

PROSECUTION REPLENISH

(An Endeavour for learning and excellence)

Inaugural Edition

Vol- I Part I

November, 2012

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

Greetings. At the outset, we wish all of you a very HAPPY DIWALI, and this apt season that dispels the darkness has seen the fructification of a long cherished dream of creation of a medium of keeping and getting in touch with each other; for exchange of ideas and experiences to enrich our dominion.

We have endeavoured to incorporate various aspects which would cater to the various aesthetic values of ALL, but suggestions are welcome to improve the same.

We have divided the leaflet to hold the following sections which are one Landmark Judgment; latest judgments section to contain the citation reported in three of the most read journals-the ALD(Crl), the Crl.L.J. and the ALT(Crl).; a local act-in alphabetical order; a news section to update ourselves; a funny section; a expert section to answer any query which would have created a block in our duties; a sharpen your tools section to recognize and spread some of our outstanding colleagues.

We remain as mentioned above in the rig Veda, open minded to imbibe all that is good to improve this leaflet.

We take this opportunity to congratulate the new governing body of the A.P. Prosecutors (Cadre) Association, and wish them all the best in taking the prosecution department to new peaks.

The other brethren Telangana Public Prosecutors (Cadre) Association, is also scheduled to go for polls in this month.

We hope both the associations would jointly strive for our betterment and in taking our department to new heights.

We take this opportunity to thank the guiding forces behind us, who made this vision a reality. We are wantonly not taking any names as the same would be exhaustive and the space is a constrain. Further it is their counsel that names do not matter; but the material matters.

Hoping that this would satiate our pursuits.

We Remain,
Yours faithfully,
Editorial Team

LAND MARK JUDGMENT BEST BAKERY CASE

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. **Zahira Habibulla H. Sheih V. State of Gujarat 2004 Crl.L.J. 2050**

Latest Judgments

Extracts from the Precedents reported in ALD(CrI)

Contention that lower court has no jurisdiction to take cognizance of offences U/Sec 447 and 427 IPC as well as under Land Grabbing (Prohibition)- Rejected. **2012(2) ALD (CrI) 532 (A.P) -Yelamanchili Chinnamai Sai Kiran @ Siva Kumar Vs. Syed Athwar Rahaman and another.**

No Police officer can unilaterally delete or direct deletion of an accused person from a case, without there being a judicial decision on Cognizance. (A.P. police Manual Vol.II, Pt.1 order 487(3); A.P. Criminal rules of Practice and Circular Order 1990, form No. 52) **2012(2) ALD (CrI) 675 (A.P) Kotla Hari Chakrapani Reddy Vs. State of Andhra Pradesh.**

Scope of 320(1) & (2) Cr.P.C.- what can be compounded is the offence and not the accused. A case cannot be compounded against individual accused. it can be compounded as a whole. **2012(2) ALD (CrI) 541 (A.P) Kalpana Kopaley @ K.Kalpana Vs State of Andhra Pradesh and another.**

No evidence can ever be perfect for man is not perfect and man lives in an imperfect world. Discrepancies not effecting core of prosecution case should be ignored as being minor discrepancies. giving undue importance to them would amount to adopting a hyper-technical approach. **2012(2) ALD (CrI) 663 (S.C) Thoti Manohar Vs State of Andhra Pradesh.**

Sec 304-B IPC-essential requirements; nature and scope of the presumption U/Sec 113-A and 113-B Evidence act. **2012(2) ALD (CrI) 553 (A.P) Khandavalli Amith Kumar Vs State of Andhra Pradesh**

Sec 378 Cr.P.C- Power of appellate court to re-appreciate, review and reconsider evidence before it and to come to its own conclusion-scope and guiding principles-discussed.

