehood are so glaring as utterly to destroy confidence in the witnesses. It is necessary to remember that a Judge does not preside over a criminal trial merely to see that no innocent man is of punished. A Judge also presides to see that as guilty man does not escape. One is as important as the other. Both are public duties which the Judge has to perform. (Para 10) **1988 3 Crimes(SC) 367; 1989 0 CrLJ 88; 1989 0 SCC(Cri) 58; State of U.P. Vs Anil Singh.**

It is not unknown that where serious offences like the present are committed and a large number of accused persons are tried, attempts are made either to terrorise or win over prosecution witnesses, and if the prosecutor honestly and bona fide believes that some of his witnesses have been won over, it would be unreasonable to insist that he must tender such witnesses before the Court. It is undoubtedly the duty of the prosecution to lay before the Court all material evidence available to it which is necessary for unfolding its case; but it would be unsound to lay down as a general rule that every witness must be examined even though his evidence may not be very material or even if it is known that he has been won over or terrorised. In such a case, it is always open to the defence to examine such witnesses as their witnesses and the Court can also call such witnesses in the box in the interest of justice under S. 540, Cr. P. C.
It may be conceded that if a point of fact which plainly arises on the record, or a point of law which is relevant and material and can be argued

without any further evidence being taken was urged before the trial Court and after it was rejected by it was not repeated before the High Court, it may, in a proper case be permissible to the appellants to ask this Court to consider that point in an appeal under Art. 136 of the Constitution;
1965 0 AIR(SC) 202; 1965 0 CrLJ 226; 1964 8 SCR 133; 1964 0 Supreme(SC) 164; Masalti Vs State of U.P.

Evidence Act 1872, Sections 134 and Penal Code 1860, section 149 - Criminal trial unlawful Assemble - Identification of accused - There is no rule of evidence that no conviction can be based unless a certain minimum number of witnesses have identified a particular accused as a member of unlawful assembly - Evidence is not to be counted but only weighed - It is not the quantity of evidence but the quality that matters - Even the testimony of one single witness if wholly reliable is sufficient to establish identification of an accused - when, size of unlawful assembly is quite large a formula should be adopted to insist all at least two reliable witnesses. (Para 30)
Evidence Act 1872, section 11 - "Alibi" - Meaning of - "Alibi" not an exception (special or general) - It is only a rule of evidence recognised in section 11 that facts which are inconsistent with the fact in issue are relevant. Strict proof is required for establishing the plea of alibi. (Para 21 & 22)
Evidence Act 1872, section 3 - Appreciation of evidence of eye-witnesses - Re-appreciation of evidence on the strength of some discrepancies which do not appear to be material or serious - Held - Concurrent finding regarding reliability of evidence of those witnesses can not be disturbed. (Para 29)
Evidence Act 1872, section 3 - Massacre - Identification of assailants - There is no justification in drawing a hiatus between injured witnesses and non injured witnesses as for capacity to identify the assailants while in action - Held - No fault can be found with them as to their inability to identify assailants. (Para 15)
1997 0 AIR(SC) 322; 1997 0 AIR(SCW) 78; 1998 0 BBCJ(SC) 1; 1997 0 CrLJ 362; 1996 10 JT 79; 1997 1 PLJR(SC) 159; 1997 1 PLJR(SC) 24; 1998 1 RCR(Cri) 620; 1997 1 RCR(Cri) 178; 1996 7 Scale 910; 1997 1 SCC 283; 1996 0 Supreme(SC) 1810; Binay Kumar Singh Vs State of Bihar.

Non-framing of charge would not vitiate the conviction if no prejudice is caused thereby to the accused. As observed in the aforesaid case, the trial should be fair to the accused, fair to the State and fair to the vast mass of the people for whose protection penal laws are made and administered. Criminal Procedure Code is a procedural law and is designed to further the ends of justice and not to frustrate them by the introduction of endless technicalities.

Code of Criminal Procedure, 1973 - Section 464-Non-framing of charge-Would not vitiate conviction if no prejudice is caused to accused.

1999 0 AIR(SC) 775; 1999 0 AIR(SCW) 390; 1999 2 BBCJ(SC) 26; 1999 1 CCR(SC) 54; 1999 1 Crimes(SC) 50; 1999 0 CrLJ 1134; 1999 1 JT 259; 1999 1 RCR(Cri) 839; 1999 1 Scale 235; 1999 2 SCC 522; 1999 0 SCC(Cri) 281; 1999 1 Supreme 308; 1999 0 Supreme(SC) 116; Kammari Brahmiah And Ors vs Public Prosecutor, High Court

There is neither any rule of law no of prudence that evidence furnished by extra-judicial confession cannot be relied upon unless corroborated by some other credible evidence. The Courts have considered the evidence of extra-judicial confession a weak piece of evidence. (See Jagta v. State of Haryana (1975) 1 SCR 165 at. P. 170 and State of Punjab v. Bhajan Singh (1975) 1 SCR 747 at. P. 751. In Sahoo v. State of U. P. (1965) 3 SCR 86 it was held that an extra-judicial confession may be an expression of conflict of emotion, a conscious effort to stifle the pricked conscience; an argument to find excuse or justification for his act; or a penitent or remorseful act of exaggeration of his part in the crime. Before evidence in this behalf is accepted, it must be established by cogent evidence what were the exact words used by the accused. The Court proceeded to state that even if so much was extablished, prudence and justice demand that such evidence cannot be made the sole ground of conviction. It may be used only as a corroborative piece of evidence. In that case, the evidence was that after the commission of murder the accused was heard muttering to himself that he has finished the deceased. The High Court did not interfere with the conviction observing that the evidence of extra-judicial confession is corroborated by circumstantial evidence. However in Pyara Singh v. State of Punjab (1978) 1 SCR 597 this Court, observed that the law does not require that evidence of an extra-judicial confession should in all cases be corroborated. It thus appears that extra-judicial confession appears to have been treated as a weak piece of evidence but there is no rule of law nor rule of prudence that it cannot be acted upon unless corroborated. If the evidence about extra-judicial confession comes from the mouth of witness / witnesses who appear to be unbiased, not even remotely inimical to the accused, and in respect of whom nothing is brought out Which may tend to indicate that he may have a motive for attributing an untruthful statement to the accused; the words spoken to by the witness are clear, unambiguous and unmistakably convey that the accused is the perpetrator of the crime and nothing is omitted by the witness which may militate against it, then after subjecting the evidence of the witness to a rigorous test, on the touchstone of credibility, if it passes the test, the extra-judicial confession can be accepted and can be, the basis of a conviction. In such a situation to go in search of corroboration itself tends to cast a shadow of doubt over the evidence. If the evidence of extra-judicial confession is reliable, trustworthy and beyond reproach the Same can be relied upon and a conviction can be founded thereon.

While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the Court to scrutinise the evidence more particularly keeping in view the deficiencies drawbacks and infirmities pointed out in the evidence, as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier, evaluation of the evidence. is shaken as to render it unworthy of belief. Minor discrepancies on trivial matters not touching the core of the case, hyper-technical approach by taking sentences torn out of context here or there from the evidence, Attaching importance to some technical error committed by/ the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as hole. It the Court before whom the witness gives evidence had the opportunity to form the opinion About the general tenor of evidence given by the witness, the appellate Court which had not this benefit will have to attach due weight to the appreciation of evidence by the trial Court and unless there are reasons weighty and formidable it would not be proof to reject the evidence on the ground of minor variations or infirmities in the matter of trivial details. Even honest and truthful witnesses may differ in some details unrelated to the main incident because power of observation, retention and reproduction differ with individuals. Cross examination is an unequal duel between a rustic and refined lawyer. Having examined the evidence of this witness, a friend and well-wisher of the family carefully giving due weight to the comments made-by the learned counsel for the respondent and the reasons assigned to by the High Court for rejecting his evidence simultaneously keeping in view the appreciation of the evidence of this witness by the trial Court, we have no hesitation in holding that the High Court was in error in rejecting the testimony of witness Nair whose evidence appears to us trustworthy and credible.

If the investigating officer did obtain the signature of Nair an intimate friend of the ,respondent speaking about the confession of the respondent, it may be that it may be a violation of See. 162 of the Code of Criminal Procedure but no attempt was made to verify this fact by referring to the case diary. The Court is always entitled to look into the case diary. Assuming that Nairs admission that his signature was obtained on the statement recorded by the investigating officer on March 1, 1973, is correct, it does not render his evidence inadmissible. It merely puts the Court on caution and may necessitate indepth scrutiny of the evidence. But the evidence on this account cannot be, rejected outright. Sec. 162 of the Code of Criminal Procedure does not provide that evidence of a witness given in the Court becomes inadmissible if it is found that the statement of the witness recorded in course of the investigation was signed by the witness at the instance of the investigating officer. Such is not the effect of contravention of Sec. 162 Code of Criminal Procedure.

1985 0 AIR(SC) 48; 1985 0 CrLJ 493; 1985 1 RCR(Cri) 87; 1984 2 Scale 728; 1985 1 SCC 505; 1985 0 SCC(Cri) 105; 1984 0 Supreme(SC) 322; State of U.P. Vs. M.K. Anthony.

Though the trial court referred to the evidence of the eye-witnesses, it chose to disbelieve them merely on account of minor inconsistencies in their evidence, relating to the exact site of occurrence and failure to name all who landed blows and the exact nature of injuries. The High Court, on the other hand, held that minor inconsistencies and discrepancies regarding the exact place or the point at which the incident took place or as to who landed the blows is not sufficient to disbelieve the evidence of injured eye-witnesses. It is not necessary that all eye-witnesses should specifically refer to the distinct acts of each member of an unlawful assembly. In fact, it is difficult, if not impossible. (Para 14)

The contention that when only four persons are found guilty, there cannot be conviction under section 149 IPC, has no merit. Section 149 provides that if an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence. Section 141 requires a minimum of five persons for being designated as an 'unlawful assembly'. The question has been specifically considered by this Court. (Paras 17 & 18)

2006 0 AIR(SC) 831; 2006 0 AIR(SCW) 177; 2006 2 BBCJ(SC) 64; 2006 1 Crimes(SC) 1; 2006 0 CrLJ 799; 2006 1 JCC 163; 2006 2 JT 631; 2006 1 RCR(Cri) 427; 2006 1 SBR 493; 2006 1 Scale 100; 2006 10 SCC 313; 2006 3 SCC(Cri) 546; 2006 3 SCJ 141; 2006 1 Supreme 30; 2006 0 Supreme(SC) 14 Kallu @ Masih & Ors. Vs State of M.P.

