PROSECUTION

REPLENISH

(An Endeavour for Learning and Excellence)

Vol- III Part 1 Monthly Leaflet JANUARY, 2014

CITATIONS

CITATIONS REPORTED IN Crl.L.J.

Extradition request – Arrest and detention of fugitive accused pursuant to enquiry by Magistrate and legally issued warrant of arrest – cannot be termed as illegal. **P.Pushpavarthy Vs Ministry of External Affairs & ors. 2013 Crl.L.J. 4420**

Investigation – transfer of independent investigating agency to any other independent investigating agency like CBI must be in rare and exceptional cases. **K.V.Rajendran vs. Superintendent of Police, CBCID, South Zone, Chennai 2013 Crl.L.J. 4465**

Delay of few hours in lodging FIR being satisfactory explained not fatal to prosecution case.
Partisan/interested witness testimony is reliable **Shanmugam & anr Vs State rep. through Inspector of Police, / Tamilnadu 2013 Crl.L.J. 4522**

Two dying declarations made before ASI and doctor respectively – said D.D. corroborated both by circumstantial and direct evidence – cannot be discarded even though Magistrate was not requisitioned for their recording. **State of Rajasthan vs. Santosh Savita 2013 Crl.L.J. 4611**

Where the eye witnesses' account is found credible and trustworthy, a medical opinion pointing to alternative possibilities cannot be accepted as conclusive.
Minor contradictions in deposition of witnesses have to be ignored.
Evidence of interested witness cannot be disbelieved because they are related to each other or to deceased.

Prosecution case cannot be rejected solely on ground of delay in lodging FIR **Gangabhavani Vs Rayapati Venkat Reddy & ors. 2013 Crl.L.J. 4618**

Minor contradictions, inconsistencies, embellishment or improvements in relation to trivial matter does not affect prosecution case **S.Govindaraju vs. State of Karnataka 2013 Crl.L.J. 4710**

CITATIONS REPORTED IN SCC (Crl)

Benefit of probation, not available to persons convicted of offence under Crimes against Women and Children. **Ajahar Ali vs. State of Karnataka 2013(3) SCC (Crl.) 794.**

Where dying declaration is made voluntarily and truthfully by a person who is physically in a condition to make such statement, there is no impediment in relying on such a declaration **Manoj & ors Vs. State of Haryana 2013(3) SCC (Crl.) 865**

S.190(1)(b) and S.173(2) of Cr.P.C – Magistrate's power to take cognizance of offence upon police report – Magistrate has power to independently apply his mind to facts emerging from investigation and take cognizance even if police report U/s.173(2) suggests no case made out against accused. **Motilal Songara vs. Prem Prakash @ Pappu & anr. 2013(3) SCC (Crl.) 872**

When accused is last seen with deceased in his house, accused is duty-bound to explain circumstances under which deceased died – failure to explain or false explanation would create a strong suspicion about guilt of accused. **Ravirala Laxmaiah vs. State of A.P. 2013(3) SCC (Crl.) 911**

CITATIONS REPORTED IN ALT (Crl)

Verdict by the Constitutional Court of Portugal is not binding on Supreme Court of India, but only has persuasive value.
'World Public Order' is the recurring theme, based on which the extradition is practiced by the States. **Abu Salem Abdul Qayyum Anari vs. CBI & anr 2013(3) ALT (Crl.) 385 (SC)**

Magistrate has ample powers to disagree with final report u/s. 173(3) and proceed against accused, dehors police report – such power Sessions Court does not have till S.319 stage is reached. **Dharam Pal and others Vs State of Haryana & ors. 2013(3) ALT (Crl.) 403 (SC)**

Principles governing grant of sanction order for prosecution enunciated. **State of Maharastra through CBI vs. Mahesh G.Jain 2013(3) ALT (Crl.) 433 (SC)**

Dying declaration which has been found to be voluntary and truthful and which is free from any doubts can be the sole basis for conviction. **Parbin Ali & anr Vs. State of Assam 2013(3) ALT (Crl.) 440(SC)**

While deciding acquittal appeal, power of appellate court is in no way circumscribed by any limitation, and that power is exercisable by appellate court to comprehensively review the entire evidence.

There would be failure of justice not only by unjust conviction, but also by acquittal of guilty. **Chinnam Kameswara Rao & ors. Vs. State of A.P. rep. by Home Secretary 2013(3) ALT (Crl.) 446 (SC)**

CITATIONS REPORTED IN ALD (Crl)

The statement given by the witness in the Court on oath is a substantive evidence. : There cannot be any dispute that F.I.R in a criminal case is a valuable piece of evidence, which shows the earliest version of the incident. Law is well settled that the F.I.R. can only be used to corroborate the evidence of informant when the informant comes to the witness box in the manner as provided under Section 157 of the Indian Evidence Act, 1872 (for short, 'the Act') or for contradicting the maker under Section 145 of the Act or impeaching the credit of the witness under Section 155 of the Act. It is not a substantive piece of evidence. The statement given by the witness in the Court on oath is a substantive evidence. The main fabric of the prosecution case, as stated by P.W.1, is completely more or less in corroboration with his evidence. Minor discrepancies or omissions are bound to occur even in a case of truthful witness. Those minor contradictions or omissions are of trivial in nature. They will not affect the main fabric of the prosecution case.

One of the contentions raised by the learned counsel for the appellants is that the evidence of P.Ws.1 to 3 is a **parrot like version** and therefore, it is not possible for the witnesses to reproduce the same after lapse of 4 or 5 years. In view of the fact that the incident had taken place in the broad day light and they could be in a position to identify the assailants, the incident must have been imprinted in their minds so as to recollect the same at a later point of time and to narrate the same. Therefore, once their presence is established, on the ground of giving a parrot like version, the entire testimony cannot be discarded.

The delay in sending the report may be one of the grounds for taking into consideration **along with other grounds**, if any, to suspect the case of the prosecution, but in this case, there are no other suspicious circumstances appearing in the prosecution evidence so as to doubt the case.

Mere relationship with the deceased is no ground to jettison their testimonies, if it is otherwise found to be worthy of confidence and trustworthy. **In the normal course of events, a close relative would be the last person to relieve the real culprits and implicate a false person.** The evidence of related witnesses should be subjected to very careful scrutiny with extreme care and caution and if on such scrutiny, the testimony is found to be intrinsically reliable, then that evidence can be acted upon.

The latin maxim***"falsus in uno amd falsus in omnibus"*** (false in one thing and false in everything) has no application to the present Indian Law of Criminal Jurisprudence. **Such part of the statement, which inspires confidence, can be taken into consideration and such part of his testimony, which is false or unbelievable, can be rejected.**

Dowluri Krishna & ors Vs State of A.P. 2013(2) ALD (Crl) 929 (D.B) (A.P.)

if there are more than one dying declaration they should be consistent throughout if the deceased had several opportunities of making such dying declarations, that is to say, if there are more than one dying declaration they should be consistent. If a dying declaration is found to be voluntary, reliable and made in fit mental condition, it can be

relied upon without even any corroboration. In a case where there are more than one dying declaration if some inconsistencies are noticed between one and the other, the Court has to examine the nature of the inconsistencies names whether they are material or not. In scrutinizing the contents of various dying declarations, in such a situation, the court has to examine the same in the light of the various surrounding facts and circumstances.
State of A.P. Vs Palika Raju & another 2013(2) ALD (Crl) 949 (D.B) (A.P.)

The Investigation agency has to investigate and find the culprit who impersonated and created the forged document. The person in whose favour the sale deed is executed cannot escape on the ground that he did not forge the document.
Ambavaram Rajasekhar Rao Vs State of A.P. 2013(2) ALD (Crl) 955 (A.P.)

Once a fact has been stated by witness and the same has not been denied or disputed in the cross examination, it can be said that such a fact is admitted.
An improvement would not discredit the evidence of a witness. The evidence of a witness will have to be assessed by its intrinsic worth.
the prosecution must establish all the pieces of incriminating circumstances by reliable and clinching evidence and the circumstances so proved must form such a chain of events as would permit no conclusion other than one of guilt of the accused. The circumstances cannot be on any other hypothesis. It is also well-settled that suspicion, however, grave may be, cannot be a substitute for a proof and the courts shall take utmost precaution in finding an accused guilty only on the basis of the circumstantial evidence.
Borgam Rajender Vs State of A.P. 2013(2) ALD (Crl) 956 (D.B) (A.P.)

For distinct offences, the trial Court ought to have framed separate charges against the accused i.e., for the offences of rape, murder and kidnap. But when the accused knows about the sum and substance of the charges, no prejudice has been caused to the accused in clubbing of the offences in one charge and hence, it cannot be said to be a ground to acquit the accused. **KARAM SREENIVASU DORA State of A.P. 2013(2) ALD (Crl) 976 (D.B) (A.P.)**

It is well settled that when a case rests on circumstantial evidence, such evidence must satisfy the following tests:

(i) The circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established,
(ii) Those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused,
(iii) The circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that with in all human probability the crime was committed by the accused and none else.

The accused has not given any explanation as to under what circumstances the death of the deceased has taken place. When the circumstance is exclusively within the knowledge of the accused, he has to give an explanation as required under Section 106 of the Act. No doubt, that burden will come into play only after the prosecution establishes its case beyond all reasonable doubt.
some technical illegalities committed by the investigating officer cannot be taken advantage by the accused so as to doubt the veracity of the prosecution case, especially when the case rests upon three important witnesses, whose presence at the time of incident is established beyond all reasonable doubt, and who have no enmity against the accused to implicate him falsely.
Kadari Gopal Rao Vs State of A.P. 2013(2) ALD (Crl) 993 (D.B) (A.P.)

Section 106 of the Evidence Act does not relieve the burden of prosecution to prove guilt of the accused beyond reasonable doubt but where the prosecution has succeeded to prove the facts from which a reasonable inference can be drawn regarding the existence of certain other facts and the accused by virtue of special knowledge regarding such facts fail to offer any explanation then the Court can draw a different inference.

RAJINDER SINGH VS STATE OF HARYANA 2013(2) ALD (Crl) 1017 (S.C.)

her signatures were obtained on the statement but she knew only how to write her name and cannot read or write Punjabi except appending her signatures. In view of the aforesaid statement made by PW-3 in her cross- examination, **her statement** recorded in the inquiry conducted by S.P. Mr. Harbhajan Singh Bajwa **cannot be used to contradict** the evidence of PW-3 given in Court.

As PW-3(prosecutrix) was not a young woman, **medical examination was not significant** and absence of medical examination may not be sufficient to disbelieve PW-3 if her story stands on its own. (The case is of rape in custody by police personnel)

CHARANJIT & ORS Vs. STATE OF PUNJAB & ANR. 2013(2) ALD (Crl) 1031 (S.C.) = (2013) 40 SCD 523

The Juvenile Justice (Care and Protection of Children) Act, 2000

k. **"juvenile" or "child" means a person who has not completed eighteenth year of age;**

12. **Bail of juvenile**.- (1) When any person accused of a bailable or non-bailable offence, and apparently a juvenile, is arrested or detained or appears or is brought before a Board, such person shall, notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) or in any other law for the time being in force, **be released on bail with or without surety** but he shall not be so released if there appear reasonable grounds for believing that the release is **likely to bring him into association with any known criminal or expose him to moral, physical or psychological danger or that his release would defeat the ends of justice**.

(2) When such person having been arrested is not released on bail under sub-section (1) by the **officer incharge of the police station**, such officer shall cause him to **be kept only in an observation home** in the prescribed manner until he can brought before a Board.

(3) When such person is not released on bail under sub-section (1) by **the Board** it shall, instead of committing him to prison, make an order sending him to an **observation home or a place of safety** for such period during the pendency of the inquiry regarding him as may be specified in the order.