Sole eye-witness, a police officer-reliance on testimony of to form basis of conviction- scope and guiding principles-discussed. **2012(2) ALD (CrI) 580 (S.C) Govindaraju @ Govinda Vs State by Sripurampuram P.S. and another.**

Sec 376 IPC-Even if the prosecutrix is of easy virtue/unchaste woman that itself cannot be determinative factor- Prosecution to prove case beyond reasonable doubt and cannot rely upon the weakness of the defence. **2012(2) ALD (CrI) 631(S.C) Narender Kumar Vs State**

Extracts from the Citations reported in CrI.L.J. Oct,2012 Part

Interested/Related witness evidence has to be accepted unless the same carries element of unfairness and undue intention of false implication;

Contradiction between ocular evidence and medical evidence- Witnesses stating presence of injuries on the body-PME does not disclose the same-Rejection of ocular evidence in such circumstances would amount to granting benefit to accused of deliberate defects and lapses committed by investigating agency;

The courts do not merely discharge that function to ensure that no innocent man is punished, but also that a guilty man does not escape. Both are public duties of the Judge.

Even if the prosecution attempts to misdirect the trial on the basis of perfunctory or designedly defective investigation, there court is to be deeply cautious and ensure that despite such an attempt, the determinative process is not subverted.

Supreme court direction to record specific finding against the I.O. and the Expert who indulge in acts of omission and commission in breach of professional duties and even against prosecution witnesses.

2012 CrI.L.J. 4323 (SC) Dayal singh & ors Vs State of Uttaranchal.

{the law may or may not be an ass, but in India it is certainly a snail and our cases proceed at a pace which would be regarded as unduly slow in a community of snails} Late N.A. Palkhiwala.

Nullum tempus aut locus occurrit regi (Lapse of time is no bar to crown in proceeding against the offenders.

The limitation act, 1963 does not apply to criminal proceedings unless there are express and specific provisions to that effect, for instance, Articles 114,115,131 and 132 of the act. **Japani Sahoo Vs Chandra Sekhar Mohanty (2007) 7 SCC 394; AIR 2007 SC 2762}**

Criminal trial cannot be quashed on the sole ground of delay. No fixed time can be set conclusion of Criminal Trial. **Ranjan Dwivedi Vs CBI ---2012 CrI.L.J. 4206 (SC)**

Delay in registration of FIR- circumstances leading to concentration of arranging medical help to deceased who was in serious condition, later dealing with his dead body- not fatal. **Arumugam Vs State --2012 Cr.L.J. 4001 (SC)**

Remissness in Investigation- not ground to acquit accused if there is enough evidence to establish his guilt. Kashinath Mondal Vs State of West Bengalô **2012 Cr.L.J. 3974(SC)**; **Kallu alais Amit Vs State of Haryana; Joginder and anr Vs State of Haryana—2012 Cr.L.J. 4244 (SC)**

Sole eye witness- name not found in DD- or in inquest proceedings-chance witness- affidavit filed by father of the witness that his son did not witness the incident- deposed meticulously about the incident- Complainant turned hostile- Eye witness evidence accepted as truth-conviction upheld. **Kallu alais Amit Vs State of Haryana; Joginder and anr Vs State of Haryana—2012 Cr.L.J. 4244 (SC)**

Accused driving car rashly in inebriated state without license mowing down 6 people- Accused though not intending to cause death had knowledge that his driving in such state was likely to cause death- Sec 304-A IPC is not applicable but Sec 304 Part II Applicable.

Breath analysis test- only when person is driving or attempting to drive a vehicle- not when the driver absconded from the scene.

Accused driving long distance before the accident with no untoward incident- not sufficient to hold him sober when his blood was found to contain alcohol beyond permissible limits.

Witness turning hostile- erodes criminal justice- Court should not be mute spectator but shall make every effort to bring home truth. **State Tr.P.S. Lodhi Colony, New Delhi Vs. Sanjeev Nanda—2102 Cr.L.J. 4174 (SC)**

Shiv Murat Dwivedi Vs State: 2012 Cr.L.J. 4237 (Del)

More than one charge sheet filed against the accused within preceding 10 years- All offences committed with intent of pecuniary gain U/Sec 4,5,8 Immoral Traffic Prevention Act, 1956- Case qualified requirements to invoke control of Organised Crime Act.