Criminal Trial – Unlawful Assembly – It is well-settled that where a crowd of assailants who are members of an unlawful assembly proceeds to commit an offence in pursuance of common object of unlawful assembly, it is often not possible for witnesses to describe accurately part played by each one of the assailants- Besides, if a large crowd of persons armed with weapons assaults a victim, it is not necessary that all of them must take part in the actual assault – Even in absence of actual assault, all members of unlawful assembly may be held vicariously liable for the acts of others provided there was common object to commit a crime – Appreciation of evidence in such a complex situation is indeed a difficult task, but courts exercising powers in administering criminal justice have to do their best in dealing with such cases and it is expected of them to discharge their duty to sift the evidence carefully and to decide which part of it is true and which is not. (Para 15)

2008 11 JT 435; 2009 3 SCC(Cri) 1214; 2008 7 Supreme 578; 2008 0 Supreme(SC) 1547; Viji & Anr Vs State of Karnataka.

Relationship is not a factor to affect credibility of a witness. It is more often than not that a relation would not conceal actual culprit and make allegations against an innocent person. Foundation has to be laid if plea of false implication is made. In such cases, the court has to adopt a careful approach and analyse evidence to find out whether it is cogent ad credible. (Para 11)

Exaggerated devotion to the rule of benefit of doubt must not nurture fanciful doubts or lingering suspicion and thereby destroy social defence. Justice cannot be made sterile on the plea that it is better to let hundred guilty escape than punish an innocent. Letting guilty escape is not doing justice according to law. (Para 18)

Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases (see Padamasundara Rao (dead) and Ors. v. State of Tamil Nadu & Ors. [JT 2002 (3) SC 1]. It is more so in a case where conclusions relate to appreciation of evidence in a criminal trial, as was observed in Krishna Mochi s case (supra). The inevitable result of this appeal is dismissal which we direct. (Paras 29 and 30)

2002 0 AIR(SC) 3633; 2002 0 AIR(SCW) 4271; 2002 3 BBCJ(SC) 220; 2003 1 Crimes(SC) 28; 2003 0 CrLJ 41; 2002 8 JT 135; 2002 7 Scale 402; 2002 8 SCC 381; 2003 0 SCC(Cri) 32; 2002 7 Supreme 276; 2002 0 Supreme(SC) 1028; Gangadhar Behera & Ors Vs State of Orissa.

The learned defence counsel contended that these judicial confessions should not have been admitted into evidence at all in absence of examining the Magistrate who recorded the same. We think this contention has no force. Section 80 of the Evidence Act provides that whenever any document is produced before any Court purporting to be a statement or concession by any prisoner or accused person, taken in accordance with law, and purporting to be signed by any Judge or Magistrate, or by any officer authorised by law to take evidence, the Court shall presume that the document is genuine; that any statements as to the circumstances under which it was taken, purporting to be made by the person signing it, are true, and that such statement or confession was duly taken. The Supreme Court in the case of Kashmira Singh v. State of Madhya Pradesh, AIR 1952 SC 159 : (1952 Cri LJ 839), repelled the defence criticism in that case based on the fact that the Magistrate who recorded the confession had not been examined as a witness. Their Lordships endorsed the remarks of the Privy Council in Nazir Ahmed's case (AIR 1936 PC 253) : (37 Cri LJ 897) regarding the undesirability of calling the Magistrate who recorded the confession as a witness. This Court in the case of Bisipati Padhan v. State, 1969 O.JD. 71 : (1969 Cri LJ 1517), has also taken the view that the confessional statement can be admitted into evidence and made an exhibit without examining the Magistrate in court. This is what has exactly been done in this case by

exhibiting the two judicial confessions as Exts. 18 and 18/1. If the defence had brought out such facts as would have destroyed the presumption of Section 80 of the Evidence Act, then, in such a contingency the prosecution may probably have had to examine the Magistrate to corroborate the presumption and to prove that all the formalities required by law had been complied with before recording the Judicial confession. The appellants 1 and 2, however do not take any such plea that the formalities were not complied with. On the contrary, appellant No. 2 completely denied to have made a confession, a statement which is palpably false.
1976 0 CrLJ 325; 1975 0 Supreme(Ori) 60; BANDHU KICHEI AND OTHERS VERSUS THE STATE.

the court dealt with the meaning of the word "instigation" and "goading". The court has opined that there should be intention to provoke, incite or encourage the doing of an act by the latter. Each person's suicidability pattern is different from the other. Each person has his own idea of self-esteem and self-respect. Therefore, it is impossible to lay down any straitjacket formula in dealing with such cases. Each case has to be decided on the basis of its own facts and circumstances. Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained. The intention of the legislature and the ratio of the cases decided by the apex court were clear that in order to convict a person under section 306 of the IPC, there has to be a clear mens rea to commit the offence and it also requires an active act or direct act which lead the deceased to commit suicide seeing no option and that act must have been intended to push the deceased into such a position that he committed suicide.
Indian Penal Code, 1860 - Sections 107 and 306 - Abetment of suicide - direct involvement of person concerned in the commission of offence of suicide is essential to bring home offence u/s 306 word uttered in a fit of anger or emotion without intending consequences to actually follow, cannot be said to be instigation - presence of mens rea is necessary concomitant of instigation - to constitute an offence u/s 306, prosecution has to establish that a person committed suicide, and that such suicide was abetted by accused - any willful misrepresentation or willful concealment of material fact which accused is bound to disclose, may also come within contours of abetment. (Paras 11 to 15) **Chitresh Kumar Chopra Vs State (Govt. NCT of Delhi) 2009 3 ACR(SC) 2608; 2010 0 AIR(SC) 1446; 2009 4 BBCJ(SC) 311; 2009 4 CCR(SC) 1; 2009 4 JCC 2507; 2009 4 JLJR(SC) 150; 2009 10 JT 698; 2009 4 RCR(Cri) 196; 2009 16 SCC 605; 2009 0 Supreme(SC) 1432;**

Two panch witnesses on the fact of recovery turned hostile-Testimony of police official was however supported by fact that lethal weapons were produced before the Court after recovery-No reason to reject the testimony of police witness and conviction called for no interference. (Para 7)
2000 4 Crimes(SC) 290; 2000 8 JT 104; 2001 9 SCC 362; 2000 7 Supreme 687; 2000 0 Supreme(SC) 881;Mohd Aslam Vs State of Maharasthra.

CRIMINAL TRIAL - Adjournment of trial of sessions case for cross-examination of prosecution witnesses -witnesses resiling from their earlier statements on the adjourned date -Court can take earliest version given by witnesses - Duty of court to proceed for perjury against hostile witnesses - Adjournment of case for recording evidence by Sessions Court - Deprecated
1995 0 CrLJ 1738; 1994 1 LS 255; 1994 0 Supreme(AP) 175; Pubi Satyanarayana @ Satteyya Vs State of A.P.

Penal Code Sec. 408 & 109 - Prosecution of Chairman and member of the Co-operative Society for conspiracy to commit criminal breach of trust - Facts found leading to no case of defalcation - Prosecution must prove cohesion and collusion between all the accused - Conviction can not be based on the principles of vicarious liability. (Para 8)
1984 0 AIR(SC) 151; 1984 0 BBCJ(SC) 1; 1983 2 Crimes(SC) 942; 1984 0 CrLJ 162; 1983 2 Scale 709; 1984 Supp1 SCC 207; 1984 0 SCC(Cri) 474; 1984 1 SCR 797; 1983 0 Supreme(SC) 366; Jethsur Surangabhai Vs. State of Gujarat

It is now well settled that FIR need not be encyclopedic.
Non recovery of incriminating material from accused cannot be a ground to exonerate them of charges when eye witnesses examined by prosecution were found to be trustworthy. . **2008 1 AD(Cr) 21; 2008 0 CrLJ 816; 2008 1 RCR(Cri) 574; 2007 14 SCC 711; 2009 3 SCC(Cri) 244; 2007 8 Supreme 573; 2007 0 Supreme(SC) 1591; Umar Mohammed Vs State of Rajasthan.**

Evidence Act, 1872 — Section 9 — Test identification parade — When FIR is lodged against unknown person, a test identification parade is held for testing veracity of witness in regard to his capability of identifying person — Holding of a test identification parade after a long time will loose its significance. (Paras 17 and 20)
It is no doubt true that the substantive evidence of identification of an accused is the one made in the court. A judgment of conviction can be arrived at even if no test identification parade has been held. But when a First Information Report has been lodged against unknown persons, a test identification parade in terms of Section 9 of the Evidence Act, is held for

the purpose of testing the veracity of the witness in regard to his capability of identifying persons who were unknown to him.

2007 0 AIR(Kar)(R) 30; 2007 0 AIR(SC) 1729; 2007 0 AIR(SCW) 2740; 2007 0 CrLJ 2740; 2007 3 JCR(SC) 47; 2007 7 JT 55; 2007 3 RCR(Cri) 97; 2007 6 Scale 216; 2007 3 Supreme 781; 2007 0 Supreme(SC) 610; Ravi @ Ravichandran Vs State.

Code of Criminal Procedure, 1973-Section 239-Indian Evidence Act, 1872-Section 10-Discharge of accused-Legality of-Offence under Section 409 r/w 120-B of IPC and Section 13(2) of Prevention of Corruption Act-Respondent Ex-Chief Minister arraigned as prime accused along with other accused persons who were Minister and Government Officers-Trial Court discharging respondent on ground material were insufficient to frame charge against her but framing charges against other accused persons-Reasoning of trial Court any High Court that while signing concerned file objection note of Secretary was not there and Chief Minister, respondent, would not have known conspiracy-Held, on basis of material available on record there is strong presumption, under respondent affords satisfactory explanation, that respondent was aware of serious consequence of dial on State exchequer as pointed out by Secretary-Court can presume there are reasonable ground to believe she was involved in conspiracy envisaged in Section 10 of Evidence Act-Exercise at stage of discharge must be confined to considering police report and documents to decide allegations against accused-Discharge order of trial Court as confirmed by High Court set aside.

2000 0 AIR(SC) 1589; 2000 0 AIR(SCW) 1737; 2000 3 CCR(SC) 25; 2000 2 Crimes(SC) 292; 2000 2 JCC 514; 2000 6 JT 260; 2000 3 RCR(Cri) 407; 2000 4 Scale 390; 2000 5 SCC 440; 2000 0 SCC(Cri) 981; 2000 3 Supreme 768; 2000 0 Supreme(SC) 1016; State of Tamil Nadu Vs. J. Jayalalitha

Criminal trial-Appreciation of evidence-Evidence of investi-gation officer-Even if investigation is illegal or even suspicious rest of evidence must be scrutinised independently-Court must have predomi-nence and pre-eminence in criminal trials over action by investigating officers-If Court is convinced that testimony of witness to occurrence is true Court is free to act on it albeit investigation officer's suspicious role in the case.