15. Order that may be passed regarding juvenile.- (1) Where a Board is satisfied on inquiry that a juvenile has committed an offence, then notwithstanding anything to the contrary contained in any other law for the time being in force, the Board may, if it thinks so fit,-

(a) allow the juvenile to go home after **advice or admonition** following appropriate inquiry against and counselling to the parent or the guardian and the juvenile;
(b) direct the juvenile **to participate in group counselling** and similar activities;
(c) order the juvenile **to perform community service**;
(d) order the parent of the juvenile or the juvenile himself **to pay a fine**, if he is over fourteen years of age and earns money;
(e) direct the juvenile **to be released on probation of good conduct** and placed **under the care of any parent, guardian or other fit person**, on such parent, guardian or other fit person executing a bond, with or without surety, as the Board may require, for the good behaviour and well-being of the juvenile **for any period not exceeding three years;**
(f) direct the juvenile **to be released on probation of good conduct and placed under the care of any fit institution** for the good behaviour and well-being of the juvenile for any period not exceeding three years;
(g) make an order directing the juvenile **to be sent to a special home**,-

i. in the case of juvenile, over seventeen years but less than eighteen years of age for a period of not less than two years;
ii. in case of any other juvenile for the period until he ceases to be a juvenile :

Provided that the Board may, if it is satisfied that having regard to the nature of the offence and the circumstances of the case it is expedient so to do, for reasons to be recorded, reduce the period of stay to such period as it thinks fit.
2. The Board **shall obtain the social investigation report** on juvenile either through a probation officer or a recognised voluntary organisation or otherwise, and shall take into consideration the findings of such report before passing an order.
3. Where an order under clause (d), clause (e) or clause (f) of sub-section (1) is made, the Board may, if it is of opinion that in the interests of the juvenile and of the public, it is expedient so to do, in addition make an order that the juvenile in conflict with law shall remain under the supervision of a probation officer named in the order during such period, not exceeding three years as may be specified therein, and may in such supervision order impose such conditions as it deems necessary for the due supervision of the juvenile in conflict with law :
Provided that if at any time afterwards it appears to the Board on receiving a report from the probation officer or otherwise, that the juvenile in conflict with law has not been of good behaviour during the period of supervision or that the fit institution under whose care the juvenile was placed is no longer able or willing to ensure the good behaviour and well-being of the juvenile it may, after making such inquiry as it deems fit, order the juvenile in conflict with law to be sent to a special home.
4. The Board shall while making a supervision order under sub-section (3), explain to the juvenile and the parent, guardian or other fit person or fit institution, as the case may be, under whose care the juvenile has been placed, the terms and conditions of the order shall forthwith furnish one copy of the supervision order to the juvenile, the parent, guardian or other fit person or fit institution, as the case may be, the sureties, if any, and the probation officer.

16. Order that may not be passed against juvenile.-(1) Notwithstanding anything to the contrary contained in any other law for the time being in force, no

juvenile in conflict with law shall be sentenced to **death or life imprisonment, or committed to prison in default of payment of fine or in default of furnishing security :**
Provided that where a juvenile who has attained the age of sixteen years has committed an offence and the Board is satisfied that the offence committed is of so serious in nature or that his conduct and behaviour have been such that it would not be in his interest or in the interest of other juvenile in a special home to send him to such special home and that none of the other measures provided under this Act is suitable or sufficient, the Board may order the juvenile in conflict with law to be kept in such place of safety and in such manner as it thinks fit and shall report the case for the order of the State Government.
(2) On receipt of a report from a Board under sub-section (1), the State Government may make such arrangement in respect of the juvenile as it deems proper and may order such juvenile to be kept under protective custody at such place and on such conditions as it thinks fit:
Provided that the period of detention so ordered shall not exceed the maximum period of imprisonment to which the juvenile could have been sentenced for the offence committed.

17. Proceeding under Chapter VIII of the Code of Criminal Procedure not component against juvenile.

18. No joint proceeding of juvenile and person not a juvenile

19-Removal of disqualification attaching to conviction.

21-Prohibition of publication of name, etc., of juvenile
As per Sec 23 If any person having the actual charge of, or control over, a juvenile or the child, assaults, abandons, exposes or wilfully neglects the juvenile or causes or procures him to be assaulted, abandoned, exposed or neglected in any manner likely to cause such juvenile or the child unnecessary mental or physical suffering, he shall be punishable with imprisonment upto **six months, or fine, or with both.**

24. Employment of juvenile or child for begging.—(1) Whoever employs or uses any juvenile or the child for the purpose or causes any juvenile to beg shall be punishable with imprisonment for a term which may extend to **three years and shall also be liable to fine.**

(2) Whoever, having the actual charge of, or control over, a juvenile or the child **abets** the commission of the offence punishable under sub-section (1), shall be punishable with imprisonment for a term which may extend to **one year and shall also be liable to fine.**

25. Penalty for giving intoxicating liquor or narcotic drug or psychotropic substance to juvenile or child.—Whoever gives, or causes to be given, to any juvenile or the child any intoxicating liquor in a public place or any narcotic drug or psychotropic substance except upon the order of duly qualified

medical practitioner or in case of sickness shall be punishable with imprisonment for a term which may extend to **three years and shall also be liable to fine.**

26. Exploitation of juvenile or child employee.- Whoever ostensibly procures a juvenile or the child for the purpose of any hazardous employment keeps him in bondage and withholds his earnings or uses such earning for his own purposes shall be punishable with imprisonment for a term which may extend to **three years and shall be liable to fine.**

27. Special offences.- The offences punishable under sections 23, 24, 25 and 26 shall be **cognizable.**

52. **Appeals.**- (1) Subject to the provisions of this section, any person aggrieved by an order made by a competent authority under this Act may, within **thirty days** from the date of such order, prefer an appeal to the Court of Session:
Provided that the Court of Session may entertain the appeal after the expiry of the said period of thirty days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.
(2) No appeal shall lie from-
(a) any order of acquittal made by the Board in respect of a juvenile alleged to have committed an offence; or

53. Revision.-The High Court may, at any time, either of its own motion or on an application received in this behalf, call for the record of any proceeding in which any competent authority or Court of Session has passed an order for the purpose of satisfying itself as to the legality or propriety of any such order and may pass such order in relation thereto as it thinks fit:
Provided that the High Court shall not pass an order under this section prejudicial to any person without giving him a reasonable opportunity of being heard.

NEWS

- The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (14 of 2013), has come into force from 9th day of December, 2013 vide S.O. 3606(E) dt. 09/12/2013.
- The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (30 of 2013), has come into force on 1st day of January, 2014 Vide S.O. 3729(E) dated 19/12/2013.
- 27 % I.R. sanctioned to Employees vide G.O.Ms.No.10 FINANCE (PC.I) DEPARTMENT Dated: 06-01-2014, from the month of Jan,2013.
- Contribution towards EHS from the salary/pension of employees/pensioners eligible for EHS should be deducted from

March 2014 payable in 1st April 2014 as per G.O.Ms.No.2 FINANCE (TFR) DEPARTMENT dated 04/01/2014.

- The Additional Public Prosecutors of I Additional District & Sessions Courts of all the Districts and of I Additional Metropolitan Sessions Judge Courts in the Sessions Divisions of Hyderabad, Visakhapatnam, and Vijayawada as Additional Public Prosecutors–cum-Special Public Prosecutors for the purpose of conducting the prosecution of the cases filed under **The "Protection of Children from Sexual Offences Act, 2012** as per **G.O.Rt. No. 2364 LAW (LA&J-HOME- COURTS.A1) DEPARTMENT dated 23/12/2013.**

ON A LIGHTER VEIN

There was a young couple very much in love. On the night before they were to be married, both were killed in an automobile accident. They found themselves at the pearly gates of heaven being escorted in by St. Peter. After a couple of weeks in heaven, the prospective groom took St. Peter aside and said, "St. Peter, my fiancee and I are very happy to be in heaven, but we miss very much the opportunity to have our wedding vows celebrated. Is it possible for people in heaven to get married?"

St. Peter looked at him and said, "I'm sorry, I've never heard of anyone in heaven wanting to get married. I'm afraid you'll have to talk to the Lord God Almighty about that. I can get you an appointment in two weeks from Wednesday."

Come the appointed day, the couple was escorted by the guardian angels into the presence of the Lord God Almighty, where they repeated the request. The Lord looked at them solemnly and said, "I tell you what; wait a year and if you still want to get married, come back and we will talk about it again."

A year went by and the couple, still very much wanting to get married, came back. Again, the Lord God Almighty said, "I'm sorry to disappoint you but you must wait another year, and then I will consider your request."

This happened year after year, for ten years. Each time they reasserted their yearning to be married; each time God put them off for another year. In the tenth year, they came before they Lord God Almighty to ask again. This time the Lord answered, "Yes, you may marry! This Saturday at 2:00 p.m. We will have a beautiful ceremony in the main chapel. The reception will be on me!"

The wedding went off without a hitch. The bride looked beautiful. The Buddha did the flower arrangements for which Moses wove simple yet elegant baskets. Jesus prepared the fish course. All of heaven's denizens attended, and a good time was had by all.

Tragically, but perhaps inevitably, within a few weeks, the newlyweds realized that they had made a horrible mistake. They simply couldn't stay married to one another. So they made another appointment to see the Lord God Almighty. Groveling and frightened, they asked if they could get a divorce.

The Lord heard their request, looked at them, and said, "Look, it took us TEN YEARS to find a priest up here in heaven. Do you have any idea how long it'll take us to find a lawyer?"

Experts Speak

What is the Concept Of "Zero FIR" ?

There is a concept of "**Zero-FIR**". It means that a FIR can be filed in any police station (i.e.: **irrespective of place of incident/jurisdiction**) and the same can be later transferred to the appropriate Police Station. However policemen usually deny knowing about "Zero FIR" and direct the complainant to concerned Police Station."

LAST MONTH'S ANSWER

What is the appropriate provision that has to be charged against Chain SNATCHING? Is it Sec 382 IPC or Sec 379 & 356 IPC?

Let us examine the provisions of Sec 356 & 382 IPC.

356. Assault or criminal force **in attempt** to commit theft of property carried by a person:- Whoever assaults or uses criminal force to any person, **in attempting to commit theft** on any property which that person is then wearing or carrying, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

382. Theft after preparation made for causing death, hurt or restraint in order to the committing of the theft:**-** Whoever **commits theft**, having made preparation for causing death, or hurt, or restraint, or fear of death, or of hurt, or of restraint, to any person, in order to the committing of such theft, or in order to the effecting of his escape after the committing of such theft, or in order to the retaining of property taken by such theft, shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

So, the fine difference between the two provisions is that if the case involves in only ATTEMPT, then Sec 356 IPC is attracted and if the theft is COMMITTED then the Sec 382 IPC is attracted.

THIS MONTH'S QUESTION

Q: Whether for the purpose of computing the period of limitation under Section 468 of the Code of Criminal Procedure, 1973 in respect of a criminal complaint the relevant date is
i) The date of filing of the complaint or
ii) The date of institution of prosecution or
iii) Whether the relevant date is the date on which a Magistrate takes cognizance.

The names of the patrons who send the answers, before the next edition would be acknowledged here.

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

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PROSECUTION

REPLENISH

(An Endeavour for Learning and Excellence)

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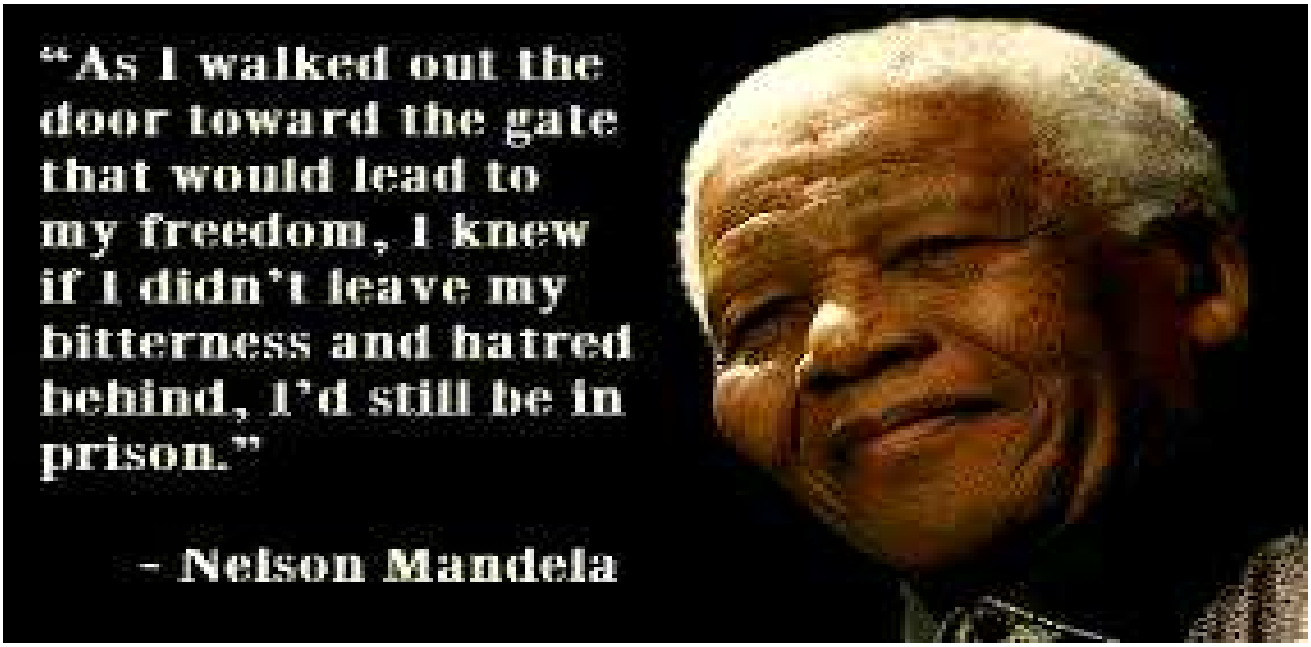

CITATIONS

CITATIONS REPORTED IN Crl.L.J.