Citations reported in ALT (Cri)

Non ó Examination of Independent witness ó Non examination of one of the witnesses present at the scene is not fatal to the case of prosecution, when witnesses examined were able to unfold the narration of events in a cogent and convincing manner.

Delay in forwarding FIR to Magistrate - The delay in receipt of FIR by the Magistrate concerned, in the absence of any prejudice to the accused it cannot by itself justify the conclusion that the investigation was tainted and prosecution insupportable.

Burden of proof - When accused contends that they were not present at the place of occurrence, burden was on them to establish the said fact. **Sandeep Vs. State of U.P. 2012 (3) ALT (CrI.) 251 (SC)**

Defective Investigation ó In the case of a defective investigation, to do so would be tantamount to playing into the hands of the Investigating Officer, Court has to be circumspect in evaluating the evidence.

Flagrant defaults and omissions on part of Investigating Officer and Medical Officer ó No prejudice to the case of prosecution. **Dayal Singh Vs. State of Uttaranchal 2012 (3) ALT (CrI.) 203 (SC)**

Charging female person for the Offence U/s 354 IPC ó Irrespective of a male person or female person committing the offence, intention of the person committing the same is important ó Intention has to be gathered from the attending facts. **Dr. M.Varalakshmi and anr VS. Nagaram Kavitha & anr 2012 (3) ALT (CrI.) 140 (AP).**

Summoning order under Section 204 Cr.P.C. requires no explicit reasons to be stated ó Magistrate has to satisfy whether there are sufficient grounds for proceeding and not whether there are grounds for conviction. **Bhushan Kumar and anr. Vs. State (NCT of Delhi) and anr. 2012 (3) ALT (CrI.) 223 (SC)**

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The Arms Act, 1959

All offences are Cognizable.

Interim custody of property cannot be granted as in the event of conviction, the same is liable for confiscation.

Previous sanction of District Magistrate to be obtained for offences in contravention of Sec 3 of the act.

Sec	SubSection	Offence	Punishment	Triable
25 Punishment for certain offences-	(1)	(a) Whoever manufactures, sells, transfers, converts, repairs etc.. in contravention to sec 5 or	> 3yrs<7yrs	JFCM
		(b) shortens the barrel of a firearm or converts an imitation firearm into a firearm in contravention of section 6; or		
		(d) bring into, or takes out of, India, any arms or ammunition of any class or description in contravention of section 11		
	(1A)	Whoever acquires, has in his possession or carries any prohibited arms or prohibited ammunition in contravention of section 7	> five years < ten years + fine.	Sessions court
	(1AA)	Whoever manufactures, sells, transfers, converts, repairs, tests or proves, or exposes or offers for sale or transfer or has in his possession for sale, transfer, conversion, repair, test or proof, any prohibited arms or prohibited ammunition in contravention of section 7	> Life + fine	Sessions court
	1AAA	Whoever has in contravention of a notification issued under section 24A in his possession or in contravention of a notification issued under section 24B carries or otherwise has in his possession, any arms or ammunition	> three years < seven years + fine	JFCM
	1B	Whoever- (a) Acquires, has in his possession or carries any firearm or ammunition in contravention of section 3, or (b) Shortens the barrel of a firearm or converts an imitation firearm in any place specified by notification under section 4 any arms of such class or description as has been specified in that notification in contravention of that section ; or (c) Sells or transfer any firearm which does not bear the name of the maker stamped or otherwise shown thereon as required by sub-section (2) of section 8 or does any act in contravention of sub-section (1) of that section; or (d) Being a person to whom sub-clause (ii) or sub-section (iii) of clause (a) of sub-section (1) of section 9 applies, acquires, has in his possession or carries any firearms or ammunition contravention of that	> 1 Year < 3 Years + fine	JFCM