Trial Court cannot overlook the reality that an investigating officer comes to the Court for giving evidence after conducting inves-tigation in many other cases also in the meanwhile. Evidence giving process should not bog down to memory tests of witnesses. An investi-gating officer must answer the questions in Court, as far as possible, only with reference to what he had recorded during investigation. Such records are the contemporaneous entries made by him and hence for refreshing his memory it is always advisable that he looks into those records before answering any question. (Para 21)

Criminal Courts should not expect a set reaction from any eye witness on seeing an incident like murder. If five persons witness one incident there could be five different types of reactions from each of them. It is neither a tutored impact nor a structured reaction which the eye witness can make. It is fallacious to suggest that PW-11 would have done this or that on seeing the incident. Unless the reaction demonstrated by an eye witness is so improbable or so inconceivable from any human being pitted in such a situation it is unfair to dub his reactions as unnatural. (Para 26)

The general rule of evidence is that no witness shall be cited to contradict another witness if the evidence is intended only to shake the credit of another witness. The said rule has been incorporated in Section 153 of the Evidence Act. The basic requirement for adducing such contradictory evidence is that the witness, whose impartiality is sought to be contradicted with the help of such evidence, should have been asked about it and he should have denied it. Without adopting such a preliminary recourse it would be meaningless, if not unfair, to bring in a new witness to speak something fresh about a witness already examined. As the general rule of evidence is one of prohibiting evidence on collateral issues and since it is only by way of exception that such evidence can be permitted, the Court must guard that the defence evidence falls strictly within the exception. (Paras 28, 30 & 31).

2000 0 AIR(SC) 185; 1999 0 AIR(SCW) 4276; 1999 3 Crimes(SC) 171; 2000 0 CrLJ 400; 1999 8 JT 10; 2000 1 PLJR(SC) 42; 1999 4 RCR(Cri) 508; 1999 6 Scale 330; 1999 8 SCC 715; 1999 8 Supreme 496; 1999 0 Supreme(SC) 1149; State of Karnataka Vs. K. Yarappa Reddy

There is no legal requirement that a confession should be made to an authorised officer. Any person can give evidence in a court regarding a confession made by an accused to him. If such confession was made to a Magistrate the law requires the same to be recorded in the manner prescribed by law. If a confession is made to any other person the court has to consider whether the evidence of that person can be believed which depends upon the credibility of the witness giving such evidence in court.

2000 10 SCC 360; 1999 0 Supreme(SC) 826; Sasi Vs State of Kerala

By virtue of Section 8 of the Evidence Act, the conduct of the accused person is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact. The evidence of the circumstance, simplicitor, that the accused pointed out to the police officer, the place where the dead body of the kidnapped boy was found and on their pointing out the body was exhumed, would be admissible as conduct under Section 8 irrespective of the fact whether the statement made by the accused contemporaneously with or antecedent to such conduct falls within the purview of Section 27 or not as held by this Court in Prakash Chand Vs. State (AIR 1979 SC 400). Even if we hold that the disclosure statement

made by the accused appellants (Ex. P14 and P15) is not admissible under Section 27 of the Evidence Act, still it is relevant under Section 8.
2005 0 AIR(SC) 3809; 2005 0 AIR(SCW) 3914; 2005 4 BBCJ(SC) 152; 2005 3 Crimes(SC) 231; 2005 0 CrLJ 3732; 2005 3 JCC 1331; 2005 7 JT 246; 2005 6 Scale 348; 2005 7 SCC 714; 2005 0 SCC(Cri) 1938; 2005 5 Supreme 746; 2005 0 Supreme(SC) 1008; A.N.Venkatesh & anr Vs. State of Karnataka.

True that these PWs are the Gotias of the deceased, but that by itself would be no reason to discard their evidence. The appellant was also their Gotia. Therefore, these PWs can be termed as independent witnesses.
1989 0 CrLJ 1516; 1988 0 Supreme(Pat) 321; Sarbeshwar Pragnait Vs State of Bihar.

Non-cross examination on a vital aspect is deemed to have been admitted.
1966 0 AIR(Cal) 620; 1964 0 Supreme(Cal) 234; SUKHRAJI BHUJ vs CALCUTTA STATE TRANSPORT CORPORATION

Freedom of expression, which is legitimate and constitutionally protected, cannot be held to ransom by an intolerant group of people. The fundamental freedom under Article 19 (l) (a) can be reasonably restricted only for the purposes mentioned in Article 19 (2 and the restriction must be justified on the anvil of necessity and not the quicksand of convenience or expediency. Open criticism of government policies and operations is not a ground for restricting expression. We must practice tolerance to the views of others. Intolerance is as much dangerous to democracy as to the person himself.
IT is really absurd to say that speeches of this kind amount to sedition. If such were the case. then every argument against the present form of government and in favour of some other form of government might be alleged to lead to hatred of the government, and it might be suggested that such ideas brought the government into contempt. To suggest some other form of government is not necessarily to bring the present government into hatred or contempt.
1989 2 JT 70; 1989 1 Scale 812; 1989 2 SCC 574; 1989 2 SCR 204; 1989 0 Supreme(SC) 195; S. RANGARAJAN Vs. P. JAGJIVAN RAM

a Writ Petition being W.P.(Crl.) No.155/2014 titled All India Human Rights and Social Justice Front vs. Union of India, filed in the Supreme Court seeking ban on another forthcoming movie „PK" on the ground of the same promoting obscenity and hurting religious sentiment with the posters of the film actor Amir Khan standing in nude on a railway track with only a transistor protecting his modesty, was dismissed in limine. Though the order of dismissal does not give any reasons but the news media widely reported, the Court during the hearing having observed that if any such restrictions were imposed, the same could affect the

Constitutional right of the film maker and that our society is a very mature society and the petitioners therein should not be so sensitive about such a thing.

K.A. Abbas vs. Union of India, (1970) 2 S.C.C. 780 The case related to the documentary A tale of 4 cities, which was not given UCertificate, against which the writ petition was filed challenged.

It was held that pre-censorship was correct as per the Constitution. The Court observed that standards of obscenity must not be at the level of the most depraved to determine what is morally healthy for a normal person. It is not the elements of rape, leprosy and other social problems that should be censored, it is the manner in which such themes are handled.

2) Maqbool Fida Hussain vs. Rajkumar Pandey, 2008 Cr. L.J.4107 This case, which was decided by one of us (S.K. Kaul, C.J.), related to private complaints filed against the noted painter M.F. Hussain for allegedly vilifying Hindu Gods and Goddesses through his art work.

It was observed therein, quoting with approval the ratio of Samaresh Bose vs. Amal Mitra (1985) 4 SCC 289), that for the purposes of judging obscenity, the judge must first place himself in the shoes of the author in order to appreciate what the author really wishes to convey, and thereafter, he must place himself in that position of the reader of every age group in whose hands the book may fall and then arrive at a dispassionate conclusion. The complaints were thus quashed.

3) Nandini Tiwari vs. Union of India, 2014 S.C.C. Online Del. 4662 This case involved a writ petition filed to ban the Hindi film Finding Fannyfor using the word Fanny.

The writ petition was dismissed observing that obscenity has to be judged from the point of view of an average person, by applying contemporary community standards. It was held that if a reference to sex by itself is considered to be obscene and not fit to be read by adolescents, the adolescents will not be in a position to read any novel and will have to read books which are purely religious.

A film that illustrates the consequences of a social evil necessarily must show that social evil. The guidelines must be interpreted in that light. No film that extols the social evil or encourages it is permissible, but a film that carries the message that the social evil is evil cannot be made impermissible on the ground that it depicts the social evil. At the same time, the depiction must be just sufficient for the purpose of the film. The drawing of the line is best left to the sensibilities of the expert Tribunal. The Tribunal is a multi-member body. It is comprised of persons who gauge public reactions to films and, except in cases of stark breach of guidelines, should be permitted to go about its task

The guidelines are broad standards. They cannot be read as one would read a statute.

1996 0 AIR(SC) 1846; 1996 0 AIR(SCW) 2156; 1996 2 CCC(SC) 193; 1996 2 CLT(SC) 333; 1996 4 JT 533; 1996 4 Scale 75; 1996 4 SCC 1;

1996 3 SCJ 70; 1996 3 Supreme 772; 1996 0 Supreme(SC) 885; Bobby Art International Vs. Om Pal Singh Hoon & Ors

Were there serious merit in the charge, a criminal prosecution would serve to sanitize the polluted celluloid, handcuff cinemas running erotic and amok, and become a curial super-censorship of salacious films. Why not? Were it otherwise, the precarious film producer had to face a new menace to public exhibition easily set in motion through the process of the court by any busybody willing to blackmail or wanting to harass, prodded by rival producers. Especially when a special statute (the Cinematograph Act) has set special standards for films for public consumption and created a special board to screen and censor from the angle of public morals and the like with its verdicts being subject to higher review, inexpert criminal courts must be cautious to rush in and, indeed, must fear to tread, lest the judicial process should become a public footpath for any highway man wearing a moral mask holding up a film-maker who has travelled the expensive and perilous journey to exhibition of his certificated picture. Omniscience, if one may adapt a great thought of Justice Holmes, is not the property of a Judge.

1980 0 AIR(SC) 258; 1980 0 CrLJ 202; 1980 1 SCC 43; 1980 0 SCC(Cri) 72; 1980 1 SCR 1081; 1979 0 Supreme(SC) 453; Raj Kapoor Vs State

Once an expert body has considered the impact of the film on the public and has cleared the film, it is no excuse to say that there may be a law and order situation and that it is for the State Government concerned to see that the law and order situation is maintained and that in any democratic society there are bound to be divergent views.