Evidence not to be rejected only because witnesses has enmity with accused – but has to be carefully scrutinized before it is accepted **Baldev Singh Vs. State of Punjab 2013 Crl.L.J.4874**

Complaint filed by unknown person to ACB – non supply of complaint (or) contents thereof do not, at all violate principle of fair trial – said complaint has no relevancy for prosecution nor it would prejudice accused **Manjeeth Singh Khara Vs State of Maharastra 2013 Crl.L.J.4884**

NDPS Act - Crucial test to determine whether an officer is police officer for the purpose of S.25 of Indian Evidence Act is the "influence (or) authority' that an officer is capable of exercising over a person from whom a confession is obtained.

Statement recorded by investigating officer U/S.67 of the Act can be treated as Confessional statement (or) not :- referred to larger bench**Tofan Singh Vs. State of Tamil Nadu 2013 Crl.L.J.4990**

CITATIONS REPORTED IN ALT (Crl)

Broad principles of law governing appellate power of High Court while reversing order of acquittal **Prem Singh Vs State of Haryana 2014 (1) ALT (Crl.) 30 (SC)**

Term 'cognizance' has not been defined in the Cr.P.C.

Cognizance is an act of the court.

Limitation Act does not apply to criminal proceedings except for appeals or revisions.**Mrs.Sarah Mathew Vs Institute of Cardio Vascular Diseases by its Director – Dr.K.M.Cherain & ors 2014 (1) ALT (Crl.) 72 (SC)**

FIR is a pertinent document in the criminal law procedure.

First and foremost principle of interpretation of a statute is the literal rule of interpretation.

If there is any inconsistency between the provisions of the Cr.P.C. and the Police Act, 1861 provisions of the Cr.P.C. will prevail.

Police is bound to proceed to conduct investigation into a cognizable offence even without receiving information (i.e. FIR) about commission of such offence **Lalita Kumar Vs. Government of U.P. 2014 (1) ALT (Crl.) 100 (SC)**

Pendency of a civil dispute between the parties does not preclude criminal action if such civil dispute also constitutes the commission of criminal offence. **Rudravaram Jhansi Rani Vs State of A.P. 2014 (1) ALT (Crl.) 61 (AP)**

CITATIONS REPORTED IN ALD (Crl)

Investigation is to be carried out by the police as a part of the prosecution to be launched against the offenders of law. It has got to be carried out on scientific and other approved lines. The Investigating Officer can expect cooperation from all those with whom he would like to interact, as he has a reason to believe that necessary and crucial information can be gathered there from, but that does not mean that the investigation should lead itself into a physical and mental endurance test. If the Investigating Officer requires the petitioner to appear before him at a particular time, on a particular day, he must try to complete the investigation as expeditiously as possible, preferably within two or three hours time.

If the petitioner, in spite of appearing before the 3rd respondent, has not been interacted with, all due to preoccupation of the Investigating Officer, real or pretentious, it shall be open to him to leave the premises of the Central Crime Station, after expiry of the three-hour time, without any intimation to the 3rd respondent and the petitioner cannot be faulted on that ground. **Grandhi Madhusudan Rao vs Commissioner Of Police, Hyderabad 2014(1) ALD (Crl) 155 (A.P)**

Case closed as natural death under sec 174 Cr.P.C. Subsequent investigation into complaint u/sec 302 IPC in respect of the same death not barred. No permission is required from court for such investigation, as it is cognizable offence and fresh investigation. **A.Bharat Vs State of A.P. 2014(1) ALD (Crl) 147 (A.P)**

Complaint U/provision of SC/ST(POA) Act referred as false by I.O. Court took cognizance on referred report only against A-1. Later complainant filed protest petition, court again too cognizance against all accused. Second cognizance is bad in law. Meka Karthik Vs State of Andhra Pradesh **2014(1) ALD (Crl) 117 (A.P)**

The trial Court itself has expressed its anguish as to how the accused had purposely delayed and dragged the examination of the prosecutrix and finally succeeded in their nefarious objective when the father of the prosecutrix died and the prosecutrix resiled on the last date of her cross-examination. The appellants belonged to a well-to-do family, while the prosecutrix came from poorest state of the society. Thus, a sudden change in their attitude is understandable. **Mohanlal Vs State of Punjab 2014(1) ALD (Crl) 81 (S.C) = 2013 STPL(Web) 304 SC**

the vehicle was seized under proper panchanama and this Court is of the view that the production of the vehicle is absolutely unnecessary for the purpose of trial and the trial can be proceeded with on the basis of the evidence of the witnesses with reference to the panchanama which was recorded during course of investigation.

Interim custody not to be denied on the ground that one of the accused is absconding and the case against him is split up and that the vehicle is required for trial of the absconding accused. **Cholamandalam Investment & Finance Co. Ltd Vs State of A.P. 2014(1) ALD (Crl) 81 (A.P)**

there is no legal impediment for a private person to launch prosecution without the permission of the registering authority under Section 81 and 82 of the Indian Registration Act, 1908 **Shaik @ Mohammed Gousinnisa Begum @ Gousia Begum vs Shaik Abdul Rasheed and another**

CITATIONS REPORTED IN STPL (Web)

Death Sentence commuted to Life imprisonment due to the inordinate delay caused by President/governor to consider the mercy petitions u/Art 72/161 of constitution **2014 STPL(Web) 41 SC SHATRUGHAN CHAUHAN & ANR. Vs UNION OF INDIA & ORS.**

Q.1 What is the stage at which power under Section 319 Cr.P.C. can be exercised?

Q.II Whether the word "evidence" used in Section 319(1) Cr.P.C. could only mean evidence tested by cross-examination or the court can exercise the power under the said provision even on the basis of the statement made in the examination-in-chief of the witness concerned?

Q.III Whether the word "evidence" used in Section 319(1) Cr.P.C. has been used in a comprehensive sense and includes the evidence collected during investigation or the word "evidence" is limited to the evidence recorded during trial?

Q.IV What is the nature of the satisfaction required to invoke the power under Section 319 Cr.P.C. to arraign an accused? Whether the power under Section 319 (1) Cr.P.C. can be exercised only if the court is satisfied that the accused summoned will in all likelihood be convicted?

Q.V Does the power under Section 319 Cr.P.C. extend to persons not named in the FIR or named in the FIR but not chargesheeted or who have been discharged?

All the above questions answered. **Hardeep singh Vs State of Punjab & ors (Batch) 2014 STPL (Web) 21 SC Constitution Bench.**

The prosecuting agencies should ensure that the viscera is, in fact, sent to the FSL for examination in all poisoning cases and the FSL should ensure that the viscera is examined immediately and report is sent to the investigating agencies/courts post haste. If the viscera report is not received, the concerned court must ask for explanation and must summon the concerned officer of the FSL to give an explanation as to why the viscera report is not forwarded to the investigating agency/court. The criminal court must ensure that it is brought on record. **Joshinder Yadav Vs State of Bihar. 2014 STPL (Web) 38 SC**

In Ram Shanker & Ors. v. State of U.P.,[(1982) 3 SCC 388(1)] the complainant and the accused had settled the criminal case and an application was made for compounding the offence. The accused were convicted for offence under Section 307 of the Penal Code. **This Court converted the conviction of the appellant from one under Section 307 of the Penal Code to that of an offence under Section 325 read with Section 34 of the Penal Code**. Permission to compound the offence was granted and the appellants therein were acquitted. Followed in **2014 STPL(Web) 52 SC Dasan Vs State of Kerala.**

When no questions regarding the doubts of the defence regarding the evidence lead in the case were put, they cannot be raised for first time at time of arguments. **2013 STPL(Web) 504 SC 1 Rafique @ Rauf & Others Vs. State of U.P =2014 (1) ALD Crl. 54 (SC)**

Court has rightly held that though the **injured witnesses were related to each other,** having regard to the nature of evidence tendered by them, there were no good grounds to discard their version. It has found that their evidence was natural and there was nothing to find fault with their version. It has further held rightly that it is the quality of the witness and not the quantity that matters. It has also taken judicial notice of the fact that the public are reluctant to appear and depose before the Court, especially in criminal cases because of many obvious reasons

The defence had not even suggested that there was communal hatred between the parties, hence they cannot now rasie the same

When there was enough evidence to support the version of the prosecution that the appellants, some of whom were in possession of licenced arms and others were holding unlicenced pistols and the shooting with those arms was sufficiently established by the version of the injured eye-witnesses, we fail to understand as to how **non- detection of pellets or bullets** will be of any consequence as a vitiating factor to defeat the case of the prosecution. It is an undisputed fact that both the deceased died of fire-arm injuries and all the injuries suffered by others were also firm-arm injuries. The said contention also therefore, deserves to be rejected.
the so-called **delay in forwarding** express report to the Magistrate after three days from the date of occurrence, namely, on 24.11.2001 would not vitiate the case of the prosecution. **2013 STPL(Web) 382 SC 8 Manga @ Man Singh Vs. State of Uttarakhand = 2014 (1) ALD (Crl) 88 SC.**

(i) Registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.

(ii) If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.

(iii) If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.

(iv) The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.

(v) The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.

(vi) As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:

(a) Matrimonial disputes/ family disputes
(b) Commercial offences
(c) Medical negligence cases
(d) Corruption cases
(e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months delay in reporting the matter without satisfactorily explaining the reasons for delay. The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.

(vii) While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time bound and in any case it should not exceed 7 days. The fact of such delay and the causes of it must be reflected in the General Diary entry.

(viii) Since the General Diary/Station Diary/Daily Diary is the record of all information received in a police station, we direct that all information relating to cognizable offences, whether resulting in registration of FIR or leading to an inquiry, must be mandatorily and meticulously reflected in the said Diary and the decision to conduct a preliminary inquiry must also be reflected, as mentioned above. **2013 STPL(Web) 912 SC 34 Lalita Kumari Vs. Govt. of U.P. & Ors = 2014(1) ALD (Crl) 159 (SC).**

THE MEDICAL TERMINATION OF PREGNANCY ACT, 1971

Sec 3 : Pregnancies can be terminated by registered medical practitioners where the pregnancy is not more than twelve weeks if the medical practitioner, or where the pregnancy is more than twelve but less than twenty weeks, at least two medical practitioners are of the opinion that the continuance of the pregnancy would involve a risk to the life of the pregnant woman or of grave injury to her physical or mental health, or there is a substaintial risk that if the child were born, it would suffer from such physical or mental abnormalities as to be seriously handicapped. Pregnancy of any woman who is less than 18 years or who is a mentally ill person can be terminated only, with the consent in writing of her guardian.

Sec 4 Pregnancy can be terminated either at a hospital established or maintained by Government or at a place which is approved by Government or district level committee constituted by that Government.

Sec 5. Sections 3 and 4 when not to apply.—(1) The provisions of section 4, and so much of the provisions of sub-section (2) of section 3 as relate to the length of the pregnancy and the opinion of not less than two registered medical practitioners, shall not apply to the termination of a pregnancy by a registered medical practitioner in a case where he is of opinion, formed in good faith, that the termination of such pregnancy is immediately necessary to save the life of the pregnant woman.

[1][(2) Notwithstanding anything contained in the Indian Penal Code (45 of 1860), the termination of pregnancy by a person who is not a registered medical practitioner shall be an offence punishable with rigorous imprisonment for a term which shall not be less than two years but which may extend to seven years under that Code, and that Code shall, to this extent, stand modified.

(3) Whoever terminates any pregnancy in a place other than that mentioned in section 4, shall be punishable with rigorous imprisonment for a term which shall not be less than two years but which may extend to seven years.

(4) Any person being owner of a place which is not approved under clause (b) of section 4 shall be punishable with rigorous imprisonment for a term which shall not be less than two years but which may extend to seven years.

