

Prosecution Replenish

Vol- X

Part – 9



September, 2022

Aano Bhadra Kratvo Yantu Viswatah (Rig Ved)
Let all Noble thoughts come to us from all directions



CITATIONS

2022 0 Supreme(SC) 649; Reliance Industries Limited Vs. Securities And Exchange Board Of India & Ors.; Criminal Appeal No. 1167 of 2022 [@ Special Leave Petition (Crl) NO. 3417 of 2022]; Decided On : 05-08-2022 (THREE JUDGE BENCH)

Initiation of criminal action in commercial transactions, should take place with a lot of circumspection and the Courts ought to act as gate keepers for the same. Initiating frivolous criminal actions against large corporations, would give rise to adverse economic consequences for the country in the long run.

2022 0 Supreme(SC) 652; Varsha Garg vs. The State of Madhya Pradesh and Others; Criminal Appeal No. 1021 of 2022, M.A. No. 1144 of 2022, SLP (Crl) No. 2239 of 2022; Decided On : 08-08-2022

The summons to produce a document or other thing under Section 91 can be issued where the Court finds that the production of the document or thing “is necessary or desirable for the purpose of any investigation, trial or other proceeding” under the Cr.P.C. As already noted earlier, the power under Section 311 to summon a witness is conditioned by the requirement that the evidence of the person who is sought to be summoned appears to the Court to be essential to the just decision of the case.

Court is vested with a broad and wholesome power, in terms of Section 311 of the Cr.P.C. to summon and examine or recall and re-examine any material witness at any stage and the closing of prosecution evidence is not an absolute bar.

2022 0 Supreme(SC) 657; Dauvaram Nirmalkar Vs. State Of Chhattisgarh; Criminal Appeal No. 1124 of 2022 (Arising Out Of Special Leave Petition (Criminal) No. 2481 of 2022); Decided on : 02-08-2022

The question of loss of self-control by grave and sudden provocation is a question of fact. Act of provocation and loss of self-control, must be actual and reasonable. The law attaches great importance to two things when defence of provocation is taken under Exception 1 to Section 300 of the IPC. First, whether there was an intervening period for the passion to cool and for the accused to regain dominance and control over his mind. Secondly, the mode of resentment should bear some relationship to the sort of provocation that has been given. The retaliation should be proportionate to the provocation.¹²[See the opinion expressed by Goddar, CJ. in R v. Duffy (supra).] The first part lays emphasis on whether the accused acting as a reasonable man had time to reflect and cool down. The offender is presumed to possess the general power of self-control of an ordinary or reasonable man, belonging to the same class of society as the accused, placed in the same situation in which the accused is placed, to temporarily lose the power of self-control. The second part emphasises that the offender's reaction to the provocation is to be judged on the basis of whether the provocation was sufficient to bring about a loss of self-control in the fact situation. Here again, the court would have to apply the test of a reasonable person in the circumstances. While examining these questions, we should not be short-sighted, and must take into account the whole of the events, including the events on the day of the fatality, as these are relevant for deciding whether the accused was acting under the cumulative and continuing stress of provocation. Gravity of provocation turns upon the whole of the victim's abusive behaviour towards the accused. Gravity does not hinge upon a single or last act of provocation deemed sufficient by itself to trigger the punitive action. Last provocation has to be considered in light of the previous provocative acts or words, serious enough to cause the accused to lose his self-control. The cumulative or sustained provocation test would be satisfied when the accused's retaliation was immediately preceded and precipitated by some sort of provocative conduct, which would satisfy the requirement of sudden or immediate provocation.

For clarity, it must be stated that the prosecution must prove the guilt of the accused, that is, it must establish all ingredients of the offence with which the accused is charged, but this burden should not be mixed with the burden on the accused of proving that the case falls within an exception. However, to discharge this burden the accused may rely upon the case of the prosecution and the evidence adduced by the prosecution in the court.