2011 4 JLJR(SC) 112; 2011 10 JT 102; 2011 8 SCC 372; 2011 6 Supreme 109; 2011 0 Supreme(SC) 793; M/s Prakash Jha Productions & Anr Vs. Union of India & Ors

THE question, further arises whether by interpretative process, would it be permissible to fill in the gaps. THOugh it is settled law that in working the law and finding yearning gaps therein, to give life and force to the legislative intent, instead of blaming the draftsman, the courts ironed out the creases by appropriate technique of interpretation and infused life into dry bones of law. But such an interpretation in our respectful view is not permissible, when we are called upon to interpret the organic Constitution and working the political institutions created therein. When Parliament has had an opportunity to consider what exactly is going wrong with the political system designed by the Constitution but took no steps to amend the Constitution in this behalf, it is a principle of legal policy, that the law should be altered deliberately, rather than casually by a sidewind only, by major and considered process. Amendment of the Constitution is a serious legislative business and change in the basic law, carefully work out, more

fundamental changes are brought out by more THOrough-going and in-depth consideration and specific provisions should be made by which it is implemented. Such is the way to contradict the problem by the legislative process of a civilised State. It is a well-established principle of construction that a statute is not to be taken as affecting parliamentary alteration in the general law unless it shows words that are found unmistakably to that conclusion. No motive or bad faith is attributable to the legislature. Bennion at page 338 extracting from the Institute of the Law of Scotland Vol. 3, page I of The Practice by David Maxwell at page 127 abstracted that "where a matter depends entirely on the construction of the words of a statute, there cannot be any appeal to the nobile officium". He stated at page 344 that

"where the literal meaning of the enactment goes narrower than the object of the legislator, the court may be required to apply a rectifying construction. Nowadays it is regarded as not in accordance with public policy to allow a draftsman's ineptitude to prevent justice being done. This was not always the case. "where the language of a statute is clear and unambiguous, there is no room for the application either of the doctrine of casus omissus or of pressing into service external aid, for in such a case the words used by the Constitution or the statute speak for themselves and it is not the function of the court to add words or expressions merely to suit what the court thinks is the supposed intention of the legislature. In American Jurisprudence 2d Series, Vol. 73 at page 397 in para 203 it is stated that:

"it is a general rule that the courts may not, by construction insert words or phrases in a statute or supply a casus omissus by giving force and effect to the language of the statute when 'applied to a subject about which nothing whatever is said, and which, to all appearances, was not in the minds of the legislature at the time of the enactment of the law. "under such circumstances new provisions or ideas may not be interpolated in a statute or engrafted thereon. At page 434 in para 366 it is further stated that:

"while it has been held that it is duty of the courts to interpret a statute as they find it without reference to whether its provisions are expedient or unexpedient, it has also been recognised that where a statute is ambiguous and subject to more than one interpretation, the expediency of one construction or the other is properly considered. Indeed, where the arguments are nicely balanced, expediency may tip the scales in favour of a particular construction. It is not the function of a court in the interpretation of statutes, to vindicate the wisdom of the law. The mere fact that the statute leads to unwise results is not sufficient to justify the court in rejecting the plain meaning of unambiguous words or. in giving to a statute a meaning of which its language is not susceptible, or in restricting the scope of a statute. By the same token, an omission or failure to provide for contingencies, which it may seem wise to have provided for specifically, does not justify any judicial addition to the

language of the statute. To the contrary, it is the duty of the courts to interpret a statute as they find it without reference to whether its provisions are wise or unwise, necessary or unnecessary, appropriate or inappropriate or well or ill conceived

(239) CRAIES on Statute Law, 7th Edn. , at page 69, states that the second consequence of the rule of casus omissus is that the statute may not be extended to meet a case for which provision has clearly and undoubtedly not been made. In Construction of Statutes by Crawford at page 269 in paragraph 169 it is stated that omissions in a statute cannot, as a general rule, be supplied by construction. Thus, if a particular case is omitted from the terms of a statute, even THOugh such a case is within the obvious purpose ofthe statute and the omission appears to have been due to accident or inadvertence, the court cannot include the omitted case by supplying the omission. This is equally true where the omission was due to the failure of the legislature to foresee the missing case. As is obvious, to permit the court to supply the omissions in statutes, would generally constitute an encroachment upon the field of the legislature. In construing the Constitution we cannot look beyond the letter of the Constitution to adopt something which would command itself to our minds as being implied from the context. In State of Tasmania v. Commonwealth of Australia and State of Victoria" Connor, J. dealing with the question observed thus :

"it appears to me that the only safe rule is to look at the statute itself and to gather from it what is its intention. If we depart from that rule we are apt to run the risk of the danger described by Pollack, C. J. , in Mille v. Solomons. 'if, he says, 'the meaning of the language be plain and clear, we have nothing to do but to obey it - to administer it as we find it; and, I think, to take a different course is to abandon the office of Judge, and to assume the province of legislation'. Some passages were cited by Mr Glynn from Black on the Interpretation of Laws, which seem to imply that there might be a difference in the rules of interpretation to be applied to the Constitution and THOSE to be applied to any other Act of Parliament, but there is no foundation for any such distinction. The intention of the enactment is to be gathered from its words. If the words are plain, effect must be given to them; if they are doubtful, the intention of legislature is to be gathered from the other provisions of the statute aided by a consideration of surrounding circumstances. In all cases in order to discover the intention you may have recourse to contemporaneous circumstances - to the history of the law, and you may gather from the instrument itself the object of the legislature in passing it. In considering the history of the law, you may look into previous legislation, you must have regard to the historical facts surrounding the bringing of law into existence. In the case of a Federal Constitution the field of inquiry is naturally more extended than in the case of a State Statute, but the principles to be applied are the same. You may deduce the intention of the legislature from a consideration of the instrument itself in the light of

these facts and circumstances, but you cannot go beyond it. If that limitation is to be applied in the interpretation of an ordinary Act of Parliament, it should at least be as stringently applied in the interpretation of an instrument of this kind, which not only is a statutory enactment, but also embodies the compact by which the people of the several colonies of Australia agreed to enter into an indissoluble Union

(240) IN Encyclopaedia of the American Judicial System - The Constitutional Interpretation by Craig R. Ducat it is stated that the standard for assessing constitutionality must be the words of the Constitution, notwhat the judges would prefer the Constitution to mean. The constitutional supremacy necessarily assumes that a superior rule is what the Constitution says, it is not what the judges prefer it to be. (Vide page 973. (emphasis supplied) In judicial tributes balancing the competing interest Prof Ducat quoted with approval the statement of Bickel at page 798 thus :

"the judicial process is too principle-prone and principle-bound - it has to be, there is no other justification or explanation for the role it plays. It is also too remote from conditions, and deals, case by case, with too narrow a slice of reality. It is not accessible to all the varied interests that are in play in any decision of great consequence. It is, very properly, independent. It is passive. It has difficulty controlling the stages by which it approaches a problem. It rushes forward too fast, or it lags; its pace hardly ever seems just right. For all these reasons, it is, in a vast, complex, changeable society, a most unsuitable instrument for the formation of policy

(241) IN the Modes of Constitutional interpretation by Craig R. Ducat, 1978 Edn. at p. 125, he stated that the judges' decision ought to mean society's values not their own. He quoted Cardozo's passage from the Nature of Judicial Process at page 108 that, "ajudge, I think would err if he were to impose upon the community as a rule of life his own idiosyncracies of conduct or belief'. The court when caught in a paralysis of dilemma should adopt self-restraint, it must use the judicial review with greatest caution. In clash of political forces in political statement the interpretation should only be in rare and auspicious occasions to nullify ultra vires orders in highly arbitrary or wholly irrelevant Proclamation which does not bear any nexus to the predominant purpose for which the Proclamation was issued, to declare it to be unconstitutional and no more

(242) FRANKFURTER, J. says in Dennis v. US thus :

"but how are competing interests to be assessed? Since they are not subject to quantitative ascertainment, the issue necessarily resolves itself into asking, who is to make the adjustment? - who is to balance the relevant factors and ascertain which interest is in the circumstances to prevail? Full responsibility for the choice cannot be given to the courts. courts are not representative bodies. They are not designed to be a good reflex of a democratic society. Their judgment is best informed, and therefore most dependable, within narrow limits. Their essential quality is

detachment, founded on independence. History teaches that the independence of the judiciary is jeopardized when courts become embroiled in the passions of the day and assume primary responsibility in choosing between competing political, economic and social pressures

(243) REGIONALISM, linguism and religious fundamentalism have become divisive forces to weaken the unity and integrity of the country. Linguistic chauvinism adding its fuel to keep the people poles apart. Communalism andcasteism for narrow political gains are creating foul atmosphere. The cessationist forces are working from within and outside the country threatening national integration. To preserve the unity and integrity of the nation, it is necessary to sustain the power of the President to wisely use Article 356 to stem them out and keep the government of the State functioning in accordance with the provisions of the Constitution. Article 356 should, therefore, be used sparingly in only cases in which the exercise of the power is called for. It is not possible to limit the scope of action under Article 356 to specific situations, since the failure of the constitutional machinery may occur in several ways due to diverse causes be it political, internal subversion or economic causes and no strait-jacket formula would be possible to evolve. The Founding Fathers thus confided the exercise of the power in the highest executive, the President of India, through his council of Ministers headed by the Prime Minister of the country who is accountable to the people of the country. **1994 0 AIR(SC) 1918; 1994 0 AIR(SCW) 2946; 1994 2 JT 215; 1994 2 Scale 1; 1994 3 SCC 1; 1994 0 Supreme(SC) 337; S.R.Bommai Vs Union of India.**

Similarly, failure of the investigating officer to seize blood-stained clothes of P. Ws. 1 to 4, and to produce the F. S. L. Report cannot be made a ground to disbelieve the prosecution case.

When prosecution case is fully established by direct testimony of eye-witnesses which is corroborated then any failure or omission of investigating officer cannot render prosecution case doubtful or unworthy of belief.

2006 1 ALT(Cri) 294; 2005 0 Supreme(AP) 728; 2005 CRLJ 3896 (AP) 2006(1)ALD(Cri)125, Kunduru Vinaya Reddy alias Fathima Mareddy Vs. State of A.P.

as a general rule the court can and may act on the testimony of a single witness provided he is wholly reliable. There is no legal impediment in convicting a person on the sole testimony of a single witness. That is the logic of Section 134 of the Indian Evidence

2008(1)ACR783(SC), AIR2008SC1381, 105(2008)CLT513(SC), 2008CriLJ1804, JT2008(1)SC450, 2008-1-LW(Crl)423, 2008(1)SCALE479, (2008)2SCC151 Kunju @ Balachandran Vs. State of Tamil Nadu

It is also our experience that invariably the witnesses add embroidery to prosecution story, perhaps for the fear of being disbelieved. But that is no ground to throw the case overboard, if true, in the main. If there is a ring of truth in the main, the case should not be rejected. It is the duty of the Court to cull out the nuggets of truth from the evidence unless there is reason to believe that the inconsistencies or falsehood are so glaring as utterly to destroy confidence in the witnesses. It is necessary to remember that a Judge does not preside over a criminal trial merely to see that no innocent man is of punished. A Judge also presides to see that as guilty man does not escape. One is as important as the other. Both are public duties which the Judge has to perform.

1988 0 AIR(SC) 1998; 1988 3 Crimes(SC) 367; 1989 0 CrLJ 88; 1988 3 JT 491; 1990 3 RCR(Cri) 585; 1988 2 Scale 436; 1988 Supp1 SCC 686; 1988 Supp2 SCR 611; 1988 0 Supreme(SC) 532; State of U.P. Vs Anil Singh.