NEWS

- **RBI has decided to withdraw all currency notes issued before 2005. *refer the circular to this effect in download section.***
- An unmarried adult couple will be considered married and can be termed husband and wife if they have sex, the Madras high court has said in a judgment with far-reaching consequences, especially for those in live-in relationships.
- **S.O. 119(E).—In exercise of the powers conferred by sub-section (4) of Section 1 of the Lokpal and LokayuktasAct, 2013 (1 of 2014), the Central Government hereby appoints the 16th day of January, 2014, as the date on which the provisions of the said Act shall come into force. *{ the act and circular is posted in downloads section}***
- **Designating the Additional Public Prosecutors of I Additional District & Sessions Courts of all the Districts and I Additional Metropolitan Sessions Judge Courts in the Sessions Divisions of Hyderabad, Visakhapatnam and Vijayawada as Additional Public Prosecutor-cum-Special Public Prosecutor for conducting trial of cases in the specified courts U/s 32 (1) for the purpose of conducting the prosecution of the cases filed under the "Protection of Children from Sexual Offences Act, 2012 (Act 32 of 2012)– Notification – Orders - Issued. Vide G.O.Rt.No. 2364 LAW (LA&J-HOME- COURTS.A1) DEPARTMENT Dated:23-12-2013. *{G.O. available under gazette section}***

ON A LIGHTER VEIN

Marketing translations

Cracking an international market is a goal of most growing corporations. It shouldn't be that hard, yet even the big multi-nationals run into trouble because of language and cultural differences. For example, observe the following examples below.

The name Coca-Cola in China was first rendered as Ke-kou-ke-la. Unfortunately, the Coke company did not discover until after thousands of signs had been printed that the phrase means "bite the wax tadpole" or "female horse stuffed with wax" depending on the dialect. Coke then researched 40,000 Chinese characters and found a close phonetic equivalent, "ko-kou-ko-le," which can be loosely translated as "happiness in the mouth."

In Taiwan, the translation of the Pepsi slogan "Come alive with the Pepsi Generation" came out as "Pepsi will bring your ancestors back from the dead."

Also in Chinese, the Kentucky Fried Chicken slogan "finger-lickin' good" came out as "eat your fingers off."

The American slogan for Salem cigarettes, "Salem - Feeling Free," got translated in the Japanese market into "When smoking Salem, you feel so refreshed that your mind seems to be free and empty."

When General Motors introduced the Chevy Nova in South America, it was apparently unaware that "no va" means "it won't go." After the company figured out why it wasn't selling any cars, it renamed the car in its Spanish markets to the Caribe.

When Parker Pen marketed a ballpoint pen in Mexico, its ads were supposed to say "It won't leak in your pocket and embarrass you." However, the company mistakenly thought the spanish word "embarazar" meant embarrass. Instead the ads said that "It wont leak in your pocket and make you pregnant."

An American t-shirt maker in Miami printed shirts for the spanish market which promoted the Pope's visit. Instead of the desired "I Saw the Pope" in Spanish, the shirts proclaimed "I Saw the Potato."

Colgate introduced a toothpaste in France called Cue, the name of a notorious porno magazine.

In Italy, a campaign for Schweppes Tonic Water translated the name into Schweppes Toilet Water.
Source: ahajokes.com

Q: Can a bail granted for less grave offence, be deemed to have become void if the offence later evolves into a graver offence?

Ans: Mere initial grant of anticipatory bail for lessor offence did not entitle the respondent(accused) to insist for regular bail even if he was subsequently found to be involved in the case of murder. There is no question of cancellation of bail earlier granted. AIR 2001SC 1444 = 2001(2)PLJR205SC Prahlad Singh Bhati Vs NCT Delhi

..Simply because a penal provision is added in the case in respect of a serious non-bailable offence, the bail granted earlier shall not automatically stand cancelled and therefore, the police shall not have the power to re-arrest the accused until the bail granted earlier is cancelled by way of a positive order by the appropriate court. In the instant case, since the bail granted to the petitioner earlier by the learned Magistrate has not so far been cancelled, the apprehension of arrest at this stage when the petitioner is very much on bail is baseless and so, the question of granting anticipatory bail does not arise. Dhivan Vs State. http://indiankanoon.org/doc/1053595/

LAST MONTH'S ANSWER

Q: Whether for the purpose of computing the period of limitation under Section 468 of the Code of Criminal Procedure, 1973 in respect of a criminal complaint the relevant date is
i) The date of filing of the complaint or
ii) The date of institution of prosecution or
iii) Whether the relevant date is the date on which a Magistrate takes cognizance.

Ans: 2013 STPL (Web) 929 SC; Sarah Mathew Vs. Institute of Cardio Vascular Diseases & Ors. Under the period of limitation of Section 468 of the Cr.P.C. the relevant date is the date of filing of the complaint or the date of institution of prosecution and not the date on which the Magistrate takes cognizance.

THIS MONTH'S QUESTION

Can a magistrate take cognizance of offences registered under the provisions of the A.P. Land Grabbing (Prohibition) Act, 1982 ?

The names of the patrons who send the answers, before the next edition would be acknowledged here.

While due care is taken while preparing this information. The patrons are requested to verify and bring it to the notice of the concerned regarding any misprint or errors immediately, so as to bring it to the notice of all patrons. Needless to add that no responsibility for any result arising out of the said error shall be attributable to the publisher as the same is inadvertent.

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PROSECUTION

REPLENISH

(An Endeavour for Learning and Excellence)

Vol- III Part 3 Monthly Leaflet March, 2014

"....But man, proud man,
Drest in a little brief authority,
Most ignorant of what he's most assur'd,
His glassy essence, like an angry ape,
Plays such fantastic tricks before high heaven,
As make the angels weep...." Shakespeare

CITATIONS

CITATIONS REPORTED IN Crl.L.J.

NBW not to be issued directly to an accused added U/Sec. 319 Cr.P.C.
2014 Crl.L.J. 183 (SC) Vikas Vs State of Rajasthan

Absence of fitness certificate by Dr. on D.D.- not fatal.
State to concentrate on witness protection to discourage hostility due to force, coercion etc. Minor discrepancy in time of recording DD- no mention of Kerosene smell emating from body of deceased in inquest or PME- not fatal- when other evidence proves it.
2014 Crl.L.J. 368 (SC) Anjappa Vs State of Karnataka.

Court can monitor investigation only till a charge sheet is filed into the court.
2014 Crl.L.J. 64 (SC) Sushila Devi Vs State of Rajasthan.

Evidence obtained by illegal search-admissible if relevant.
It is as much the duty of the prosecutor as of court to ensure that full and material facts are brought on record so that there might not be miscarriage of justice.
2014 Crl.L.J. 156 (SC) Bharati Tamang vs UOI.

Magistrate cannot refer the matter U/Sec 156(3) Cr.P.C. against a public servant without valid sanction order.
When referring matter U/Sec. 156(3) Cr.P.C., the magistrate has to record reasons and it is not sufficient to order that "after going through complaint, documents and hearing complainant, the complaint is referred to police"
2014 Cri.L.J. 1 (SC) = (2014) 1 SCC (Crl) 35 = (2013) 10 SCC 705 Anil Kumar Vs M.K.Aiyappa

NIA Act- Appeal against grant /refusal of bail lies to bench of High court.
2014 Cri.L.J. 44 (SC) State of A.P. vs. Md.Hussain

Expression "act" occurring in Sec. 338 IPC includes acts of omission as well.
Doctor who does not take proper care of patient liable
2014 Cri.L.J. 385 (SC) Dr.P.B.Desai Vs State of Maharastra.

Litigant cannot chose the forum of trial
Revision is not a right but a procedural facility.
2014 Cri.L.J. 22 (SC) Kamlesh Kumar Vs. State of Jharkand.

It is the quality and not the quantity of evidence which determines the adequacy of evidence
2014 Cri.L.J. 34 (SC) Gulam Sarbar Vs State of Bihar

Order of confiscation passed by Divisional Forest Officer, who is superior in rank to Asst. Conservator of Forests-Proper.
2014 Cri.L.J. 336 (A.P) Chintala Anjaneyulu Vs State of A.P.

Councilor and member of Municipal board are public servants U/Prevention of Corruption Act- definition of public servant in code and the act are different-
2014 Cri.L.J. 429 (SC) Manish Trivedi Vs State of Rajasthan.

Death caused within 7 years of marriage by burn injuries-no evidence that deceased was harassed soon before her death for or in connection with demand for dowry- however evidence that she was harassed to drive her to commit suicide available- Presumption U/Sec. 113 A and not U/Sec 113B attracted. Conviction u/Sec. 306 Proper.
2014 Cri.L.J. 41 (SC) State of Rajasthan vs Giridharlal.

Reduction of minimum punishment on ground of compromise arrived between parties and that offence took long ago- not proper.
2014 Cri.L.J. 308 (SC) Shimbu vs Haryana.

Accused had sexual intercourse on false assurance of marriage-consent obtained under misconception of fact- accused guilty of Rape.
2014 Cri.L.J. 540 (SC) State of U.P. Vs Naushad.

Sec 377 IPC does not suffer from vice of unconstitutionality.
Sec 377 applies irrespective of age and consent- regardless of gender identity and orientation
2014 Cri.L.J. 784 (SC) Suresh Kumar Koushal Vs NAZ Foundation.

Acquittal on ground of compromise in non-compoundable offence-bad
2014 Cri.L.J.609 (SC) Raj Vs Shambhu Kewal.

304 B IPC does not categorize death- covers every type of death that occurs otherwise than under normal circumstances.
2014 Cri.L.J. 551 (SC) Suresh Kumar Vs State of Haryana.

Appellate court to reassess and re-appreciate the material to find any defect in the lower court judgment.
2014 Cri.L.J. 443 (SC)Kamlesh Prabhudas Tanna Vs State of Gujarat.

Limitation applies to filing complaints and not for taking cognizance by court.
2014 Cri.L.J. 586 (SC) (CB) Mrs Sarah Mathew Vs Institute of Cardio Vascular diseases.

Non-examination of injured- who was injured along with the deceased – his statement stating multiple injuries whereas the MC reflects only two injuries- not fatal.
2014 Cri.L.J. 743 (SC) Patchapalli Naresh Reddy Vs State of A.P.

CITATIONS REPORTED IN SCC (Crl)

Sec 319 Cr.P.C-which found place in our last edition is reported as **(2014) 1 SCC (Cri) 236. Hardeep singh Vs State of Punjab.**

Criminal Court to consider grant of compensation in each case.
(2014) 1 SCC (Cri) 285 Ankush Shivaji Gaikwad Vs State of Maharastra.

Executive cannot remit below statutory minimum prescribed by the act.
(2014) 1 SCC (Cri) 411 = (2013) 10 SCC 721 State of Raj Vs Jamil Khan.

Admissibility of email
(2014) 1 SCC (Cri) 18=(2013) 10 SCC 658 T.C.Gupta Vs Hari Om Prakash.

An informant is different from complainant.
An Advocate is an officer of court- he should not mislead the court. His statements to the court should be made responsibly.
(2014) 1 SCC (Cri) 88 Himachal Pradesh Schedule Tribes employees Federation Vs Himachal Pradesh Samanya Varg Karmachari.

CITATIONS REPORTED IN ALT (Crl)

In criminal jurisprudence, proof beyond reasonable doubt is a guideline, not a fetish (something regarded with irrational reverence) Guilty man cannot get away with it, because truth suffers infirmity when projected through human process.

Manjith Singh & anr Vs. State of Punjab & anr 2014 (1) ALT (Crl.) 151 (SC)

In the criminal justice system, the investigation of an offence is the domain of the police.

The biggest loss that may occur to the Nation due to corruption is loss of confidence in the democracy and weakening of rule of law.

To supervise would mean to observe and direct the execution of a task, whereas to monitor would only mean to maintain surveillance

Supervision of investigation by any court is a contradiction in terms. Cr.P.C. does not envisage such a procedure

When information available is adequate to indicate commission of cognizable offence or its discreet verification leads to similar conclusion, a regular case may be registered, instead of a preliminary enquiry

Aim of the investigation is ultimately to search for truth and bring the offender to book

Investigation by the police under the Cr.P.C. has to be fair, impartial and uninfluenced by external influences.

Manohar Lal Sharma Vs. Principal Secretary & ors 2014 (1) ALT (Crl.) 218 (SC)

An unnatural death, whether homicidal or suicidal would attract S.304B IPC.

Chemical examination of viscera is not mandatory in every case of dowry death

Suicide is one of the modes of death falling within the ambit of S.304B IPC

Bhupendra Vs. State of Madhya Pradesh 2014 (1) ALT (Crl.) 267 (SC)

CITATIONS REPORTED IN ALD (Crl)

Merely because some other accused has been enlarged on bail, it cannot be the sole ground to grant bail to the petitioner.