2022 0 Supreme(SC) 661; Ramabora @ Ramaboraiah & Anr. Vs. State Of Karnataka: Criminal Appeal No.1697 of 2011; Decided on : 10-08-2022

It is true that the principle "falsus in uno falsus in omnibus" may not have unadulterated application to criminal jurisprudence. The Courts have always preferred to do what Hamsa, the mythological Swan, is believed to do, namely, to separate milk and water from a mixture of the two¹[The idiom "sifting the chaff from the grain" has become very old and worn out and requires replacement].

2022 0 Supreme(SC) 662; Budhiyarin Bai Vs State of Chattisgarh; Criminal Appeal No (S). 1218 of 2022 (Arising out of SLP (Criminal) No(s). 4935 of 2022); Decided On : 10-08-2022

We are of the considered view that the offences under the NDPS Act are very serious in nature and against the society at large and no discretion is to be exercised in favour of such accused who are indulged in such offences under the Act. It is a menace to the society, no leniency should be shown to the accused persons who are found guilty under the NDPS Act. But while upholding the same, this Court cannot be oblivious of the other facts and circumstances as projected in the present case that the old illiterate lady from rural background, who was senior citizen at the time of alleged incident, was residing in that house along with her husband and two grown up children who may be into illegal trade but that the prosecution failed to examine and taking note of the procedural compliance as contemplated under Sections 42, 50 and 55 of the NDPS Act, held the appellant guilty for the reason that she was residing in that house but at the same time, this fact was completely ignored that the other co-accused were also residing in the same house and what was their trade, and who were those persons who were involved into the illegal trade providing supplies of psychotropic substances, prosecution has never cared to examine.

2022 0 Supreme(SC) 712; Makhan Singh Vs. State of Haryana; Criminal Appeal No. 1290 of 2010; Decided On : 16-08-2022

the Court is required to examine as to whether the dying declaration is true and reliable; as to whether it has been recorded by a person at a time when the deceased was fit physically and mentally to make the declaration; as to whether it has been made under any tutoring/duress/prompting. The dying declaration can be the sole basis for recording conviction and if it is found reliable and trustworthy, no corroboration is required. In case there are multiple dying declarations and there are inconsistencies between them, the dying declaration recorded by the higher officer like a Magistrate can be relied upon. However, this is with the condition that there is no circumstance giving rise to any suspicion about its truthfulness. In case there are circumstances wherein the declaration has not been found to be made voluntarily and is not supported by any other evidence, the Court is required to scrutinize the facts of an individual case very carefully and take a decision as to which of the declarations is worth reliance.

In the present case, we are faced with two dying declarations, which are totally inconsistent and contradictory to each other. Both are recorded by Judicial Magistrates. A difficult question that we have to answer is which one of the dying declarations is to be believed.

the second dying declaration (Ex. PE) which was recorded by another Judicial Magistrate Ms. Kanchan Nariala (PW-6) after 3 days is concerned, it was recorded without there being examination by a doctor with regard to the fitness of the deceased Manjit Kaur to make the statement. Though the statement is recorded in L.N.J.P. Hospital and though doctors were available, Ms. Kanchan Nariala (PW-6)

did not find it necessary to get the medical condition of the deceased examined from the doctors available in the hospital. It is further to be noted that Ms. Kanchan Nariala (PW-6) herself has admitted that Bhan Singh (PW-13) and Kamlesh Kaur (PW-11), father and sister of deceased Manjit Kaur were present in the hospital. The possibility of the second dying declaration (Ex. PE) being given after tutoring by her relatives cannot therefore be ruled out.

2022 0 Supreme(SC) 747; Pushpendra Kumar Sinha Vs. State Of Jharkhand; Criminal Appeal No.1333 of 2022 [Arising Out Of SLP (Crl.) No.3440 of 2021]; Decided on : 24-08-2022

an offence of conspiracy cannot be deemed to have been established on mere suspicion and surmises or inference which are not supported by cogent and acceptable evidence. This proposition of law has been laid down by the Hon'ble Supreme Court in a case of Central Bureau of Investigation, Hyderabad Vs. K. Narayana Rao {(2012) 9 SCC 512}.