(i) Criminal - benefit of conflicting evidences - oral and medical evidence contrary to each other - held, benefit of such vagueness should be granted to accused. (ii) Evaluation of evidence - accusation on group - evidence should be taken leaving out improbabilities and exaggerations - held, it is quality

1999(2)ALD405, 1999(1)ALD(Cri)525, 1999(1)ALT(Cri)529, 1999CriLJ2368 Kollam Brahmananda Reddy Vs. State of A.P

Indian Penal Code, 1860 – Section 34 – Common intention prior to the commission of the offence in point of time is essential – Persons having similar intention which is not the result of the pre-arranged plan cannot be held guilty of the criminal act u/s 34 – Even if some of the co-accused have been acquitted, rest can be convicted invoking S. 34. (Paras 45, 51 and 52)

Criminal trial – Framing of charge – Non-framing of charge is not fatal if it did not cause prejudice to the accused. (Paras 39 and 43)

Criminal trial – Eye witness and medical evidence – Consistent and reliable evidence of eye witness will prevail upon medical evidence even if at variance. (Paras 31 to 33 and 36)

Criminal trial – Injured witness – An injured witness comes with a built-in guarantee of his presence at the scene of the crime – He is unlikely to spare his actual assailant(s) in order to falsely implicate someone else – Testimony of such a witness is generally considered to be very reliable – Convincing evidence is required to discredit an injured witness. (Paras 26 and 28)

Criminal Trial – Identification – Where the number of assailants is large it is difficult to identify each assailant and attribute a specific role to him. (Para 22)

2010 71 AllCriC(SC) 555; 2010 4 CCR(SC) 245; 2010 4 Crimes(SC) 86; 2010 10 JT 434; 2011 1 RCR(Cri) 550; 2010 10 SCC 259; 2010 3

SCC(Cri) 1262; 2010 6 Supreme 489; 2010 0 Supreme(SC) 869; 2010 8 UJ 4037; Abdul Sayeed Vs. State of Madhya Pradesh.

Related and Interested witnesses – Mere relationship is not a factor to affect the credibility of a witness – It is more often than not that a relation would not conceal actual culprit and make allegations against an innocent person – Foundation has to be laid if plea of false implication is made.
Testimony of an eye-witness, who received injuries in the occurrence, if found to be trustworthy of belief, cannot be discarded merely for non-examination of the independent witnesses. (Para 39)
Merely because prosecution has failed to explain injuries on the accused, the same cannot be a solitary ground for doubting the prosecution case, if otherwise, evidence relied upon is found to be credible. (Para 46)
2008 3 AD(CR) 365; 2008 0 AIR(SCW) 4231; 2008 2 ALT(CRI)(SC) 381; 2008 0 CrLJ 3602; 2008 6 JT 1; 2008 7 Scale 10; 2008 13 SCC 271; 2009 3 SCC(Cri) 543; 2008 2 Supreme 898; 2008 1 SUPREME 898; 2008 0 Supreme(SC) 634; Mahesh s/o Janardhan Gonnade Vs. State of Maharasthra.

Code of Criminal Procedure, 1973 – Section 174 – Proceedings u/s 174 have limited scope – Inquest report cannot be treated as substantive evidence. (Paras 17 and 18)
Code of Criminal Procedure, 1973 – Though ordinarily investigation is undertaken on information received by a police officer, the receipt of information is not a condition precedent for investigation – Information regarding a cognizable offence furnished to the police will be regarded as FIR – All enquiries held by the police subsequent thereto would be treated as investigation, even though the formal registration of the FIR takes place only later. (Paras 22 and 23)
2010 0 AIR(SC) 3300; 2010 71 AllCriC(SC) 367; 2010 4 BBCJ(SC) 442; 2010 4 JCR(SC) 182; 2010 9 JT 470; 2010 4 RCR(Cri) 799; 2010 10 SCC 374; 2010 3 SCC(Cri) 1301; 2010 6 Supreme 475; 2010 0 Supreme(SC) 872; Sri Sambhu Das @ Bijoy Das & Anr. Vs State of Assam.

Mere non-recovery of pistol or cartridge does not detract the case of the prosecution where clinching and direct evidence is acceptable. Likewise, absence of evidence regarding recovery of used pellets, blood stained clothes etc. cannot be taken or construed as no such occurrence had taken place.
Motive for doing a criminal act is generally a difficult area for the prosecution to prove since one cannot normally be seen into the mind of another. Motive is the emotion which impels a man to do a particular act. Even in the absence of specific evidence as to motive,
2011 0 AIR(SC) 3380; 2012 1 BBCJ(SC) 120; 2011 0 CrLJ 4943; 2011 4 JCR(SC) 138; 2011 10 JT 112; 2011 4 RCR(Cri) 270; 2011 9 SCC

115; 2011 6 Supreme 69; 2011 0 Supreme(SC) 842; State of Rajasthan Vs. Arjun Singh.

Again mere non-recovery of pistol or cartridge does not detract the case of prosecution where clinching and direct evidence is acceptable- Likewise, absence of evidence regarding recovery of used pellets, blood stained clothes etc. could not be taken or construed as no such occurrence had taken place- Apart from that gun shot injuries tallied with medical evidence-Deposition of doctor PW1 that deceased received 8 and 7 gun shot wounds respectively while PW-2 also received 8 gun shots scattered in front of left thigh- The reliable eye-witnesses stated that there was previous enmity between them and litigation was going on between the accused and the complainant-Even in absence of motive, in view of assertion of eye-witnesses, coupled with the medical evidence case of prosecution could not be thrown out-
1997(2)ALD(Cri)656, 1998(1)ALT(Cri)1, 1998CriLJ335, JT1997(8)SC492, 1997(6)SCALE435 State of Maharashtra Vs. Manohar

(i) Indian Penal Code, 1860-Section 302-Appeal against conviction for murder - For same offence another accused tried earlier and acquitted-Eye witnesses same for both trial-Eye witnesses in earlier trial attributed fatal assault to accused in that case-In present trial attributing assault to present accused-No explanation for difference in their evidence-Evidence of witnesses unreliable-Conviction set aside. (Para 7)
1999(3)ACR2880(SC), AIR2000SC366, 2000(1)ALD(Cri)78, 2000CriLJ494, JT1999(9)SC342, 1999(7)SCALE254, (2000)1SCC295, L.L. Kale Vs. State of Maharashtra & Ors

IT is not necessary that number of prosecution witnesses will come before the Court and it is the quality of the evidence has to be weighed.
2000 1 ALD(Cri) 557; 2000 1 ALT(Cri) 471; 2000 0 CrLJ 3396; 2000 0 Supreme(AP) 34; Padigapati Sanjeevarayudu alias Kethanna VS State Of A. P

Where in a sudden fight accused and deceased started grappling and accused took out a scissors and assaulted deceased on his abdomen and chest, offence would fall u/s 304 part II and not u/s 302 IPC.
Relationship is not a factor to affect credibility of a witness. It is more often than not that a relation would not conceal actual culprit and make allegations against an innocent person. Foundation has to be laid if plea of false implication is made. In such cases, the court has to adopt a careful approach and analyse evidence to find out whether it is cogent and credible.(Para 11)

2007 2 JCR(SC) 213; 2007 1 RCR(Cri) 924; 2007 1 SCC 699; 2007 1 SCC(Cri) 425; 2006 9 Supreme 613; 2006 0 Supreme(SC) 1234; Salim Sahab Vs State of Madhya Pradesh.

If ocular testimony is such that it is not possible to relate injuries with circumstances in which they were said to have been inflicted, Court has discretion not to accept the ocular evidence.
The present case is an example of contradiction between the ocular evidence and the medical evidence, where the medical evidence is not borne out by the ocular evidence. In such a situation it was suggested on behalf of the appellants on the authority of a decision of this Court in the case of State of M.P. vs. Dharkole alias Govind Singh and Ors., reported in (2004) 13 SCC 308, where the medical evidence was at variance with the ocular evidence, the testimony of the eye-witness should be decided independently and if found trustworthy, the same could not be discarded merely because it is at variance with medical opinion. While there can be no difference of opinion with the principle explained in the aforesaid decision, the application thereof will depend on whether the story as made out by the prosecution is trustworthy and can be related to the injuries suffered by the victim in the manner as sought to be projected. If the ocular testimony is such that it is not possible to relate the injuries with the circumstances in which they were said to have been inflicted, the court has the discretion not to accept the ocular evidence. The principle enunciated in Dharkoles case (supra) may be applied in an appropriate case, but each case has to be determined having regard to its own set of facts. (Para 19)

2006 0 AIR(SC) 3236; 2006 0 AIR(SCW) 5021; 2007 1 BBCJ(SC) 95; 2006 4 Crimes(SC) 71; 2006 0 CrLJ 4652; 2006 3 JCC 1775; 2006 12 JT 164; 2006 4 RCR(Cri) 459; 2006 9 Scale 438; 2006 11 SCC 239; 2007 1 SCC(Cri) 431; 2006 7 Supreme 33; 2006 0 Supreme(SC) 878; Khambam Raja Reddy & Anr. Vs PP, High Court of A.P.

The prosecution version essentially rested on circumstances. The trial court found that the circumstances were sufficient to hold the accused guilty. Accordingly, conviction, as noted above, was recorded. In appeal, the High Court did not find any substance in the plea of the appellant and upheld the conviction.
The circumstances clearly establish that the accused was employed in the hotel and used to sleep in the hotel and on the night of occurrence, both the deceased and the accused were alone in the hotel. The evidence of PW1, PW2 and PW3 in this regard are clear, cogent and credible. Additionally, the accused and the deceased were last seen together on the previous night. The appellant was arrested long after the incident, i.e., on 29.11.1998 and was absconding during the aforesaid period. The circumstances, according to us, are sufficient to hold the accused guilty.

2009 0 AIR(SC) 712; 2008 12 JT 306; 2009 1 RCR(Cri) 250; 2008 14 Scale 370; 2008 15 SCC 122; 2009 3 SCC(Cri) 742; 2008 0 Supreme(SC) 1573; Ramachami Vs. State rep. By State Prosecutor

that, in spite of the order dated 4.11.1982 made by that court granting the possessory remedy of temporary injunction in favour of the complainant-plaintiff in respect of the premises concerned in that suit, you, in spite of that injunction order having been brought to your notice, acted in aid of the interests of the defendant in that suit and denied the complainant-plaintiff, by benefit of that order of temporary injunction by locking up the suit premises, putting your seal on the locks and taking away the keys and in warning the complainant-plaintiff not to enter upon the suit premises;

the appellant had intentionally and knowingly flouted the order of the Court and had thereby interfered with the course of justice. He has been rightly convicted under the Contempt of Courts Act.

AIR 1999 SC 2140, 1999 (1) ALD Cri 346, 1999 (1) ALD Cri 759, 1999 (1) ALT Cri 212, 1999 CriLJ 3487, JT 1999 (1) SC 294, (1999) 123 PLR 592, 1999 (1) SCALE 321, (1999) 9 SCC 79, 1999 (1) UJ 447 SC, (1999) 2 UPLBEC 955 Shri K.S. Villasa vs M/S. Ladies Corner And Anr

A case, when rests upon circumstantial evidence, all circumstances must be firmly and cogently be established and those circumstances should be of a definite tendency unerringly pointing towards accused Further, all proved circumstances must form a chain so complete, that within all human probability, crime was committed by accused and none else. [Para 11, 13]

There cannot be any dispute that evidence means viz., the chief-examination, cross-examination and re-examination in any. A part of the statement of the witness viz., chief-examination or cross-examination cannot be taken so as to assess the credibility of a witness or to evaluate the evidence of a witness.