In the economic offences, which ruin the national economy, proper investigation has to be conducted. The Investigating Officers have to identify the end beneficiaries and how the ill-gotten money has been routed, secreted or invested in various other business activities. It appears that mere prosecuting the accused involved in economic offences would not be sufficient, but the entire ill-gotten money in whatever form it is at present

has to be recovered and the same has to be ultimately confiscated to the State in the interest of Nation. ------Confiscation of illegally acquired wealth may help to reduce corrupt practices in this Country.
2014(1) ALD (Crl) 215 (A.P) K.Mehfuz Ali Khan Vs State of Andhra Pradesh.

The law with regard to cancellation of bail has been well settled. The bail already granted can be cancelled when
(i) where the accused misuses his liberty after release by indulging in any criminal act;
(ii) interferes with the investigation;
(iii) attempts to tamper with evidence or witnesses;
(iv) threatens the witnesses or indulges in similar activities which would hamper further investigation;
(v) where there is likelihood of the accused fleeing away from justice; and
(vi) where full particulars have not been placed before the Court at the time of hearing bail application i.e., where the Court was mislead due to suppression of material facts while granting bail.
2014 (1) ALD (Crl) 226 (A.P) State of A.P. vs Surendra Kumar Joshi & others.

principles what emerges is that it is not enough for one to call in question the appointment of a Special Public Prosecutor only on the basis of the plea that such an appointment was solicited by the victim or someone else. It must be demonstrated that the State has failed to apply its mind with regard to the nature of the case before appointing a Special Public Prosecutor. In as much as an accused has a right to be prosecuted fairly, at the same time the victims have an equal right for a proper and correct manner of prosecution of the offenders. The rights of the victims are no less significant and or subservient. Above all, the prosecutor carries on the job, strictly in accordance with law; both substantive and procedural, under the overall scrutiny of the Court. The Court does not merely play a passive role in the whole drama that unfolds before it and it will always be vigilant about any possible lapses on the part of the prosecution, particularly towards the accused. No rights of the accused, would be allowed by the Court to be diminished by the prosecution.
2014 (1) ALD (Crl) 244 (A.P) Bharaju Ramabu @ B.H.Rambabu and another vs State of A.P.

CITATIONS REPORTED IN STPL (Web)

the appeal stands disposed of with the following directions:
(i) All High Courts are requested to re-examine the statutory rules dealing with the appointment of staff in the High Court as well as in the subordinate courts and in case any of the rule is not in conformity and

consonance with the provisions of Articles 14 and 16 of the Constitution, the same may be modified.
(ii) To fill up any vacancy for any post either in the High Court or in courts subordinate to the High Court, in strict compliance of the statutory rules so made. In case any appointment is made in contravention of the statutory rules, the appointment would be void ab-initio irrespective of any class of the post or the person occupying it.
(iii) The post shall be filled up by issuing the advertisement in at least two newspapers and one of which must be in vernacular language having wide circulation in the respective State. In addition thereto, the names may be requisitioned from the local employment exchange and the vacancies may be advertised by other modes also e.g. Employment News, etc. Any vacancy filled up without advertising as prescribed hereinabove, shall be void ab- initio and would remain unenforceable and inexecutable except such appointments which are permissible to be filled up without advertisement, e.g., appointment on compassionate grounds as per the rules applicable. Before any appointment is made, the eligibility as well as suitability of all candidates should be screened/tested while adhering to the reservation policy adopted by the State, etc., if any.
(iv) Each High Court may examine and decide within six months from today as to whether it is desirable to have centralised selection of candidates for the courts subordinate to the High Court and if it finds it desirable, may formulate the rules to carry out that purpose either for the State or on Zonal or Divisional basis.
(v) The High Court concerned or the subordinate court as the case may be, shall undertake the exercise of recruitment on a regular basis at least once a year for existing vacancies or vacancies that are likely to occur within the said period, so that the vacancies are filled up timely, and thereby avoiding any inconvenience or shortage of staff as it will also control the menace of adhocism.
2014 STPL(Web) 90 SC Renu & Ors. Vs. District & Sessions Judge, Tis Hazari & Anr.

When the informant and witnesses have supported the allegations made in the FIR, it would not be proper for this Court to evaluate the merit of the allegations on the basis of documents annexed with the memo of appeal. Such materials can be produced by the appellants in their defence in accordance with law for due consideration at appropriate stage.
a given set of facts may make out a civil wrong as also a criminal offence and only because a civil remedy may also be available to the informant/complainant that itself cannot be a ground to quash a criminal proceeding. The real test is whether the allegations in the complaint discloses a criminal offence or not. This proposition is supported by several judgments of this Court as noted in

paragraph 16 of judgment in the case of Ravindra Kumar Madhanlal Goenka and Another vs. Rugmini Ram Raghav Spinners Private Limited[(2009)11 SCC 529]

2014 STPL(Web) 87 SC Vijayander Kumar & Ors. Vs. State of Rajasthan & Anr.

the 'right to live with dignity' under Article 21 will be inclusive of 'right to die with dignity', the decision does not arrive at a conclusion for validity of euthanasia be it active or passive. So, the only judgment that holds the field in regard to euthanasia in India is Aruna Shanbaug (supra), which upholds the validity of passive euthanasia and lays down an elaborate procedure for executing the same on the wrong premise that the Constitution Bench in Gian Kaur (supra) had upheld the same.-referred to constitutional bench by three judges bench of SC-

2014 STPL(Web) 123 SC Common Cause (A Regd. Society) Vs. Union of India,

In instant case both the petitioners can be convicted under Section 302 IPC simpliciter as both of them could be convicted under Section 302/34 IPC as both of them came fully armed with iron rods and both of them gave two blows each on the vital part of the body i.e. head and forehead which proved fatal for the deceased. More so, no question had been put to Dr. Daljit Singh Bains (PW.1) as to whether the injuries caused by each of the petitioners was sufficient to cause death independently.

Occular evidence corroborates medical evidence. Non-cross examination of witness (Dr) about a vital defence plea- fatal to defence.

2014 STPL(Web) 118 SC Pal Singh & Anr. Vs. State of Punjab

THE MENTAL HEALTH ACT, 1987

87. Sanction for prosecution.—Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), no court shall take cognizance of any offence punishable under section 82, except with the previous sanction of the licensing authority

82. Any person who establishes or maintains a psychiatric hospital or psychiatric nursing home in contravention of the provisions of this Act,	imprisonment upto three months or with fine upto 200 rupees or with both; and in the case of a second or subsequent offence shall be punishable with imprisonment upto six months, or with fine upto 1000 rupees, or with

	both.
83. Penalty for improper reception of mentally ill person.—Any person who receives or detains or keeps a mentally ill person in a psychiatric hospital or psychiatric nursing home otherwise than in accordance with the provisions of this Act,	imprisonment for a term which may extend to two years or with fine which may extend to one thousand rupees, or with both.
84. Penalty for contravention of sections 60 and 69.—Any manager appointed under this Act to manage the property of a mentally ill person, who contravenes the provisions of section 60 *(Manager to furnish inventory and annual accounts)* or sub-section (2) *(Manager to deliver property and accounts to new manager)* of section 69,	with fine which may extend to two thousand rupees and may be detained in a civil prison till he complies with the said provisions.
85. General provision for punishment of other offences.—Any person who contravenes any of the provisions of this Act or of any rule or regulation made thereunder, for the contravention of which no penalty is expressly provided, in this Act,	imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

91. If any mentally ill person does not have sufficient means to engage a legal practitioner to represent him in any proceeding under this Act before a District Court or a Magistrate then the District Court or Magistrate shall assign a legal practitioner to represent him at the expense of the State.

86. Offences by companies.—(1) --------every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, **as well as the company**, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

NEWS

- The public servants who have filed the declarations, information and returns under the provisions of the relevant rules **shall file revised** declarations, information or returns, as the case may be, in compliance of the rules framed under Section 44 of the Lokpal and Lokayuktas Act, 2013 within the period specified therein.
- RTI Process gets Further Boost with the Introduction of ‘e-Indian Postal Order’ for all by the Department of Posts
- The June 2nd has been notified as the date of impugned date for the purpose of Andhra Pradesh Reorganisation Act, 2014.

- the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014, has received the assent of the H.E. the President of India. Copy of the said act is available in downloads section on our website.
- Question as to whether euthanasia can be made constitutional, referred to larger bench in Common Cause (A Regd. Society) Vs. Union of India in Writ Petition (Civil) No. 215 of 2005-Decided on 25-2-2014.
- As per the statement of the Chief Secretary of A.P., the salaries of the employees who haven't submitted the "Regular Employee Details Form", will not be paid for the month of March, 2014.
- There shall be fixed tenure of atleast two years for the posts of IAS & IPS- 2013 STPL(Web) 896 SC 7 T.S.R. Subramanian & Ors. Vs. Union of India & Ors.
- Tax rebate of Rs. 2000/- U/Sec 87 A is applicable to all employees whose taxable income is less than Rs.5,00,000/-

ON A LIGHTER VEIN

Amy's father was not particularly bright, so she coached him ahead of time, telling him that her boyfriend was an old fashioned sort, and would be stopping by to ask his permission to marry her.

"Have you got that, dad?" she asked, dubiously.
"Don't you worry about me, honey" he said.
The next day the boyfriend arrived.
"Sir," he said, "I want your daughter for my wife."
A look of horror came over her dad's face. He stood up, eyes bulging, and pointed toward the door.
"That's just sick!" her father blurted out, as Amy buried her face in her hands.
"You get out, and go home, and tell your wife that she can't have my daughter!"

Experts Speak

Q: What is the course when there is a conflict between Sec 112 of IEA & DNA test report?

Ans: It has been recognized by the Supreme Court that **the result of a genuine DNA test is scientifically accurate. Although section 112 of the Evidence Act was enacted at a time when the modern scientific advancement and DNA test were not even in contemplation of the legislature.** It is evident that a child born during continuance of a valid marriage shall be a conclusive proof that the

child is a legitimate child of the man to whom the lady giving birth is married. The provision makes the legitimacy of the child to be a conclusive proof, if the conditions laid therein are satisfied. It can be denied only if it is shown that the parties to the marriage have no access to each other at any time when the child could have been begotten. Here, in the present case, the wife had pleaded that the husband had access to her and, in fact, the child was born in the said wedlock, but the husband had specifically pleaded that after his wife left the matrimonial home, she did not return and thereafter, he had no access to her when the child was begotten. The husband's plea was proved by the DNA test report showing that he was not the biological father of the girl child. None of the courts below had given any finding with regard to the plea of the husband that he had not any access to his wife. The Supreme Court held that they could not compel the husband to bear the fatherhood of a child, when the scientific reports proved to the contrary.

Nandlal Wasudeo Badwaik v. *Lata Nandlal Badwaik* , 2014 (1) SCALE 99 (SC): Crl. A. No. 24 of 2014; Decided on 6-1-2014 [Chandramauli Kr. Prasad and Jagdish Singh Khehar, JJ.]

LAST MONTH'S ANSWER

Q: Can a magistrate take cognizance of offences registered under the provisions of the A.P. Land Grabbing (Prohibition) Act, 1982 ?
Ans: A special court alone can take cognizance of the case under A.P.Land Grabbing Prohibition act.
An harmonious construction of Sec. 11 Sec. 12 would lead us to an inference that the Magistrate of the First Class specially empowered by the Government can take Cognizance of the offence of land grabbing, when the previous sanction of the Tribunal is granted with reference to particular cases.

THIS MONTH'S QUESTION

Q: Can information U/right to information act, be given of the investigation being done by the police?

The names of the patrons who send the answers, before the next edition would be acknowledged here.

A Very Happy Women's Day to all our lady Colleagues

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SAVE PAPER SAVE TREES.