It is a well settled law that at the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing of charge the Court must apply it's judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible. Indeed, the Court has limited scope of enquiry and has to see whether any prima-facie case against the accused is made out or not. At the same time, the Court is also not expected to mirror the prosecution story, but to consider the broad probabilities of the case, weight of prima-facie evidence, documents produced and any basic infirmities etc. In this regard the judgment of "Union of India Vs. Prafulla Kumar Samal, (1979) 3 SCC 4" can be profitably referred for ready reference.

2022 0 Supreme(SC) 813; Parvez Parwaz and Another VS State of Uttar Pradesh and Others; Criminal Appeal No. 1343 of 2022, SLP (Crl.) No. 6190 of 2018; Decided On : 26-08-2022

The words "No Court shall take cognizance" employed in Section 196 of the Code of Criminal Procedure (for short 'Cr.P.C.') and the consequential bar created under the said provision would undoubtedly show that the bar is against 'taking of cognizance by the Court'. In other words, it creates no bar against registration of a crime or investigation by the police agency or submission of a report by the police on completion of investigation as contemplated under Section 173, Cr.P.C. [Refer: State of Karnataka vs. Pastor P. Raju, (2006) 6 SCC 728].

2022 0 Supreme(SC) 862; Sanju And Others Vs. State Of Uttar Pradesh; Criminal Appeal No. 1981 of 2014; Decided on : 29-08-2022

there was a time gap between the actual occurrence and the visit of the police to the place of incident. By that time, the villagers had collected at the spot, a factum which has been deposed to by Rakesh Kumar (PW- 1), wherein he has stated that the villagers saw the police taking the dead body 2 hours after the incident. This was not controverted and challenged in the cross-examination. Disappearance of the empty

cartridges can be explained, as a number of villagers had gathered on the spot and had access to the place of occurrence. Further, the place of occurrence cannot be challenged on this ground. There is overwhelming evidence to establish that the place of incident was outside the residence of the deceased Chandrapal Singh and his brother Rakesh Kumar (PW-1).

<https://indiankanoon.org/doc/194730296/>; **Mr. Y.S. Jagan Mohan Reddy vs Central Bureau Of Investigation on 26 August, 2022; CRLP No.607 OF 2020**

as per sub-section (1) of [Section 205](#), whenever a Magistrate issues a summons, he may dispense with the personal attendance of the accused and permit him to appear by his pleader, if he sees reason so to do. However, as per sub-section (2), at any stage of the proceedings, the trying Magistrate may direct personal attendance of the accused and if necessary, enforce such attendance in the manner provided. Therefore, the Magistrate has the discretion to dispense with the personal attendance of the accused and to permit him to appear by his pleader, if he sees reason so to do. The expression reason so to do is not qualified to the extent that the reason should be good or sufficient. The requirement of the law is that if the Magistrate sees reason, he may dispense with the personal attendance of the accused. Of course, he is empowered thereafter to direct the personal attendance of the accused at any stage of the proceedings.

<https://indiankanoon.org/doc/86036347/>; **Kommara Ramesh vs The State Of Telangana on 26 August, 2022; CRIMINAL REVISION CASE No.192 OF 2015**

The non examination of the Investigating Officer is not fatal to the prosecution case, as he reported to be died. The trial court also observed that no important omissions and contradictions were elicited in the evidence of the witnesses to confront the same to the investigating officer so as to consider that it resulted in prejudice to the accused.

No defence of contributory negligence was taken by the accused during the trial. It was not even suggested to the witnesses that the deceased suddenly crossed the road or that he was negligent and contributed to the accident. No defence witnesses were examined by the accused to prove the said fact.

<https://indiankanoon.org/doc/97594006/>; **Mohammed Ghouse, Hyd 2 Othrs vs State Of Telangana on 25 August, 2022; CRLR CASE No.54 OF 2015**

the common intention can develop on the spot and the observations of the appellate court that on observing the manner of incident, the accused might have developed common intention at the spur of the moment at the scene of offence is not contrary to law.

the other injuries might be a result of fall of PW.6 on a rough surface, is considered as not proper as the suggestion given to a doctor could at the most be considered as a defence but not as an evidence to come to a conclusion that the injuries were the result of a fall of PW.6 on a rough surface.