The plea of the accused was that on the date of the incident he was present at Hyderabad. The burden is on the accused to show that he was somewhere else other than the place of occurrence at the time of incident. He has to establish his plea of alibi by positive evidence. But he failed to establish the same by preponderance of probability. This plea appears to be false in view of the fact that prosecution discharged its burden in proving the charge beyond all reasonable doubt. This false plea can be taken as additional link to the chain of circumstances.

THE MITIGATING FACTORS TO BE CONSIDERED FOR AWARDING PUNISHMENT are discussed.

2013 2 ALD(Cri) 956; 2014 1 ALT(Cri) 324; 2013 0 Supreme(AP) 273; Borgam Rajender vs State of A.P.

It is not inconceivable that a child of tender age would be able to recapitulate facts in his memory witnessed by him long ago.
Oral dying declaration can also be made basis for conviction.
(a) Criminal Trial – Appreciation of oral evidence – While appreciating the evidence of a witness, the approach must be to find out whether the evidence of witness read as a whole appears to have a ring of truth. (Para 8)

(b) Criminal trial – Minor discrepancies in the evidence are not fatal. (Para 8)

(c) Criminal trial – Evidence – A rustic witness is not expected to always have an alert mind and so have an idea of direction, area and distance with precision from which he had witnessed the incident – Non-examination of all witnesses is not always fatal. (Para 10)

AIR 1988 SC 1998 – Relied upon

(d) Criminal Trial – High Court erred in taking the view that it is inconceivable that a child of tender age would not be able to recapitulate facts in his memory witnessed by him long ago. (Para 13)

(e) Indian Evidence Act, 1881 – Section 134 – No particular number of witnesses shall be required for the proof of any fact – Reliance can be placed on the solitary statement of a witness if it is reliable and correct version of the occurrence. (Para 15)

(f) Indian Evidence Act, 1881 – Section 32 – Dying declaration – High Court erred in not believing the oral dying declaration given by the deceased to his brother. (Para 16)

2010 0 AIR(SC) 3071; 2010 0 CrLJ 3889; 2010 4 JCR(SC) 18; 2010 8 JT 240; 2010 3 LS(SC) 42; 2010 3 RCR(Cri) 843; 2010 12 SCC 324; 2011 1 SCC(Cri) 381; 2010 6 SCJ 232; 2010 6 Supreme 193; 2010 0 Supreme(SC) 673; State of U.P. Vs Krishna Master

When statement of an injured witness is recorded in anticipation of death and he survives, the statement cannot be treated as dying declaration. Such statement can be used as provided u/s 157 CrPC.
Criminal trial – FIR – Informant failing to name a particular accused – Said accused named at earliest opportunity thereafter when the statement of witnesses are recorded – Will not adversely affect the prosecution. (Para 9)

(2006) 12 SCC 64; AIR 1997 SC 768; AIR 1975 SC 1252; AIR 1978 SC 1142; AIR 1981 SC 631; (2009) 12 SCC 342; (2008) 5 SCC 368 – Relied upon

(b) Maxim – Falsus in uno, falsus in omnibus (false in one false in all) – Does not apply in criminal cases in India – A witness may be partly truthful and partly false in the evidence he gives to the Court. (Para 16)

AIR 1975 SC 1962; AIR 1965 SC 277; (2002) 10 SCC 366; (2007) 9 SCC 589; (2007) 10 SCC 455; (2008) 17 SCC 152; (2009) 12 SCC 275; (2009) 12 SCC 288; (2010) 6 SCC 673; (2009) 14 SCC 494 – Relied upon

(c) Criminal Trial – Conviction – Number of witnesses – No bar on conviction on testimony of sole eye-witness, if reliable – Corroboration is a

rule of prudence – More than one witness required in case a witness deposes in general and vague terms, or in case of riot. (Para 22)

AIR 1965 SC 202; AIR 1978 SC 1647; AIR 1997 SC 322; (1999) 8 SCC 701; (2001) 8 SCC 690 – Relied upon

(d) Indian Evidence Act, 1872 – Section 32 – Statement of injured witness recorded in anticipation of death – Injured witness survives – Cannot be treated as dying declaration – It has to be treated as of a superior quality/high degree than that of a statement recorded under Section 161 Cr.P.C. – Can be used as provided u/s 157 – On the hand if maker of statement u/s 164 CrPC dies, the statement can be used as dying declaration. (Para 24, 25)

AIR 1997 SC 940; AIR 1983 SC 126; AIR 1999 SC 1969; AIR 1996 SC 2791; AIR 2004 SC 4614 – Relied upon

(e) Criminal Trial – Injured witnesses – Their evidence has to be given due weightage – More so when the injury was grievous and one witness was under apprehension of death – Evidence of witnesses reliable and consistent not shaken by vigorous cross-examination. (Para 30)

AIR 2002 SC 3652; (2003) 1 SCC 456; (2004) 7 SCC 629; (2006) 12 SCC 459; AIR 2009 SC 2661; (2010) 6 SCC 673 – Relied upon

(f) Criminal Trial – Close relatives of deceased and injured witnesses – Not expected to shield real culprits by naming somebody else in their place. (Para 32)

(2008) 8 SCC 270; (2008) 15 SCC 604; (2009) 13 SCC 722 – Relied upon

2011 0 CrLJ 283; 2011 1 RCR(Cri) 44; 2011 4 SCC 336; 2011 2 SCC(Cri) 227; 2010 0 Supreme(SC) 1042; Ranjit Singh Vs State of A.P.

Criminal Trial – Circumstantial Evidence – Conviction can be based on circumstantial evidence provided the links in the chain of circumstances connects the accused with the crime beyond reasonable doubt. (Para 5)

(2010) 2 SCC 353; (2010) 2 SCC 583 – Relied upon

(b) Criminal Trial – Circumstantial Evidence – Motive assumes importance in case of circumstantial evidence. (Para 6)

(2011) 3 SCC 306; Cr. Appeal 958/2011; (2006) 5 SCC 475 – Relied upon

(c) Honour Killing – Wholly illegal. (Para 8)

(2006) 5 SCC 475 – Relied upon

(d) Indian Penal Code, 1860 – Section 302 – Apart from the appellant and the deceased only two persons present in the house at relevant time – Mother too old – There is no suggestion of the brother having committed the crime – Deceased deserting her husband and living with her uncle – Appellant having both motive and opportunity Clear motive – Appellant not reporting death of his daughter even after ten hours – The entire circumstances point to the guilt of the accused. (Para 8)

(e) Code of Criminal Procedure, 1973 – Section 162(1), Proviso – Statement before Police may be treated as extra-judicial confession and

can be taken into consideration – Denial on confrontation may be an afterthought. (Para 8)
2011 0 AIR(SC) 1863; 2011 4 BBCJ(SC) 44; 2011 0 CrLJ 2903; 2011 3 JLJR(SC) 192; 2011 6 JT 345; 2011 2 RCR(Cri) 920; 2011 6 SCC 396; 2011 2 SCC(Cri) 985; 2011 3 Supreme 729; 2011 0 Supreme(SC) 502; Bhagwan Das Vs State NCT Delhi.

Principle of falsus in uno falsus in omnibus-Scope and ambit of-The doctrine merely involves the question of weight of evidence which a Court may apply in a given set of circumstances, but it is not what may be called "a mandatory rule of evidence"- Merely because some of the accused persons have been acquitted, though evidence against all of them, so far as direct testimony went, was the same does not lead as a necessary corollary that those who have been convicted must also be acquitted- It is always open to a Court to differentiate accused who had been acquitted from those who were convicted- Doctrine is a dangerous one specially in India for if a whole body of the testimony were to be rejected, because witness was evidently speaking an untruth in some aspect, it is to be feared that administration of criminal justice would come to a dead-stop- The witnesses just cannot help in giving embroidery to a story, however, true in the main- Therefore, it has to be appraised in each case as to what extent the evidence is worthy of acceptance, and merely because in some respects the Court considers the same to be insufficient for placing reliance on the testimony of a witness, it does not necessarily follow as a matter of law that it must be disregarded in all respects as well- The evidence has to be shifted with care. (Para10)
2008 0 AIR(SC) 2389; 2008 0 AIR(SCW) 3957; 2008 0 CrLJ 3061; 2008 3 RCR(Cri) 353; 2008 8 Scale 504; 2008 11 SCC 425; 2009 2 SCC(Cri) 553; 2008 3 Supreme 629; 2008 0 Supreme(SC) 895; Dalbir Singh Vs State of Haryana.

the evidence of the circumstance, simpliciter, that an accused person led a Police Officer and pointed out the place where stolen Articles or weapons which might have been used in the commission of the offence were found hidden, would be admissible as conduct, under Section 8 of the Evidence Act, irrespective of whether any statement by the accused contemporaneously with or antecedent to such conduct falls within the purview of section 27 of the Evidence Act (vide Himachal Pradesh Administration v. Om Prakash (AIR 1972 SC 975)).
1979 0 AIR(SC) 400; 1979 0 CrLJ 329; 1979 3 SCC 90; 1979 0 SCC(Cri) 656; 1979 2 SCR 330; 1978 0 Supreme(SC) 365; Prakash Chand Vs State Delhi Adminsitration.

Indian Penal Code, 1860-Section 300 Exception I-Wounds caused to wife by the husband cannot be held to have been caused under grave and sudden provocation.

1997 0 CrLJ 22; 1997 1 MLJ(Cri) 1; 1996 0 Supreme(Mad) 707; Mohan Vs State.