PROSECUTION

REPLENISH

(An Endeavour for learning and excellence)

Vol- III Part 4 Monthly Leaflet April, 2014

CITATIONS

SUPREME COURT

It is, but natural, that instance of cruelty, harassment of demand of dowry generally would remain within the personal knowledge of near relations and they would be the best persons to depose about the same. Therefore, the evidence of physical and mental torture of the deceased from the accused is not to be discarded simply on the score of independent corroboration. **Ranjit Singh Vs State of Punjab (2014) 1 SCC (Crl) 644 = (2013) 12 SCC 333**.

it was submitted that the entire trial was vitiated as it had commenced and concluded without committal of the case to the Court of Session by the competent court inasmuch as the Sessions Court could not have directly taken cognizance of the offence under the Act without the case being committed for trial. **Rattiram & Ors. vs State Of M.P.Tr.Insp.Of Police (2014) 1 SCC (Crl) 635 = (2013) 12 SCC 316.**

the doctrine, "falsus in uno, falsus in omnibus" and held, that the same has no application in India. The court must assess the extent to which the deposition of a witness can be relied upon. The court must make every attempt to separate falsehoods from the truth, and it must only be in exceptional circumstances, when it is entirely impossible to separate the grain from the chaff, for the same are so inextricably entertwined, that the entire evidence of such a witness must be discarded. **Yogendra @ Yogesh & Ors. vs State Of Rajasthan (2014) 1 SCC (Crl) 671 = (2013) 12 SCC 399**

that merely not mentioning all the names of all the accused or their overt acts elaborately or details of injuries said to have been suffered, could not render the FIR vague or unreliable. The FIR is not an encyclopaedia of all the facts.
the defence cannot rely on nor can the court base its finding on a particular fact or issue on which the witness has not made any statement in his examination-in- chief and the defence has not cross examined him on the said aspect of the matter.
in case there are minor contradictions in the depositions of the witnesses the same are bound to be ignored as the same cannot be dubbed as improvements and it is likely to be so as the statement in the court is recorded after an inordinate delay. In case the contradictions are so material that the same go to the root of the case, materially affect the trial or core of the prosecution case, the court has to form its opinion about the credibility of the witnesses and find out as to whether their depositions inspire confidence. **Gangabhavani vs Rayapati Venkat Reddy 2014(1) ALD (Crl) 383 (SC).**

the Supreme Court held that it was incorrect on part of the Additional Sessions Judge to express opinion about the merits of the case at this stage. The Court opined that a conclusion as to whether a case under S. 326 of IPC, 1860 is made out or not can be drawn only after the investigation is complete. Only speculating based on the available records of evidence is inappropriate. It would be too early to form and express any opinion before the complete investigation report is submitted. Therefore, it was held that the Additional Sessions Judge erred in granting anticipatory bail, which was affirmed by the High Court. Accordingly, the order of the Sessions Court as well as the High Court was set aside and the appeal was allowed. **Nasiruddin v. State (NCT) Delhi, 2014(1) ALD (Crl) 398 (SC)**

There is no prohibition in law to convict the accused of rape on the basis of sole testimony of the prosecutrix and the law does not require that her statement be corroborated by the statements of other witnesses.
Rape cannot be treated only as a sexual crime but it should be viewed as a crime involving aggression which leads to the domination of the prosecutrix. In case of rape besides the psychological trauma, there is also social stigma to the victim. Majority of rapes are not sudden occurrences but are generally well planned as in this case. Social stigma has a devastating effect on rape victim. It is violation of her right of privacy. Such victims need physical, mental, psychological and social rehabilitation. Physically she must feel safe in the society, mentally she needs help to restore her lost self esteem, psychologically she needs help to overcome her depression and socially, she needs to be accepted back in the social fold. Rape is blatant violation of women's bodily integrity. **Md Iqbal and Another Vs State of Jharkand 2014(1) ALD (Crl) 402 (SC)**

The recovery of an incriminating article from a place which is open and accessible to others, alone cannot vitiate such recovery under Section 27 of the Indian Evidence Act. **State Of Himachal Pradesh vs Jai Chand 2014(1) ALD (Crl) 406 (SC)**

Complainant has right to seek alteration of charges
State of Gujarat Vs Radhakrishnan Varde, I (2014) CCR 372 (SC)

Dying Declaration of injured, upon survival of the injured- to be treated as 164 Cr.P.C. Statement. Solitary evidence sufficient if reliable. Hostile evidence can be considered. **Veer Singh Vs State of U.P., I (2014) CCR 102 (SC) = 2014 Cri.L.J. 1083**

When the advocate for the accused is absent- court to appoint an advocate to act as amicus curiae- **Shridhar Namdeo Law & State of Maharastra, I (2014) CCR 329 (SC)**

Abetment of suicide Sec 306 IPC + 498A IPC – not applicable after 7 years of Marriage. **Sherish Hardenia & others Vs State of M.P. I (2014) CCR 92 (SC)**

Viscera Report to be indispensably directed to be procured and filed into court. **Joshinder Yadav Vs State of Bihar, I (2014) CCR 361 (SC) = 2014 Cri.L.J.1175**

Investigation- monitoring by court to check investigation, but not to direct the investigation. **Manohar Lal Sharma Vs Principal Secretarym I (2014) CCR 196 (SC) = AIR 2014 SC 666 = 2014 Cri.L.J. 1015(SC)**

If witness is disbelieved due to improvements made by him- then there would hardly be any witness. **Sheesh Ram Vs State of Rajasthan, I (2014) CCR 464 (SC)**

Vehicle seized under Delhi Excise Act- released by high court- illegal- only Deputy commissioner of Excise empowered, **State (NCT of Delhi) Vs. Narender, I (2014) CCR 223 (SC)**

Cognizable offence and non-cognizable offence **Vishal Agarwal Vs Chathisgarh I (2014) CCR 407 (SC)**

Any amount of laxity and indifference by officials of Government and insensitivity towards the genuine complaints should be taken serious note and they should be punished. **2014 STPL(Web) 171 SC, Sudipta Lenka Vs. State of Odisha Ors.**

Dr. Swamy would urge that the relevant provisions of the Act i.e. Sections 1(4), 2(k), 2(l) and 7 must be read to mean that juveniles (children below the age of 18) who are intellectually, emotionally and mentally mature enough to understand the implications of their acts and who have committed serious crimes do not come under the purview of the Act. Such juveniles are liable to be dealt with under the penal law of the country and by the regular hierarchy of courts under the criminal justice system administered in India.- Not Tenable- **2014 STPL(Web) 211 SC, Dr. Subramanian Swamy & Ors. Vs. Raju Thr. Member Juvenile Justice Board & Anr.**

Further, we also wish to clarify that according to Section 357B, the compensation payable by the State Government under Section 357A shall be in addition to the payment of fine to the victim under Section 326A or Section 376D of the IPC.

the obligation of the State does not extinguish on payment of compensation, rehabilitation of victim is also of paramount importance. The mental trauma that the victim suffers due to the commission of such heinous crime, rehabilitation becomes a must in each and every case.
2014 STPL(Web) 217 SC In Re: Indian Woman Says Gang-Raped On Orders of Village Court Published In Business & Financial News

In the absence of a previous sanction u/s 19 of Prevention of Corruption Act, magistrate cannot order investigation against a public servant u/s 156(3) of Cr.P.C **Anil Kumar & Ors Vs. M.K.Aiyappa & anr. 2014(1) ALT (Crl.) 317 (SC)**

Whether Investigating Officer under NDPS Act would qualify as Police Officer or not **Tofan Sigh Vs. State of Tamil Nadu 2014(1)ALT (Crl.) 323 (SC)**

Method of hanging prescribed by S.354(5) of the Cr.P.C. was held not violative of the guarantee right under Article 21 of the Constitution on basis of scientific evidence and opinions of eminent medical persons assuring that hanging is the least painful way of ending the life.
Insanity is one of the supervening circumstances that warrants for commutation of death sentence to life imprisonment.
It is necessary that a minimum period of 14 days be stipulated between the receipt of communication of rejection of mercy petition and the scheduled date of execution.
Undue, inordinate and unreasonable delay in execution of death sentence does certainly attribute to torture, which is in violation of Art.21 of the Constitution of India
Exercising of power under Article 72 or 161 of the Constitution by the President or the Governor is a Constitutional obligation and not a mere prerogative. **Shatrughan Chauhan & anr Vs. Union of India & ors. 2014 (1) ALT (Crl.) 388 (SC)**

Perjury punishable only when it is deliberate, conscious to mislead court. **Ashok Kumar Agarwal Vs UOI 2014 Cri.L.J. 1213.**

Second wife not having knowledge of first marriage of husband- treated as legally wedded wife for the purpose of maintenance. **Badshah Vs Sou. Urmila Badshah Godse. 2014 Cri.L.J. 1076.**

A.P.HIGH COURT

weapon of offence used in commission of the offence, learned counsel for the appellants contended that in the First Information Report, it is stated that knives were used where in the evidence, eye-witnesses stated that the accused were armed with hunting sickles.- it cannot be said that it is a serious discrepancy to doubt the case of prosecution.
Rustic witness will not have time sense.
Direct proof of common intention is rarely and hardly available and therefore such intention can also be inferred from the circumstances appearing from the proved facts of the cases and proved circumstances.

Motive is not one of the ingredients for the offence of murder. It can only be taken as an aid in assessment of criminality. Absence of motive by itself is not a ground to acquit the accused. Further, motive looses significance when there is direct evidence which is truthful and acceptable.
it is not expected from him at that stage of suffering from mental agony or anxiety to rush to the police station to lodge the report. Delay not fatal.
names of eye-witnesses have not been mentioned in the inquest report nor in Complaint Ex.P1. The purpose of holding inquest is to ascertain the apparent cause of death of the deceased. Similarly, First Information Report is not an *encyclopedia* to contain all the minute details.- not fatal. **Bynoboina Vali Raju and others Vs State of A.P. 2014(1) ALD (Crl) 487.**

Once the Court basing on the evidence available on record finds that all the accused shared common intention, the question of proving specific overt acts of each of the accused may not be necessary
Test Identification Parade conducted after 38 days of the incident- not fatal. **Matapu Venkat Reddy Vs State of A.P. 2014(1) ALD (Crl) 457 (DB)**

whereas the witnesses were examined after lapse of two years. Therefore, Some minor discrepancies are bound to occur even in case of a truthful witness. So undue importance cannot be given to the minor discrepancies. If the discrepancies seriously affect the main fabric of the prosecution case, then those contradictions shall be given importance.
No doubt, motive in a criminal case, especially in murder case, assumes importance and it can be taken as one circumstance to assess criminality. But, at the same time, it is not an integral part or one of the essential ingredients of the crime. Absence or non-proof of motive by itself is not a ground to discard the testimony of an eyewitness provided his evidence is true, trustworthy and reliable.
Law is well settled that if evidence of solitary evidence is found to be true, trustworthy and reliable, then it can be acted upon. When evidence of a sole witness is put in the category of wholly reliable, the question of corroboration does not arise. **Bukya Bhaskar & Another Vs State of A.P. 2014(1) ALD (Crl) 442 (DB)**

The word ‘incorrigible’ is perhaps an inadequate expression to describe the conduct of the Station House Officers of the Police Stations in the State of Andhra Pradesh.
Non-Registration of FIR in cognizable offence, fined a sum of Rs. 20,000/- and further directed to identify the SHO who is responsible for non-registration of the complaint filed by the petitioner and initiate appropriate proceedings against him as per the Police Manual and recover from him the costs paid by him to the petitioner. **TVG Chandrasekhar Vs State of A.P 2014(1) ALD (Crl) 507**

When S.19 (a) and (b) of Prevention of Corrution Act prohibit reversal or alteration of a finding, sentence or order passed by a Special Judge in an appeal, confirmation or reversion on the ground of absence or on the ground of irregular sanction unless a failure of justice has occasioned, the question of quashing of the proceedings U/s 482 Cr.P.C. on the ground of invalid sanction order at the threshold would not arise unless it is established that there was a failure of justice. **Juvvaji Srinivasa Rao Vs. State,**

Dsitrict Inspector, Krishna ACB rep by Public Prosecutor 2014(1) ALT (Crl.) 207 (AP)

In a case of grave offences where powerful and influential accused are enlarged on bail, the very presence of such accused may create apprehension in the minds of the witnesses. When there is apprehension that the accused may threaten the witnesses and thereby bury the truth, it is not desirable to grant bail to the accused in the interest of justice **K.Mehfuz Ali Khan Vs. State of A.P. rep by its Public Prosecutor for CBI 2014(1) ALT (Crl.) 222 (AP)**

Sessions trial should be prosecuted only by Public Prosecutor and not by any counsel engaged by any aggrieved party **Dantha Trinadha Rao Vs. Special Judge for trial of offences under the SC & ST (POA) Act 2014(1) ALT (Crl.) 269 (AP)**

DELHI HIGH COURT

Sec 8 IEA is not circumscribed by Sec 27 IEA. **Rues Ul Zuma Vs State (NCT of Delhi) I (2014) CCR 96 (DB)**

The A.P. Prevention of disfigurements of Open Places and Prohibition of Obscene and Objectionable Posters and Advertisements act, 1997.

is available in Gazette zone

This act has been contributed by Sri E.Ramulu, PP (Retd), as being useful during the elections period.