Conducting of test identification parade is only for the satisfaction of the Investigating Officer to know whether he arrested the right persons or not and

whether the investigation was proceeding in a proper manner. Non-conducting of test identification parade could not be viewed with suspicion when the witness identified his assaulters during trial.

The maxim falsus in uno, falsus in omnibus is not recognized in our criminal law. When a witness speaks false in one thing it need not be considered that he would speak false on all other aspects. It is the duty of the courts to separate chaff from the grains.

<https://indiankanoon.org/doc/74426486/>; **Marepally Venkanna, Nalgonda vs State Of A.P., on 25 August, 2022; CRIMINAL APPEAL No.1209 OF 2009**

The allegation of rape in the present case is against P.W.1 who is the daughter of the appellant. No daughter would under any circumstance implicate the father in such heinous offence.

When the father himself was the perpetrator, the victim daughter in all probability would have informed her friend, for the reason of the others being family members and may have apprehended that they would support the appellant.

The medical evidence also suggesting that there was no semen and spermatozoa found, cannot be a ground to brush aside the case of the complainant. The Doctor, P.W.6 not finding any external injuries on P.W.1 is of no consequence in the present facts of the case. The case is one of raping daughter by her own father, over a period of time. It is not the case of P.W.1 that immediately after she was raped, she went to the police station.

<https://indiankanoon.org/doc/50553224/>; **Baseer Ahmed, Hyd vs P.P., Hyd on 23 August, 2022; I.A. No.3 of 2021 in CrI.A. No.1224 of 2015;**

354 IPC compounded as the offence was prior to the 2013 amendment

<https://indiankanoon.org/doc/181041043/>; **Shaik Tajuddin Balu vs The State Of Andhra Pradesh on 11 August, 2022; CRLA Nos.1197 OF 2009 and 485 of 2010**

The act of trying to remove the clothes will not amount to an offence under [Section 376](#) r/w 511 of [IPC](#). However, the allegation that A1 removed his clothes and tried to pull the clothes of P.W.2 will amount to an offence of outraging the modesty of woman punishable under [Section 354](#) of IPC.

<https://indiankanoon.org/doc/96283053/>; **M.Yadagiri, vs The State Of A.P., on 11 August, 2022; CRIMINAL APPEAL No.773 OF 2009**

It cannot be said that the appellant had no intention to outrage the modesty of victim girl. The act of lying on the victim girl itself would attract the offence under [Section 354](#) of IPC.

<https://indiankanoon.org/doc/96896951/>; **Mohd. Ahmed Mobin And Another vs State Of Telangana on 11 August, 2022; CrI.Petition No.7035 of 2022**

Police directed to follow the procedure as contemplated under [Section 41-A](#) Cr.P.C and the guidelines formulated by the Hon'ble CrI.Petition No.7035 of 2022 Supreme Court in [Arnesh Kumar v. State](#) of Bihar¹scrupulously. It is needless to say, any

deviation in this regard will be viewed seriously in offence registered under Section 370A(2) IPC (**Punishable with 20 years to life**)

<https://indiankanoon.org/doc/60773884/>: Nandagiri Praveen vs The State Of Telangana And Another on 11 August, 2022; Crl.Petition No.7061 of 2022

Police directed to follow the procedure as contemplated under [Section 41-A](#) Cr.P.C and the guidelines formulated by the Hon'ble Supreme Court in [Arnesh Kumar v. State](#) of Bihar scrupulously in a case registered for the offences punishable under [Sections 448](#), [509](#) and [506](#) read with [Section 34](#) of Indian Penal Code and Section 3(1)(r)(s) and 3(ii)(Va) of SC/STs (POA) Amendment Act - 2015.