While it is not the function of this Court to determine who other than the person who has been charged with the murder had committed it, the line which the defence adopted was to establish that the witnesses referred to above had an interest in implicating the accused or at any rate to create uncertainty and dobut sufficient to give the benfit to the accused. It is not beyond the ken of experienced able and astute lawyers to raise doubts and uncertainties in respect of the prosecution evidence either during trial by cross-examination or by the marshalling of that evidence in the manner in which the emphasis is placed there on. But what has to be borne in mind is that penumbra of uncertainty in the evidence before a Court is generally due to the nature and quality of that evidence. It may be the witnesses are lying or where they are honest and truthful, they are not certain. It is therefore difficult to expect a scientific or mathematical exactitude while dealing with such evidence or arriving at a true conclusion. Because of these difficulties corroboration is sought wherever possible and the maxim that the accused should be given the benefit of doubt becomes pivotal in the prosecution of offenders which in other words means that the prosecution must prove its case an accused beyond reasonable doubt by a sufficiency of credible evidence. The benefit of doubt to which the assused in entitled is reasonable doubt - the doubt which rational thinking men will reasonably honestly and conscientiously entertain and not the doubt of a timid mind which fights shy - though unwittingly it may be - or is afraid of the logical consequences, if that benefit was not given or as one great Judge said it is "not the doubt of a vacillating mind that has not the moral courage to decide but shelters itself in a vain and idle scepticism". It does not mean that the evidence must be so strong as to exclude even a remote possibility that the accused could not have committed the offence. If that were so the law would fail to protect society as in no case can such a possibility be excluded. It will give room for fanciful conjectures or untenable dubts and will result in deflecting the course of justice if not thwarting it altogehter, It is for this reason the phrase has been criticised. Lord Goddard C. J. in Rex v. Kritz, (1950) 1 KB 82 at p. 90 said that when in explaining to the juries what the prosection has to establish a Judge begins to use the words "reasonable doubt" and to try explain what is a reasonable doubt and what is not, he is more much likely to confuse the jury than if he tells them in plain language. "It is the duty of the prosecution to satisfy you of the prisoner s quilt". What in effect this approach amounts to is that the greatest possible care should be taken by the Court in conviting an accused who is presumed to be innocent till the contrary is clearly established which burden is always in the accusatory system, on the prosecution. The mere fact that there is only a remote possibility in favour of the accused is itself sufficient to establish the case beyond reasonable doubt. This then is the approach.

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 contempaled under Sec. 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 serached 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.

The reason why the reports of the Director of the Finger Print Bureau is treated as evidence without examining the persons giving the report is that the comparison and identification of Finger Prints has now developed into a science and the results derived therefrom have reached a stage of exactitude. As long as the report shows that the opinion was based on observations which lead to a conclusion that opinion can be accepted, but should there be any doubt it can always be decided by the calling of the person making the report. When once the report is proved, neither the prosecution nor the accused nor yet the Court thought it necessary to require the person making the report to be examined.

There is in our view no justification for the High Court in jettisoning this cogent evidence of a conclusive nature on mere conjectures and on the omnibus ground that the witnesses were not independent or impartial which as we have shown is without justification.

1972 0 AIR(SC) 975; 1972 0 CrLJ 606; 1972 1 SCC 249; 1972 0 SCC(Cri) 88; 1972 2 SCR 765; 1971 0 Supreme(SC) 654;H.P. Administration Vs Om Prakash.

Indian Evidence Act, 1882 – Section 32 – Dying declaration – Corroborated and reliable – Can be relied upon notwithstanding aberrations in deposition of one witness due to efflux of time. (Para 13)

2012 0 AIR(SC) 2176; 2012 0 CrLJ 2645; 2012 3 JLJR(SC) 24; 2012 5 JT 351; 2012 3 MLJ(Cri)(SC) 270; 2012 5 Scale 249; 2012 6 SCC 606; 2012 3 SCC(Cri) 293; 2012 3 Supreme 616; 2012 0 Supreme(SC) 372; Salim Gulab Pathan Vs. State of Maharasthra.

Indian Penal Code, 1860 – Section 34 – The true contents of the Section are that if two or more persons intentionally do an act jointly, the position in law is just the same as if each of them has done it individually by himself – The existence of a common intention amongst the participants in a crime is the essential element for application of this Section – As a result when an accused is convicted under Section 302 read with Section 34, in law it means that the accused is liable for the act which caused death of the deceased in the same manner as if it was done by him alone – Section

34 is applicable even if no injury has been caused by the particular accused himself. (Paras 7 and 10)
2007 4 BBCJ(SC) 394; 2007 9 JT 191; 2007 4 RCR(Cri) 20; 2007 10 SCC 225; 2007 4 Supreme 824; 2007 0 Supreme 824; 2007 0 Supreme(SC) 900; Lala Ram Vs State of Rajasthan.

It is well settled that dying declaration must be dealt with caution for the reason that the maker of the statement had not been subjected to cross-examination. There is no rule of law or rule of prudence that dying declaration cannot be accepted unless it is corroborated. (Para 11)
Section 32 of the Evidence Act is an exception to the general rule of exclusion of hearsey evidence and the statement made by a person written or verbal of relevant facts after his death is admissible in evidence if it refers to the cause of his death or any circumstances of the transactions which resulted in his death. To attract the provisions of Section 32, the prosecution is required to prove that the statement was made by a person who is dead or who cannot be found or whose attendance cannot be procured wihout any amount of delay or expense or he is incapable of giving evidence and that such statement had been made under any of the circumstances specified in sub-sections (1) to (8) of Section 32 of the Evidence Act. (Para 8)
Indian Evidence Act, 1872-Section 32-Dying declaration-Statement recorded by Investigating Officer at hospital which was treated as FIR-At the time of recording statement investigating officer did not possess capacity of investigating officer as investigation had not commenced by then-Such statement could be treated as dying declaration in evidence under Section 32(1).
2000 0 AIR(SC) 2480; 2000 0 AIR(SCW) 2772; 2000 3 CCR(SC) 111; 2000 2 CHN(SC) 37; 2000 3 Crimes(SC) 142; 2000 0 CrLJ 3949; 2000 2 JCC 565; 2000 8 JT 466; 2000 3 RCR(Cri) 714; 2000 5 Scale 430; 2000 7 SCC 254; 2000 0 SCC(Cri) 1343; 2000 5 Supreme 381; 2000 0 Supreme(SC) 1267; Ghulam Hussain Vs State.

Evidence Act, 1882 - Section 32(1) - Dying declaration - Four dying declarations recorded - All statements fulfilling requirements of section 32 - All statements made in fit state of mind and consistent - Recorded by competent persons who were examined and cross-examined - No infirmity in relying on such statements. (Para 13)
2013 0 AIR(SC) 341; 2013 1 JBCJ(SC) 491; 2013 1 JLJR(SC) 426; 2013 1 JT 376; 2013 1 NCC(SC) 505; 2013 2 SCC 224; 2013 1 Supreme 97; 2013 0 Supreme(SC) 9; Asha Bai Vs State of Maharasthra.

Claim of juvenility can be raised at any stage even after final disposal of the case – For making a claim of juvenility after conviction some material referred to in Rule 12(3)(a)(i) to (iii) must be produced to prima facie satisfy

the court – An affidavit will not be sufficient – Principles discussed. (Para 36)
2013 0 AIR(SC) 1020; 2012 10 JT 453; 2012 10 JT 454; 2012 10 SCC 489; 2012 8 SCJ 470; 2012 0 Supreme(SC) 719; Abuzar Husain Vs State of West Bengal.

Testimony of - Credibility - A child witness, by reason of his tender age, is a pliable witness - He can be tutored easily either by threat, coercion or inducement - Hence, his statement can be accepted only if court comes to conclusion that child understands questions put to him and he is capable of giving rational answers and that child is not tutored and his evidence has a ring of truth - Careful evaluation of evidence of a child witness in the background and context of other evidence on record for purposes of corroboration is a must before court decides to rely upon it,
Acquittal not on merits, but on insufficiency of evidence - Appellant acquitted as a result of being given benefit of doubt though needle of suspicion pointing at him - If trial of a criminal charge results in conviction, disciplinary proceedings are bound to follow - But even in case of acquittal, when acquittal is other than honourable, departmental proceedings may follow - Disciplinary proceedings if pending against appellant, authority concerned to proceed with them independently, uninfluenced by this judgment and in accordance with law,
2012 0 AIR(SC) 2955; 2012 4 BomCR(Cri)(SC) 488; 2012 3 CalCriLR 519; 2012 0 CrLJ 4388; 2012 7 JT 392; 2013 1 RLW(SC) 176; 2012 7 Scale 397; 2012 8 SCC 73; 2012 3 SCC(Cri) 795; 2012 5 Supreme 412; 2012 0 Supreme(SC) 537; K.Venkateshwarlu Vs State of A.P.

Criminal Trial – Last seen theory – Circumstance of last seen together does not necessarily lead to the inference that it was the accused who committed the crime – There must be something more establishing connectivity between the accused and the crime – Mere non-explanation by the accused cannot lead to proof of guilt against him. (Para 17, 18)
2014 0 CrLJ 1950; 2014 3 EastCrC(SC) 157; 2014 4 SCC 715; 2014 2 SCC(Cri) 413; 2014 0 Supreme(SC) 205; Kanhaiya Lal Vs State of Rajasthan.

It is also not clear as to why the occurrence itself having taken place at bus stop where ordinarily people must be there the prosecution has not examined any outsider witness in support of the prosecution case. At least the passenger, who is said to have got down from the bus, could have been the most natural witness, who has also not been examined by the prosecution. Even the passengers, who were travelling in bus, some of them could have been examined but no attempt has been made by the prosecution to examine any of them. In this state of affairs, we do not think it safe to rely upon the evidence of Public witness .1 alone to base the conviction of these accused persons.

2001 0 AIR(SCW) 2322; 2000 8 JT 513; 2001 9 SCC 704; 2000 0 Supreme(SC) 956; Jang Singh Vs State of Rajasthan

There is no requirement either under Section 27 of the Evidence Act or under Section 161 of the Code of Criminal Procedure, to obtain signature of independent witnesses on the record in which statement of an accused is written. The legal obligation to call independent and respectable inhabitants of the locality to attend and witness the exercise made by the police is cast on the police officer when searches are made under Chapter VII of the Code. Section 100(5) of the Code requires that such search shall be made in their presence and a list of all things seized in the course of such search and of the places in which they are respectively found, shall be prepared by such officer or other person "and signed by such witnesses". It must be remembered that search is made to find out a thing or document which the searching officer has no prior idea where the thing or document is kept. He prowls for it either on reasonable suspicion or on some guess work that it could possibly be ferreted out in such prowling. It is a stark -reality that during searches the team which conducts search would have to meddle with lots of other articles and documents also and in such process many such articles or documents are likely to be displaced or even strewn helter-skelter. The legislative idea in insisting on such searches to be made in the presence of two independent inhabitants of the locality is to ensure the safety of all such articles meddled with and to protect the rights of the persons entitled thereto. But recovery of an object pursuant to the information supplied by an accused in custody is different from the searching endeavour envisaged in Chapter VII of the Code. (Para 18

It is a fallacious impression that when recovery is effected pursuant to any statement made by the accused the document prepared by the Investigating Officer contemporaneous with such recovery must necessarily be attested by independent witnesses. Of course, if any such statement leads to recovery of any article it is open to the Investigating Officer to take the signature of any person present at that time, on the document prepared for such recovery. But if no witness was present or if no person had agreed to affix his signature on the document, it is difficult to lay down, as a proposition of law, that the document so prepared by the police officer must be treated as tainted and the recovery evidence unreliable. The court has to consider the evidence of the Investigating Officer who deposed to the fact of recovery based on the statement elicited from the accused on its own worth. (Para 19) **2001 1 Crimes(SC) 176; 2001 0 CrLJ 504; 2001 0 SCC(Cri) 248; 2000 7 Supreme 728; 2000 0 AIR(SCW) 4398; 2000 7 Scale 692; 2001 1 SCC 652; 2000 0 Supreme(SC) 1913;State Govt of NCT Delhi Vs Sunil & ors.**