NEWS

- Prosecution Replenish congratulates Sri Ch.Vidyasagar, ADOP & DOP (FAC) for being promoted as DIRECTOR OF PROSECUTIONS, A.P.

- The Sections of our DOP office have been reassigned as
  - A1 Section as A Section
  - A2 Section as B Section
  - B1 Section as C Section
  - B2 Section as D Section

- Sri Ramesh and Sri Mastan Rao have been promoted as Superintendents. Now, the superintendents allotted to the sections are
  - A Section- Sri Masthan Rao.
  - B Section- Sri Vishwantham.
  - C Section- Sri Ramesh.
  - D Section- Sri Ram Kumar.

- Our D.O.P (FAC) Sri Ch. Vidyasagar Garu inaugurated the Laptops, Printers, Data Cards & Laptop Bags to be delivered to all the prosecutors of Andhra Pradesh, in an official meeting.

- Sri. E.Ramulu, FM-APPA, has retired on 31/03/2014. Prosecution Replenish wishes him a happy, peaceful, healthy retired life.

ON A LIGHTER VEIN

A woman's prayer: Dear Lord, I pray for wisdom to understand my man, love to forgive him and patience for his moods, because Lord, if I pray for strength, I'll beat him to death!

Experts Speak

Q: Can a Test Identification Parade be prayed for an accused already enlarged on bail?

Ans: Yes, but it is a weak kind of evidence. The subject of TIP had been dealt elaborately by the bench in Ashrafi & Anr. Versus The State 1961 (1) Crl. L. J.340, which has been followed even by Supreme Court in Ramesh v. State of Karnataka 2009 (15) SCC 35

QUESTION zone

Q: Can information U/right to information act, be given of the investigation being done by the police?
A: The information which would impede the progress of investigation, is exempted from disclosure or apprehension or prosecution of the offenders, as per sec 8(1) (h) of the RTI Act.

The names of the patrons who send the answers, before the next edition would be acknowledged here.

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

SAVE PAPER SAVE TREES.

PROSECUTION REPLENISH

(An Endeavour for learning and excellence)

Strive not to be a success,
but rather to be of value.
-Albert Einstein

Dear Prosecutors,

Seasons Greetings. Summer is on and the temperatures are soaring. To add to the heat, we are made to face an even more hotter situation of the retirement of our beloved Director of Prosecutions Shri Ch.Vidya Sagar Garu.

For a person coming from a rural background, to get selected as APP, was not an easy task in those days, but having been selected at the lowest grade of the department, he rose to adorn the seat of the Director of Prosecutions, only due to his pure hard work and zeal to serve. His services, in regular as well as on deputation posts have earned him the accolade of all. His services were spotless. He has created nothing less than history by becoming the first Director of Prosecutions, Government of Andhra Pradesh from Cadre Prosecutors. In short, we can say that he truly exemplified the gist of Bhagavat Gita, that to do your duty, and not to worry about the result, and that the results are sure to follow.

We take this opportunity to put it on record that it was our DOPôs encouragement and sure trust on us, which thrust us in commencing this leaflet Prosecution Replenish and the same is keeping us going.

The Least Prosecution Replenish could do to this great person, is to carry this tribute with regard to the First and Last Director of Prosecutions of United Andhra Pradesh to all the cadre Prosecutors in the State of his successful career all throughout his service

A very heartfelt wishes for happy retirement in advance to our beloved Director of Prosecutions.

Regards

Editorial team,

Prosecution Replenish

Sir,

Your kind self has left an indelible mark on all of us, your good self's guidance on professional front as well as personal aspects will be greatly missed. Sir, we all desire you a wonderful retirement in advance and we wish your good self and your family with all blessings of Almighty all throughout the retired life.

Editorial Team

CITATIONS

SUPREME COURT

Hijras, Eunuchs, apart from binary gender, be treated as "third gender" for the purpose of safeguarding their rights under Part III of our Constitution and the laws made by the Parliament and the State Legislature. **National Legal Services Authority Vs. Union of India and Others 2014 STPL(Web) 271 SC**

a proclaimed offender under section 82 is not entitled for anticipatory bail. **(2014) 1 SCC (CRL) 768 = 2014 (2) SCC 171**

304: B IPC soon before her death does not mean immediately before her death but the proximity only. **Tummala Venkateshwar Rao Vs state of Andhra Pradesh. (2014) 1 SCC (CRL) 795= (2014) 2 S CC 240.**

Lapses of prosecution – when liable for acquittal. **(2014) 1 SCC (CRL) 820= (2014) 2 SCC 395. Hemraj vs state of Haryana.**

Defence commencing arguments first – held – not invalid. **J. Jayalalitha versus state of Karnataka. (2014) 1 SCC (CRL) 824= (2014) 2 SCC 441.**

376 (2) (G) explanation 1 – not necessary that prosecution should adduce clinching proof of a completed act of rape by each one of the accused. **State of Rajasthan versus Roshan Khan and others. (2014) 1 SCC (CRL) 855= (2014) 2 SCC 476.**

Limitation – Sarah Matthews versus Institute of cardiovascular. **(2014) 1 SCC (CRL) 721= (2014) 2 SCC 62 (Constitutional bench).**

Expression 'act' under S.338 IPC includes 'act of omission' **Dr.P.B.Desai Vs State of Maharastra 2014(1) ALT (Crl.) 456 (SC)**

Quashing charge sheet even before cognizance is taken by a criminal court amounts to killing a still born child.
Inherent powers U/s.482 Cr.P.C. should not be exercised to stifle legitimate prosecution, but can be exercised to save accused from undergoing agony of criminal trial **Umesh Kumar Vs. State of Andhra Pradesh 2014(1) ALT (Crl.) 479 (SC)**

Viscera – Examination of Viscera by FSL is required – Though FSL report is not mandatory, advisable to have it in cases of suspected poisoning
S.106 of Indian Evidence Act is an exception to S.101 Indian Evidence Act **Joshinder Yadav Vs. State of Bihar 2014(1) ALT (Crl.) 492 (SC)**

Unless the witnesses are protected , the rise in unmerited acquittals cannot be checked. **Anjanappa Vs State of Karnataka 2014(1) ALT (Crl.) 506 (SC)**

a chemical examination of the viscera is not mandatory in every case of a dowry death; even when a viscera report is sought for, its absence is not necessarily fatal to the case of the prosecution
Section 306 of the IPC is much broader in its application and takes within its fold one aspect of Section 304-B of the IPC. These two sections are not mutually exclusive. If a conviction for causing a suicide is based on Section 304-B of the IPC, it will necessarily attract Section 306 of the IPC. However, the converse is not true

Bhupendra Vs State of Madhya Pradesh 2014 (1) ALD (Crl) 642 (S.C)

in Section 2(q) of the DV Act, would or would not amount to a relationship in the nature of marriage, would be apposite. Following are some of the categories of cases which are only illustrative:

a) Domestic relationship between an unmarried adult woman and an unmarried adult male: Relationship between an unmarried adult woman and an unmarried adult male who lived or, at any point of time lived together in a shared household, will fall under the definition of Section 2(f) of the DV Act and in case, there is any domestic violence, the same will fall under Section 3 of the DV Act and the aggrieved person can always seek reliefs provided under Chapter IV of the DV Act.

b) Domestic relationship between an unmarried woman and a married adult male: Situations may arise when an unmarried adult women knowingly enters into a relationship with a married adult male. The question is whether such a relationship is a relationship "in the nature of marriage" so as to fall within the definition of Section 2(f) of the DV Act.

c) Domestic relationship between a married adult woman and an unmarried adult male: Situations may also arise where an adult married woman, knowingly enters into a relationship with an unmarried adult male, the question is whether such a relationship would fall within the expression relationship "in the nature of marriage".

d) Domestic relationship between an unmarried woman unknowingly enters into a relationship with a married adult male: An unmarried woman unknowingly enters into a relationship with a married adult male, may, in a given situation, fall within the definition of Section 2(f) of the DV Act and such a relationship may be a relationship in the "nature of marriage", so far as the aggrieved person is concerned.

e) Domestic relationship between same sex partners(Gay and Lesbians): DV Act does not recognize such a relationship and that relationship cannot be termed as a relationship in the nature of marriage under the Act. Legislatures in some countries, like the Interpretation Act,1984 (Western Australia), the Interpretation Act, 1999 (New Zealand),the Domestic Violence Act, 1998 (South Africa), the Domestic Violence, Crime and Victims Act, 2004 (U.K.), have recognized the relationship between the same sex couples and have brought these relationships into the definition of Domestic relationship.

Section 2(f) of the DV Act though uses the expression "two persons", the expression "aggrieved person" under Section 2(a) takes in only "woman", hence, the Act does not recognize the relationship of same sex (gay or lesbian) and, hence, any act, omission, commission or conduct of any of the parties, would not lead to domestic violence, entitling any relief under the DV Act.

Indra Sarma Vs V.K.V. Sarma 2014(1) ALD (Crl) 662 (SC)

the evidence of police officials cannot be discarded merely on the ground that they belong to the police force and are either interested in the investigation or in the prosecution. However, as far as possible the corroboration of their evidence on material particulars should be sought. **Madhu @ Madhuranatha and another Vs State of Karnataka 2014(1) ALD (Crl) 699 (SC)**

The contention of the appellant's counsel is that even if it is proved that there was cruelty on account of demand of dowry, such cruelty shall be soon before the death and there must be proximate connection between the alleged cruelty and the death of the deceased. It is true that the prosecution has to establish that there must be nexus between the cruelty and the suicide and the cruelty meted out must have induced the victim to commit suicide. The appellant has no case that there was any other reason for her to commit suicide **2014 STPL(Web) 322 SC Dinesh Vs. State of Haryana**

The Courts cannot be unmindful of the legal position that even if the evidence relating to extra-judicial confession is found credible after being tested on the touchstone of credibility and acceptability, it can solely form the basis of conviction **2014 STPL(Web) 327 SC 4 Baskaran & Anr. Vs. State of Tamil Nadu**

On considering the same, we have accepted the suggestion offered by the learned counsel who appeared before us and hence exercising powers under Article 142 of the Constitution, we are pleased to issue interim directions in the form of mandamus to all the police station in charge in the entire country to follow the direction of this Court which are as follows:

(i) Upon receipt of information relating to the commission of offence of rape, the Investigating Officer shall make immediate steps to take the victim to any Metropolitan/preferably Judicial Magistrate for the purpose of **recording her statement under Section 164 Cr.P.C.** A copy of the statement under Section 164 Cr.P.C. should be handed over to the Investigating Officer immediately with a specific direction that the contents of such statement under Section 164 Cr.P.C. should not be disclosed to any person till charge sheet/report under Section 173 Cr.P.C. is filed.

(ii) The Investigating Officer shall as far as possible take the victim **to the nearest Lady Metropolitan/preferably Lady Judicial Magistrate**

(iii) The Investigating Officer shall record specifically the date and the time at which he learnt about the commission of the offence of rape and the date and time at which he took the victim to the Metropolitan/preferably Lady Judicial Magistrate as aforesaid.

(iv) If there is any **delay exceeding 24 hours** in taking the victim to the Magistrate, the Investigating Officer **should record the reasons** for the same in the case diary and hand over a copy of the same to the Magistrate.