<https://indiankanoon.org/doc/93713084/>; Sri C. Hemachandra Murthy vs State on 10 August, 2022; CRIMINAL APPEAL No.1451 OF 2008

As held by the Hon'ble Supreme Court, in [P.Satyanarayana Murthy v. District Inspector of Police, State of Andhra Pradesh](#) ((2015) 10 Supreme Court Cases 152 and [N.Vijay Kumar v. State of Tamil Nadu](#) (2021) 3 Supreme Court Cases 687, that unless demand is proved, though there is recovery, it is of no consequence and once the demand is not proved, [Section 7](#) of the Act of 1988 is not attracted.

<https://indiankanoon.org/doc/186506658/>; Md. Sadiq vs The State Of A.P. on 4 August, 2022; CRIMINAL APPEAL No.387 of 2009

Mere demand without any harassment such as beating, abusing or sending her away to her parents house would not amount to an offence under [Section 304-B](#) of IPC. However, the fact that there was demand for two tulas of gold would go to show that the deceased was treated with cruelty for which reason, the appellant is found guilty and convicted for the offence under [Section 498-A](#) of IPC.

<https://indiankanoon.org/doc/141667449/>; Vishwanatharn Pedda Kondaiah vs The Station House Officer, on 26 August, 2022; W.P.No.23073 of 2022

the order granting police aid in I.A.No.507 of 2021 also co-terminates along with the order setting aside the temporary injunction order. So, it cannot be said that the order of granting police aid by the trial Court is in force.

it is now evident that as per the finding recorded by the Division Bench of this Court, the 6th respondent has been in possession of the said property as a lessee and running a ginning mill in the said property. When that be the clear finding of the Court, the petitioner is not entitled to any police aid.

Siddharth Mukesh Bhandari vs State of Gujarat 2022 LiveLaw (SC) 653; [CrA 1044-1046 of 2022](#); 2 August 2022;

It appears from the impugned order passed by the High Court that the learned Single Judge has not properly appreciated and/or considered our earlier judgment and order passed in M/s. Neeharika Infrastructure Pvt. Ltd. (AIR 2021 SC 1918). Even the learned Single Judge has also not properly understood the ratio of the decision of this Court in the case of M/s. Neeharika Infrastructure Pvt. Ltd. It appears that the learned Single Judge seems to be of the opinion that after giving

reasons, the High Court can grant an interim stay of further investigation in a petition seeking quashing of the criminal complaint filed under Article 226 of the Constitution read with Section 482 Cr.P.C. The High Court has not properly appreciated the principles and the law laid down by this Court in the case of M/s. Neeharika Infrastructure Pvt. Ltd. What is emphasized by this Court in the case of M/s. Neeharika Infrastructure Pvt. Ltd. is that grant of any stay of investigation and/or any interim relief while exercising powers under Section 482 Cr.P.C. would be only in the rarest of rare cases. This Court has also emphasized the right of the Investigating Officer to investigate the criminal proceedings. In our earlier judgment and order, in fact, we abstracted the principles laid down by this Court in the case of M/s. Neeharika Infrastructure Pvt. Ltd. in paragraph 4.

Criminal Appeal No(s). 442/2022; 27th JULY, 2022 MANDAR DEEPAK PAWAR versus THE STATE OF MAHARASHTRA & ANR. 2022 LiveLaw (SC) 649

The parties chose to have physical relationship without marriage for a considerable period of time. For some reason, the parties fell apart. It can happen both before or after marriage. Thereafter also three years passed when respondent No.2 decided to register a FIR.- FIR Quashed.

We are fortified to adopt this course of action by the judicial view in (2019) 9 SCC 608 titled “Pramod Suryabhan Pawar Vs. State of Maharashtra & Anr.” where in the factual scenario where complainant was aware that there existed obstacles in marrying the accused and still continued to engage in sexual relations, the Supreme Court quashed the FIR. A distinction was made between a false promise to marriage which is given on understanding by the maker that it will be broken and a breach of promise which is made in good faith but subsequently not fulfilled. This was in the context of Section 375 Explanation 2 and Section 90 of the IPC, 1860.