The maxim "falsus in uno falsus in omnibus" has no application in India – Where chaff can be separated from grain, it would be open to the Court to

convict an accused notwithstanding the fact that evidence has been found to be deficient, or to be not wholly credible.
Doctrine of "falsus in uno falsus in omnibus" – The doctrine is not what may be called `a mandatory rule of evidence' – In a given case, it is always open to a Court to differentiate accused who had been acquitted from those who were convicted where there are a number of accused persons. (Para 4)
Material and Normal discrepancies – While normal discrepancies do not corrode the credibility of a party's case, material discrepancies do so. (Para 4)
Where it is not feasible to separate truth from falsehood, and in the process of separation an absolutely new case has to be reconstructed by divorcing essential details presented by the prosecution completely from the context and the background against which they are made, the only available course to be made is to discard the evidence in toto. (Para 4)
Merely because the accused were investigated in the case of murder of the elder son of PW1, her evidence cannot be disregarded on ground of false implication.
2009 2 CCR(SC) 197; 2009 1 Crimes(SC) 479; 2009 0 CrLJ 2268; 2009 4 JT 169; 2010 5 RCR(Cri) 56; 2009 3 Scale 431; 2009 12 SCC 288; 2010 1 SCC(Cri) 563; 2009 2 Supreme 356; 2009 0 Supreme(SC) 361; Mani @ Udattu Man & Ors Vs State.

In the case of Abdul Aziz v. State of Rajasthan [(2007) 10 SCC 283] it was held by this Court that if a person is charged under a grave Section, but however, if acquitted under the said grave section by the Trial Court, then it would amount to travesty of Justice if in his own appeal he is convicted under that grave section, without there being any appeal from the State and without there being prior notice of enhancement issued by the appellate Court. **Jarnail Singh vs State Of Punjab.**

1.In an appeal under Article 136 of the Constitution, Apex Court does not enter into detailed examination and re-appraisal of the evidence, particularly when there is concurrence of opinion between the two courts below.
2.Evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross-examined him
2010 4 BBCJ(SC) 111; 2010 3 CCR(SC) 268; 2010 3 Crimes(SC) 225; 2010 7 JT 567; 2011 1 RCR(Cri) 262; 2010 8 SCC 536; 2010 3 SCC(Cri) 960; 2010 5 Supreme 601; 2010 0 Supreme(SC) 626; Prithi Vs State of Haryana.

The overturning of a well considered and well analysed judgment of Trial Court for conviction and sentence in the instant case of a youth guilty of child rape by the High Court on the grounds like non-examination of other

independent evidence and minor contradictions in medical evidence and recovery of one or two underwear was not justified when the case against the respondent otherwise stood proved, beyond any reasonable doubt, by the true and reliable testimony of prosecutrix, her parents and doctors.
2002 0 AIR(SC) 2235; 2002 0 AIR(SCW) 2346; 2002 0 CrLJ 2951; 2002 Supp1 JT 304; 2002 2 RCR(Cri) 764; 2002 5 SCC 745; 2008 1 SCC(Cri) 411; 2002 3 Supreme 655; 2002 0 Supreme(SC) 614; 2002 1 UJ 759; State of Rajasthan Vs Om Prakash.

The prosecution cannot be accused of withholding these witnesses since it made every effort to trace and produce them at the trial but failed on account of the fact that they had left the addresses furnished by them at the time of search and their whereabouts could not be traced despite diligent efforts made in that behalf. We, therefore, do not find any reason to doubt the correctness of the prosecution version relating to the apprehension of the appellant, the search and seizure by the raiding party and the recovery from the appellant of the country-made revolver and cartridges for which he could produce no licence or authority because of the non-examination of the panch witnesses. We find that the evidence of PW1 to PW5 is reliable, cogent and trustworthy. (Para 4)
The conviction of appellant under Sections 5 r/w 3(1) of TADA r/w Section 25(1-B)(a) of Arms Act is not affected due to 15 days delay in sending fire Arms to Ballastic expert or due to search and seizure by Police Officers or due to absence of any expert opinion about the status of recovered cartridges in the facts of this case. (p. 214)
1996 0 AIR(SC) 2943; 1996 3 CCR(SC) 100; 1996 1 Crimes(SC) 103; 1996 0 CrLJ 1698; 1996 3 JT 120; 1996 2 Scale 264; 1996 2 SCC 589; 1996 1 SCC(Cri) 356; 1996 2 Supreme 213; 1996 0 Supreme(SC) 421; Anil @ Andya Sadashiv Vs State of Maharasthra.

Indian Evidence Act, 1872—Sections 63 and 65 read with Sections 65A and 65B—Electrnic records—Admissibility in evidence—Special provisions on evidence relating to electronic record shall be governed by procedure prescribed under Section 65B of Evidence Act—That is a complete code in itself—Being a special law, general law under Sections 63 and 65 has to yield—Sections 63 and 65 have no application in case of secondary evidence by way of electronic record—Same is wholly governed by Sections 65A and 65B. (Paras 19 and 22)
Words and Phrases—Connive—Connive' means to secretly allow a wrong doing where as 'consent' is permission.—Proof required is of consent for publication and not connivance on publication—It is not true to say that 'connivance' invariably and necessarily means or amounts to consent, irrespective of context of given situation—Two cannot be equated—Consent implies that parties are ad idem—Connivance does not necessarily imply that parties are of one mind.

2015 0 AIR(SC) 180; 2014 3 GLH(SC) 305; 2014 4 JLJR(SC) 593; 2014 4 PLJR(SC) 334; 2014 10 SCC 473; 2015 3 Supreme 453; 2014 0 Supreme(SC) 685; 2014 2 UAD(SC) 577; P.V.Anvar Vs P.K.Basheer.

Sections 498-A and 396 IPC are independent and constitute differ-ent offences. Though, depending on the facts and circumstances of an individual case, subjecting a woman to cruelty may amount to an of-fence under Section 498-A and may also, if a course of conduct amount-ing to cruelty is established leaving no other option for the woman except to commit suicide, amount to abetment to commit suicide. Howev-er, merely because an accused has been held liable to be punished under Section 498-A IPC it does not follow that on the same evidence he must also and necessarily be held guilty of having abetted the commission of suicide by the woman concerned.
The deceased has not committed suicide because of demand of dowry or on instigation. It is a case of cruelty. The appellant deserves acquittal of the charge under Section 306 IPC but his conviction under Section 498A IPC is maintained
2001 4 Crimes(SC) 360; 2001 0 CrLJ 4724; 2002 0 SCC(Cri) 1088; 2001 7 Supreme 737; Ramesh Kumar Vs State of Chhattisgarh.

Indian Evidence Act, 1872 - Section 8 r/w section 27 - Statement made before police - Admissibility - Part of the statement, whether confessional or not, which was exclusively within the knowledge of the accused - Will be admissible in evidence. (Para 15)
Criminal Trial - Discrepancies in evidence - Discrepancies of trivial nature are immaterial and should be ignored. (Para 18)
2013 0 AIR(SC) 3013; 2013 0 CrLJ 3895; 2013 3 JBCJ(SC) 392; 2013 4 JLJR(SC) 21; 2013 10 JT 424; 2013 12 SCC 383; 2014 1 SCC(Cri) 664; 2013 5 Supreme 605; 2013 0 Supreme(SC) 676; Anuj Kumar Gupta @ Sethi Gupta Vs State of Bihar.

What we find from the materials made available to us is that the only evidence appearing against the accused is the confession of the co-accused, as the petitioner states. We are confident that the learned Addl. Deputy Commissioner, Aizawl, is fully aware as to the evidentiary value of the confession of a co-accused. We refer to (1) Kashmira Singh, AIR 1952 SC 159: (1952 Cri LJ 839. (2) Kalawati, AIR 1953 SC 131 : (1953 Cri LJ 668), (3) Nathu, AIR 1956 SC 56 (58) : (1956 Cri LJ 152 (154) (4) Ramchandra. AIR 1957 SC 381: (1957 Cri LJ 559), (5) AIR 1968 SC 832: (1968 Cri LJ 1017). Haroon Haji Abdullah v. State of Maharashtra, as some of the important decisions in point. The confession of an accused can only be used for leading assurance to other evidence against the accused. On the basis of a confession of a co-accused alone a conviction is not sustainable.

1984 0 CrLJ 1055; 1983 0 Supreme(Gau) 78 ZOHMINGLIANA Vs State of Mizoram

None of the prosecution witnesses who have been examined bore any ill will or malice against the appellant. Of course, they all belong to the police force but merely on that account their evidence cannot be said to be tainted. Since the departmental witnesses would be interested in the success of the prosecution case prudence requires that their evidence be scrutinized with more care. We have critically and carefully analysed the evidence of all the prosecution witnesses and find that despite lengthy cross-examination nothing has been brought out which may in any way discredit their testimony at all. These witnesses had no reason to falsely implicate the appellant. They have stood the test of cross-examination. The report of the CFSL lends enough corroboration to their evidence. It is in the evidence of PW.1 that when the appellant was over-powered, some persons were looking from a distance but none of them came at the spot. Under these circumstances not joining any of those witnesses cannot affect the credit-worthiness of the prosecution case. (Para 6)
1996 4 Crimes(SC) 131; 1996 9 JT 158; 1997 1 RCR(Cri) 151; 1996 7 Scale 450; 1996 11 SCC 139; 1996 7 Supreme 661; 1996 0 Supreme(SC) 1554; Balbir Singh Vs State of Punjab.

1. It is settled law that FIR is not a substantive piece of evidence. However the FIR can not be given a complete go-by since it can be used to corroborate the evidence of the person lodging the same.
2. In criminal jurisprudence, evidence has to be evaluated on the touchstone of consistency. Consistency is the keyword for upholding the conviction of an accused.
2010 0 AIR(SC) 2768; 2010 69 AllCriC(SC) 801; 2010 3 BBCJ(SC) 78; 2010 3 CalCriLR 526; 2010 3 CCR(SC) 7; 2010 3 Crimes(SC) 52; 2010 2 JCC 1429; 2010 4 JT 467; 2010 4 KarLJ(SC) 161; 2010 3 RCR(Cri) 382; 2010 5 SCC 645; 2010 2 SCC(Cri) 1318; 2010 4 Supreme 180; 2010 0 Supreme(SC) 386; 2010 4 UJ 2007; C.Magesh Vs State of Karnataka.

Sri G.Shivaiah, Addl PP Gr-I (Retired)

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