	<p>section;</p> <p>(e) Sells or transfers, or converts, repairs, tests or proves any firearm or ammunition in contravention of clause (b) of sub-section (1) of section 9; or</p> <p>(f) Brings into, or takes out of, India, any arms or ammunition in contravention of section 10; or</p> <p>(g) Transport any arms or ammunition in contravention of section 12; or</p> <p>(h) Fails to deposit arms or ammunition as required by sub-section (2) of section 3, or sub-section (1) of section 21; or</p> <p>(i) Being a manufacturer of, or dealer in, arms or ammunition, fails, on being required to do so by rules made under section 44, to maintain a record or account or to make therein all such entries as are required by such rules or intentionally makes a false entry therein or prevents or obstructs the inspection of such record or account or the making of copies of entries there from or prevents or obstructs the entry into any premises or other place where arms or ammunition are or is manufactured or kept or intentionally fails to exhibit or conceals such arms or ammunition or refuses to point out where the same are or is manufactured or kept,</p>		
(1 C)	In Disturbed Area	> 3 years < 7 Years + fine	JFCM
(2)	Whoever being a person to whom sub-clause (I) of clause (a) of sub-section (1) of section 9 applies, acquires, has in his possession or carries any firearm or ammunition in contravention of that section	< 1 Year /+ fine	JFCM Bailable
(3)	Whoever sells or transfers any firearm, ammunition or other arms ó (i) Without informing the district magistrate having jurisdiction or the officer in charge of the nearest police station, of the intended sale or transfer of the firearm, ammunition or other arms; or (ii) Before the expiration of the period of forty five days from the date of giving such information to such district magistrate or the officer in charge of the police station. In contravention of the provisions of clause (a) or clause (b) of the proviso to sub-section (2) of section 5,	> 1 year + fine	JFCM Bailable
(4)	Whoever fails to deliver-up a licence when so required by the licensing authority under sub-section (1) of	< 6 Months /+ fine 500/-	JFCM Bailable

		section 17 for the purpose of varying the conditions specified in the licence or fails to surrender a licence to the appropriate authority under sub-section (10) of that section on its suspension or revocation		
	(5)	Whoever, when required under section 19 to give his name and address, refuses to give such name and address or gives a name or address which subsequently transpires to be false	< 6 Months /+ fine 200/-	JFCM Bailable
26. Secret contraventions	(1)	of section 3,4,10 or 12	> six months < seven years + fine.	JFCM Bailable
	(2)	of section 5,6,7 or 11	> five years < ten years + fine.	Sessions Court
	(3)	Whoever on any search being made under section 22 conceals or attempts to conceal any arms or ammunition	< ten years + fine.	Sessions Court
27. Punishment for using arms, etc.-	(1)	in contravention of section 5	> three years < seven years + fine.	JFCM
	(2)	in contravention of section 7	> seven years < imprisonment for life + fine.	Sessions Court
	(3)	in contravention of section 7 and such use or act results in the death of any other person	Death (declared unconstitutional by Supreme court.)	Sessions court
28. Punishment for use and possession of firearms of imitation firearms in certain cases-		Whoever makes or attempts to make any use whatsoever of a firearm or an imitation firearm with intent to resist or prevent the lawful arrest or detention of himself or any other person.	< seven years + fine	JFCM
29. Punishment for knowingly purchasing arms, etc., from unlicensed person or for delivering arms, etc., to person not entitled to possess the same	(a)	Purchases	> 3 Years /+ fine	JFCM Bailable
	(b)	Delivers		
30. Punishment for contravention of licence or rule -		for which no punishment is provided elsewhere in this Act	< six months] /+ fine 2000/-	JFCM Bailable
31. Punishment for subsequent offences -			double the penalty provided for the latter offence.	As per original jurisdiction

Indian Arms Rules 1962 (Extracts)

Prohibited Bores

- Prohibited Bores - Arms Rules, 1962 - Schedule I - categories I(b) and I(c).
- MHA - sole licensing authority - w.e.f. 8.8.1987.
- Applications to be made through the local licensing authorities/State/U.T. Governments.

Non Prohibited Bores

- Non-Prohibited Bores - Arms Rules, 1962 - Schedule I - category III.
- District Magistrate/Collector - licensing authority - license for the whole State or part thereof.
- All India or part license - granted by the State/U.T. Governments only.
- Renewing authority - DM/Collector.