Criminal Appeal No 1273 of 2022; (Arising out of SLP (Crl) No 9509 of 2019); M N G Bharateesh Reddy Vs. Ramesh Ranganathan and Another; 18.8.2022

an alleged breach of the contractual terms does not ipso facto constitute the offence of the criminal breach of trust without there being a clear case of entrustment.

http://tshcstatus.nic.in/hcaporders/2022/202100043902022_2.pdf; CRLP No. 4390 of 2022; Seva Swarna Kumari @ Kumaramma and others Vs. State of Andhra Pradesh; 18.08.2022;

This Court is of the considered opinion that the above said decision aptly applies to the facts of the present case. At this juncture, it may be appropriate to refer to some of the principles laid down by the Hon’ble Supreme Court in AG v. Shiv Kumar Yadav and Others³ which are to be kept in mind for exercising power under Section 311 Cr.P.C., and the relevant to the present context are: a) The exercise of widest discretionary power Under Section 311 Code of Criminal Procedure should ensure that the judgment should not be rendered on inchoate, inconclusive and speculative presentation of facts, as thereby the ends of justice would be defeated; b) The wide discretionary power should be exercised judiciously and not arbitrarily; c) The object

of Section 311 of Code of Civil Procedure simultaneously imposes a duty on the court to determine the truth and to render a just decision.

**Criminal Appeal No 1184 of 2022 (Arising out of SLP(Crl) No 1674 of 2022)
Anusha Deepak Tyagi Vs State of Madhya Pradesh & Ors; 5.8.2022**

This Court, too, has had its role to play in ensuring that justice does not remain inaccessible. In *State of Maharashtra v. Bandu @ Daulat*, {(2018) 11 SCC 163} this Court directed that special centres be set up in each state in order to facilitate depositions by vulnerable witnesses, including victims of sexual offences. In *Smruti Tukaram Badade v. State of Maharashtra*, {2022 SCC OnLine SC 78} a two judge bench of this Court (of which one of us, Dr. DY Chandrachud, J. was a part) supplemented the directions issued in *Bandu @ Daulat* (supra) with respect to setting up such special centres. 35. It is the duty and responsibility of trial courts to deal with the aggrieved persons before them in an appropriate manner, by: a. Allowing proceedings to be conducted in camera, where appropriate, either under Section 327 CrPC or when the case otherwise involves the aggrieved person (or other witness) testifying as to their experience of sexual harassment / violence; b. Allowing the installation of a screen to ensure that the aggrieved woman does not have to see the accused while testifying or in the alternative, directing the accused to leave the room while the aggrieved woman's testimony is being recorded; c. Ensuring that the counsel for the accused conducts the cross-examination of the aggrieved woman in a respectful fashion and without asking inappropriate questions, especially regarding the sexual history of the aggrieved woman. Cross-examination may also be conducted such that the counsel for the accused submits her questions to the court, who then poses them to the aggrieved woman; d. Completing cross-examination in one sitting, as far as possible.

NOSTALGIA

Interested Witness

it is an established principle of law that a close relative cannot automatically be characterized as an "interested" witness. However, it is trite that even related witness statements need to be scrutinized more carefully. [See *Bhaskarrao v. State of Maharashtra*, (2018) 6 SCC 591; *State of Rajasthan v. Madan*, (2019) 13 SCC 653]

Discharge:

it will be apposite to take note of the legal principles applicable seeking discharge, for which we may refer to a judgment of this Court in *P. Vijayan vs. State of Kerala and Another*, (2010) 2 SCC 398 which has been further reiterated by this Court in the recent judgment in *M.E. Shivalingamurthy vs. Central Bureau of Investigation, Bengaluru*, (2020) 2 SCC 768 and discerned the following principles:

“17.1. If two views are possible and one of them gives rise to suspicion only as distinguished from grave suspicion, the trial Judge would be empowered to discharge the accused.

17.2. The trial Judge is not a mere post office to frame the charge at the instance of the prosecution.

17.3. The Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding. Evidence would consist of the statements recorded by the police or the documents produced before the Court.

17.4. If the evidence, which the Prosecutor proposes to adduce to prove the guilt of the accused, even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, “cannot show that the accused committed offence, then, there will be no sufficient ground for proceeding with the trial.”

17.5. It is open to the accused to explain away the materials giving rise to the grave suspicion.

17.6. The court has to consider the broad probabilities, the total effect of the evidence and the documents produced before the court, any basic infirmities appearing in the case and so on. This, however, would not entitle the court to make a roving inquiry into the pros and cons.

17.7. At the time of framing of the charges, the probative value of the material on record cannot be gone into, and the material brought on record by the prosecution, has to be accepted as true.

17.8. There must exist some materials for entertaining the strong suspicion which can form the basis for drawing up a charge and refusing to discharge the accused.”

Falsehood

In Arvind Kumar @ Nemichand & Ors. vs. State of Rajasthan, 2021 SCC Online SC 1099, M.M. Sundresh J. speaking for the bench crystallized this principle as follows:

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

MOB Psychology

Kishori v. State of Delhi [[\(1999\) 1 SCC 148](#)], this Court observed :

“12. It is no doubt true that the high ideals of the Constitution have to be borne in mind, but when normal life breaks down and groups of people go berserk losing balance of mind, the rationale that the ideals of the Constitution should be upheld or followed, may not appeal to them in such circumstances, nor can we expect such loose heterogeneous group of persons like a mob to be alive to such high ideals. Therefore, to import the ideas of idealism to a mob in such a situation may not be realistic. It is no doubt true that courts must be alive and in tune with the notions prevalent in the society and punishment imposed upon an accused must be commensurate with the heinousness of the crime. We have elaborated earlier in the course of our judgment as to how mob psychology works and it is very difficult to gauge or assess what the notions of society are in a given situation. There may be one section of society which may cry for a very deterrent sentence while another section of society may exhort upon the court to be lenient in the matter. To gauge such notions is to rely upon highly slippery imponderables and, in this case, we cannot be definite about the views of society.”

[See also Balraj v. State of U.P. [\(1994\) 4 SCC 29](#); and Jashubha Bharatsing Gohil and Others - [\(1994\) 4 SCC 353](#)]

DURING COURSE OF INVESTIGATION, IF WITNESS HAD GIVEN IDENTIFYING FEATURES OF ASSAILANTS, SAME COULD BE CONFIRMED BY INVESTIGATING OFFICER BY SHOWING PHOTOGRAPHS OF THE SUSPECT AND SHALL NOT SHOW A SINGLE PHOTOGRAPH.

2004 4 Crimes(SC) 241 = 2004 7 Supreme 504; 2004(4) Crimes 241 (SC); D. Gopalakrishnan Vs. Sadanand Naik & Ors.