SCHEDULE -I
(See rule 2)

Category 1	Arms 2	Ammunition 3
I.	<p>a) Prohibited arms as defined in Sec. 2(1) (i) and such other arms as the Central Government may, by notification in the Official Gazette, specify to be prohibited arms.</p> <p>b) [Semi-automatic firearms, other than those included in categories I (c) and III(a), smooth bore guns having barrel of less than 20" in length.</p> <p>c) Blot action or semi-automatic rifles of .303" or 7.62 mm. bore of any other bore which can chamber and fire service ammunition of .303" or 7.62 mm. calibre; musket ammunition; pistols, revolvers of carbines of any bore which can chamber .380" and .455" rimmed cartridges or service 9mm. or .445" rimless cartridges].</p> <p>d) Accessories for any fire-arms designed or adapted to diminish the noise or flash caused by the firing thereof.</p>	<p>Prohibited ammunition as defined in Sec. 2(1) (h) and such other articles as the Central Government may, by notification in the Official Gazette, specify to be prohibited ammunition.</p> <p>Ammunition for arms of category I (b)</p> <p>Ammunition for fire-arms of category I (c).</p> <p>Nil</p>
II.	Machinery for manufacture of proof testing of a fire-arm	Machinery for manufacture ammunition.
III.	Fire-arms other than those in categories I, II and IV, namely :	Ammunition for fire-arms other than those in categories I, II and IV, namely :
	a) Revolvers and pistols.	Ammunition for fire arms of category III (a)
	b) Breach-loading rifles other than 0.22 bore rimfire mentioned in category III (c) below.	Ammunition for fire arms of category III (b)
	c) 22 bore (low velocity) rifles using rimfire cartridges, breech-loading smooth-bore guns and air-rifles.	Ammunition for fire arms of category III (c)
	d) Air-guns and muzzel-loading guns.	Ammunition for fire arms of category III (d)
IV.	Curios and historical weapons, under Sec. 45 (c) other than those excluded under Sec. 45 (c)	Curios and historical ammunition
V.	Arms other than fire-arms: Sharp-edged and deadly weapons, namely: swords (including sword-stick), daggers, bayonets, spears (including lances and javelins); battle-axes, knives (including kirpans a Khukries and other such weapons with blades longer than 9" or wider than 2" other than those designed for domestic, agricultural, scientific or industrial purpose, steel baton; "Zipo" and other such weapons called "life preserves"; machinery for making arms other than category II; and any other arms which the Central Government may notify under Sec. 4.	
VI.		<p>(a) [Articles containing explosive or fulminating material fuses and friction tubes than blank fire cartridges].</p> <p>(b) Ingredients as defined in Sec. 2(b) (VII).</p>

Notes- Parts and accessories of any arms or ammunition and charges for fire-arms and accessories for charges belong to the same category as the arms or ammunition.
Schedule óII deals with the licensing authorities.
Schedule-III deals with the various forms
Schedule IV prescribes the fees

NEWS

The following are the new Governing body of the A.P. Public Prosecutors (Cadre) Association

	Sarva Shree		
President :	T. Srinivasulu Reddy	Addl.P.P.Gr-I- Ongole	9441380033
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(Telangana) :	VACANT		
Ladies			
Representative:	Smt. V. Krishna Veni	APP, Vinukonda	9949161230

ON A LIGHTER VEIN

"Did you murder the victim?" asked the Prosecutor.

"No, I did not!" answered the Accused.

"Do you know what the penalties are for perjury?" the Prosecutor asked.

"I certainly do... and they're a hell of a lot better than the penalty for murder!" the Accused answered.

EXPERT'S SPEAK

(This column is for getting the queries clarified through the rich expertise of our seniors)

Query: An accused mixes some poison in the lake supplying drinking water to the Village.
What is the offence committed by the Accused.

Expert: Sec 328 IPC triable by court of Sessions. Cognizable and non-bailable.

SHARPEN YOUR TOOLS

Can the passport be impounded of an accused in a criminal case?

Send your replies by 15th of Next month. The best reply would be acknowledged herein.

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To, _____

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