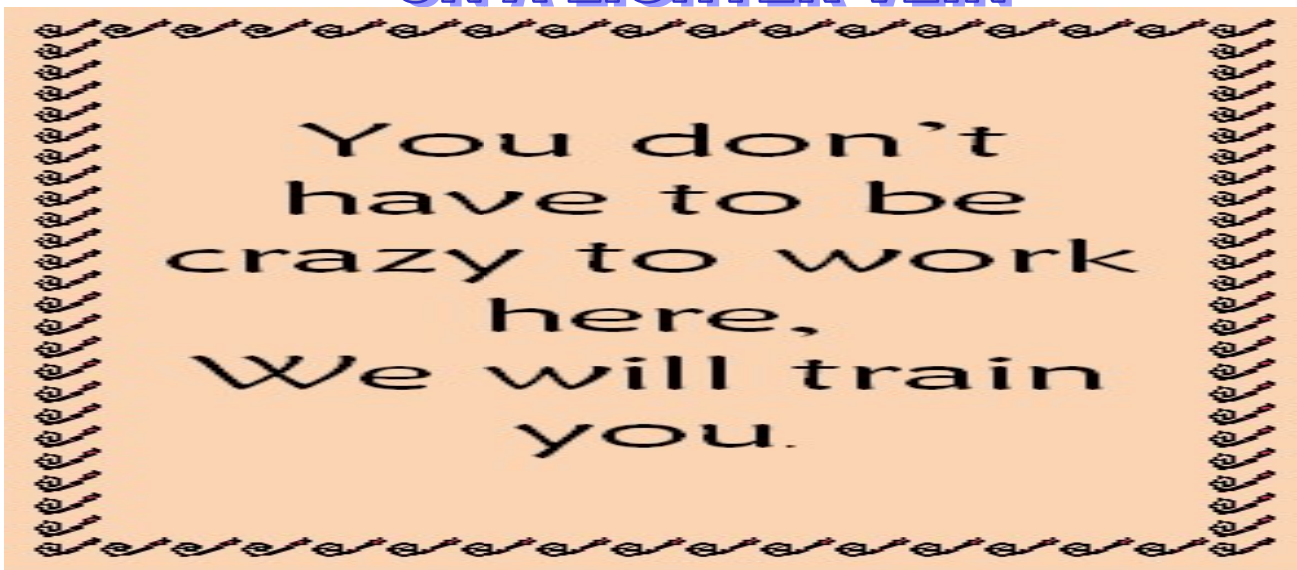
7. There are no statutory guidelines in the matter of showing photographs to the witnesses during the stage of investigation. But nevertheless, the police is entitled to show photographs to confirm whether the investigation is going on in the right direction. But in the instant case, it appears that the investigating officer procured the album containing the photographs with the names written underneath and showed this album to the eye-witnesses and recorded their statements under Section 161 Cr.P.C. The procedure adopted by the police is not justified under law as it will affect fair and proper investigation and may sometimes lead to a situation where wrong persons are identified as assailants. During the course of the investigation, if the witness had given the identifying features of the assailants, the same could be confirmed by the investigating officer by showing the photographs of the suspect and the investigating officer shall not first show a single photograph but should show more than one photograph of the same person, if available. If the suspect is available for identification or for video identification, the photograph shall never be shown to the witness in advance.

NEWS

- The Contents Of The Supreme Court Judges (Amendment) Rules, 2022 Notified.
- The Contents Of The National Anti-Doping Act, 2022. Notified
- S.O. 3653(E).—In Exercise Of The Powers Conferred By Sub-Section (2) Of Section 1 Of The Criminal Procedure (Identification) Act, 2022 (11 Of 2022), The Central Government Hereby Appoints The 4th Day Of August, 2022 As The Date On Which The Said Act Shall Come Into Force.
- The Andhra Pradesh State / District Level Police Complaints Authority (Administration And Procedure) Rules, 2022. [G.O.Ms.No.112, Home (Legal.II), 1st August, 2022.]
- Andhra Pradesh State Judicial Service - Civil Judges (Junior Division) - Notified For The Year, 2020 - Selection Of Candidates - Approved. [G.O.Ms.No.108, Law (L And LA & J - Home - Courts.A), 25th July, 2022.]
- Amendment To The Special Rules For The Andhra Pradesh Police (Secretarial Establishment) Service Rules, 1994. [G.O.Ms.No. 109, Home (Legal.II), 27th July, 2022.]
- Revolutionary Democratic Front (Rdf), A Front Organization Of Communist Party Of India (Maoist) - Extending The Declaration As Unlawful Association For A Further Period Of One Year With Effect From 09.08.2022. [G.O.Ms.No.71, General Administration (SC.II), 10th August, 2022.]
- Communist Party Of India (Maoist) - Extending The Declaration As Unlawful Association For A Further Period Of One Year With Effect From 17.08.2022 . [G.O.Ms.No.72, General Administration (SC.II), 10th August, 2022.]
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- Appointment Of The Members To The Andhra Pradesh State Commission For Protection Of Child Rights. [G.O.Ms.No.14, Dept. For Women, Children, Differently Abled & Senior Citizens (Prog.I), 5th August, 2022.]

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