(v) Medical Examination of the victim: Section 164 A Cr.P.C. inserted by Act 25 of 2005 in Cr.P.C. imposes an obligation on the part of Investigating Officer to get the victim of the rape immediately medically examined. **A copy of the report of such medical examination should be immediately handed over to the Magistrate who records the statement of the victim under Section 164 Cr.P.C.**

2014 STPL(Web) 334 SC State of Karnataka by Nonavinakere Police Vs. Shivanna @ Tarkari Shivanna

A.P.HIGH COURT

In order to establish good faith the circumstances under which the defamatory matter was written or uttered etc., is to be seen first

Sanction U/s.197 Cr.P.C is not necessary to initiate prosecution in the absence of material to show that the averments in the final report are based on the statements of witnesses. **I.Venakteswarulu Vs. State 2014(1) ALT (Crl.) 274 (AP)**

The demand and acceptance of bribe need not be proved through direct evidence. The prosecution can prove it by circumstantial evidence also **Repala Venkata Gopala Ratnam Vs. State of A.P. 2014(1) ALT (Crl.) 302 (AP)**

It is most unfortunate that the *de facto* complainant has implicated her in laws, brother-in-law, sister-in-law, parents of the mother-in-law and their relatives, two more sisters of her husband and their husbands who are residing in foreign countries. A reading of the complaint gives an impression that the *de facto* complainant has implicated almost all the relatives of her husband and their other close relatives who are visiting her husband's house. This is most unfortunate situation. This type of complaint gives an impression that Section 498-A is being misused to harass not only the husband of the *de facto* complainant but all his relatives. It is alleged that in order to force the husband to come to their terms or in order to meet their huge demands, this kind of complaints are being given. How difficult it would be for those persons staying in Australia, Jeddah or USA to come over to India and face the criminal case and prove their innocence.

the following guidelines have been issued.

a) A fair and dispassionate investigation should be conducted. After completing investigation, the same should be verified by an officer not below the rank of Deputy Superintendent of Police.
b) During the course of investigation, if the investigating officer is satisfied that there is false implication of any person in the complaint then he may delete the names of such persons from the charge sheet after obtaining necessary permission from the Superintendent of Police or any other officer equivalent to that rank.
c) As soon as a complaint is received either from the wife alleging dowry harassment or from the husband that there is every likelihood of him being implicated in a case of dowry harassment, then, both the parties should be asked to undergo counselling with any experienced counsellor or counsellors. The report of such counsellors should be made as a part of the report to be submitted by the investigating officer to the Court.
d) The Superintendent of Police, in consultation with the Chairman, District Legal Services Authority, may prepare a panel of counsellors and such panel of counsellors along with their address and phone numbers should be made available at all the police stations.
e) Normally, no accused should be arrested, where the allegation is simple dowry harassment. If the arrest is necessary during the course of investigation, the investigating officer should obtain permission of the Superintendent of Police or any other officer of the equal rank in metropolitan cities. If arrest is not necessary, the police may complete the investigation and lay charge sheet before the Court without arresting the accused and seek necessary orders from the Court. However, in the case of dowry death, suspicious death, suicide or where the allegations are serious in nature such as inflicting of bodily injury etc., the police officer may arrest the accused. However, the intimation of such arrest should be immediately sent to the concerned Superintendent of Police who may give necessary guidance to the arresting officer.
f) No accused or witness should be unnecessarily called to the police station and as soon as the purpose of summoning them to the police station is over they should be sent back. There should not be any unnecessary harassment to any person i.e. either to the relatives of the *de facto* complainant or to the relatives of the husband.
g) The higher police officers should see that the parties do not make any allegations that they are forced to come to any settlement in police stations against their wish. However, this does not mean that the police officers should not make any effort for amicable settlement.
h) The advocates have to play their role in trying to unite the families. They must act as social reformers while dealing with these kind of cases, particularly, where the couple have children. Even when an accused is produced before the Magistrate, they should examine the matter judiciously and consider whether there are valid grounds for remanding the accused to

the judicial custody. No accused should be remanded to judicial custody mechanically in routine manner. If the Magistrate feels that the accused cannot be released after taking bonds, necessary orders may be passed accordingly.

The Director General of Police, Andhra Pradesh, is requested to issue necessary instructions to all the concerned in this regard. **Tahmeena Kaleem & others Vs State of Andhra Pradesh, 2014 (1) ALD (Crl) 542 (A.P)**

When statute expressly fixed time and no power is vested in the Commissioner to condone the delay if appeal is not filed within time even for sufficient reasons, it cannot be said that Commissioner is vested with inherent power to condone the delay. A creator of the statute derives power from the statute and has to act within the four corners fixed by the statute.

the Hon'ble Supreme Court held that knowledge of transportation of contraband liquor to the owner of the vehicle is not material. Once it is proved that vehicle is involved in transportation of contraband liquor, it is liable for confiscation.

Y.Krishna Kishore V Govt. of A.P. 2014 (1) ALD (Crl) 551 (A.P.)

I. WOULD THE PROCEDURAL REQUIREMENTS OF SECTION 24(4) & (5) CR.P.C. APPLY TO THE APPOINTMENT OF SPECIAL PUBLIC PROSECUTORS? NO

II. CAN THE POWER, TO APPOINT A SPECIAL PUBLIC PROSECUTOR UNDER SECTION 24(8) Cr.P.C, BE EXERCISED FOR THE MERE ASKING? NO

A. EXERCISE OF POWER, UNDER SECTION 24(8) Cr.P.C, IS DISCRETIONARY:

B. ABDICATION OF DUTY AND SURRENDER OF DISCRETION:

III. RULE AGAINST BIAS: IS IT APPLICABLE TO THE APPOINTMENT OF A SPECIAL PUBLIC PROSECUTOR?

A. ROLE OF A PUBLIC PROSECUTOR IN THE CRIMINAL JUSTICE SYSTEM:

The Court in which we sit is a temple of justice and the Advocate at the Bar, as well as the Judge upon the Bench, are equally ministers in that temple. The object of all should equally be the attainment of justice. An advocate is retained by his client, yet he has a prior and perpetual retainer on behalf of truth and justice and there is nothing, not even the State, that can discharge him from that primary and paramount retainer. (Dodda Brahmanandam v. State of A.P.[34]; R v 0. Connell[35]). A primary position is assigned to the Public Prosecutor in Criminal Jurisprudence as the State is the prosecutor and, where the Public Prosecutor appears, the request of the complainant or the victim to be represented by any other counsel is subject to permission of the Court. (Mukul Dalal[15]). The Public Prosecutor holds a public office and therefore, like any other public office, is susceptible to misuse and corruption if not properly insulated. It is an office of responsibility, more important than many others, as the holder is required to prosecute with detachment on the one hand and yet with vigour on the other. They have certain professional and official obligations and privileges. (Mukul Dalal[15]; K.C. Sud[16]). A special feature, of the administration of criminal justice in India, is that an accused before a Sessions Court is conferred the privilege of the case against him being prosecuted only by a Public Prosecutor. This is reflected in the mandate contained in Section 225 of the Code. There is no exception to this rule. A private counsel, engaged by a victim, is not entitled to conduct prosecution in the Sessions Courts. (Abdul Khader Musliar[8]; Seethi Haji v. State of Kerala[36]).

Courts in India have recognised the practice of the Government appointing a Special Public Prosecutor at the instance of aggrieved persons in criminal cases. Criminal prosecutions are launched not only by the State but also by private parties. The role of the Prosecutor in any criminal trial, whether at the instance of the State or a private party, is to safeguard the interests of both the complainant and the

accused. In the discharge of his duties as a prosecutor he is ordained by law, by professional ethics and by his role as an officer of the Court, to employ only such means as are fair and legitimate, and to desist from resorting to unjust and wrongful means. The duties of the prosecutor and the requirements of a fair trial do not vary from case to case. (Vijay Valia v. The State of Maharashtra[37]; Susey Jose v. G. Janardhana Kurup[38]). It is the duty of the counsel for the prosecution to be an assistant to the Court in the furtherance of justice and not to act as the counsel for any particular person or party. Counsel for the prosecution are to regard themselves as ministers of justice, assisting in its administration, rather than as advocates. It is always the supposition in the administration of criminal justice, as a general rule, that the prosecuting counsel is in a kind of judicial position that, while he is there to conduct the case at his discretion, he should do so with a sense of responsibility not as if he is trying to obtain a verdict, but to assist in fairly putting the case before the Court and nothing more. The course of criminal justice would go on as it ought to do, the prosecuting counsel regarding himself really as a part of the Court, and acting in a quasi judicial capacity. (Dodda Brahmanandam[34]; R. v. Berens[39]; R v. Banks[40]; R. v. Thursfield[41]; R v. Puddick[42]).

Though the Sessions Judge has a supervising control over the entire trial, it is the Public Prosecutor who decides who are the witnesses to be examined on the side of the prosecution and which witness is to be given up, or which witness is to be recalled for further examination. For proper conduct of a criminal case, Public Prosecutors play a vital role. (Jayendra Saraswati Swamigal[10]). The Public Prosecutor is a guide to the prosecution and his functioning cannot be entrusted to the advocate appointed on behalf of a private complainant. (Ramakistaiah v. State of A. P.[43]; Sardarilal v. The Crown[44];Anant Wasudeo v. Emperor[45]; Dodda Brahmanandam[34]). The prosecuting counsel does not represent either the *de facto*complainant or the police and his function is to assist the court in arriving at the truth. (G. Daniel[33]). He stands in a position different from that of an advocate who represents the complainant. He is a representative of the State and is a part of the Court. It is not his duty to obtain a conviction at any cost but simply to lay before the Court the whole of the facts of the case, and the law, fairly and impartially. The State too has no interest in procuring a conviction. Its only interest is that the guilty must be punished, the truth should be known, and justice should be done. Prosecuting Counsel should not omit matters that are important or favourable to the interests of the accused. He should not attempt to persuade the Court, by advocacy, to inflict a severe sentence or contradict a plea in mitigation unless invited by the Court to assist it. It is regarded as proper for the prosecution to acquaint the defence as to any relevant information so that the defence may have the opportunity to use it if they so desire and so that no unfairness is meted out to the accused. The position of the public prosecutor is thus quasi-judicial and one of trust. (Dodda Brahmanandam[34]; Kenny's Out lines of Criminal law, 19th Ed. (1966) p. 611-612; Halsbury's Laws of England, 4th Ed Vol. 3 Barristers, Para 1140; R v. Superman[46]; Devineni Seshagiri Rao[14]).

A Public Prosecutor is duty bound to present a complete and truthful picture of the case from all quarters. It is his obligation to assist the Court in a dispassionate manner. A crime is committed not against an individual but against the community at large. In the administration of criminal justice the public prosecutor represents the society in entirety. The collective reposes intrinsic faith in the public prosecutor and, ordinarily, there should be no interference in the functioning of the public prosecutor. (Poonamchand Jain[13]; Abdul Kadir Musliar[8]). Public Prosecutors are really ministers of justice whose job is none other than assisting the State in the administration of justice. They are not representatives of any party. They are not there to send the innocent to the gallows. They are also not there to see culprits escape a conviction. A pleader engaged by a private person, who is a defacto complainant, cannot be expected to be so impartial, as it will be his endeavour to get a conviction even if a conviction may not be possible. The real assistance that a Public Prosecutor is expected to render will not be there if a pleader engaged by a private person is allowed to don the robes of a public prosecutor. (Babu[18]).

The Law Commission of India, in its 154th Report on 'Code of Criminal Procedure, 1973' (in chapter III, para 15),opined:-

"….'Public Prosecutor' is defined in some countries as a "public authority who, on behalf of society and in the public interest, ensures the application of the law where the breach of the law carries a criminal sanction and who takes into account both the rights of the individual and the necessary effectiveness of the criminal justice system".

Prosecutors have duties to the State, to the public, to the Court and to the accused and, therefore, they have to be fair and objective while discharging their duties.

Public Prosecutor has to act independently from the Police:

The 'independence' of the prosecutor's function stands at the heart of the rule of law. Prosecutors are expected to behave impartially. (Report of the Criminal Justice Review in Northern Ireland, 2000). Prosecutors are gatekeepers to the criminal justice process as stated by Avory J in R v. Banks 1916 (2) KB 621. The learned Judge stated that the prosecutor,

"throughout a case ought not to struggle for the verdict against the prisoner but… ought to bear themselves rather in the character of minister of justice assisting the administration of justice"

It is now too well-settled that Prosecutors are independent of the police and the Courts. While the police, the Courts and the prosecutors have responsibilities to each other, each also has legal duties that separate them from others. The prosecutor does not direct police investigations, nor does he advise the police. Public Prosecutors are part of the judicial process and are considered to be officers of the Court.

Public Prosecutor must act on his own independent of Executive influence:

The Government should ensure that public prosecutors are independent of the executive, and are able to perform their professional duties and responsibilities without interference or unjustified exposure to civil, penal or other liability. However, the public prosecutor should account periodically and publicly for his official activities as a whole. Public prosecutors must be in a position to prosecute without influence or obstruction by the executive or public officials for offences committed by such persons, particularly corruption, misuse of power, violations of human rights etc…….

Summary:

Therefore, the Public Prosecutor has to be independent of the executive and all external influences, also independent of the police and the investigation process. He cannot advice the police in the matters relating to investigation. He is independent of Executive interference. He is independent from the Court but has duties to the Court. He is in charge of the trial, appeal and other processes in Court. He is, in fact, a limb of the judicial process, officer of Court and a minister of justice assisting the Court. He has duties not only to the State and to the public to bring criminals to justice according to the rule of law but also duties to the accused so that innocent persons are not convicted……" (emphasis supplied)

Dr. Tera Chinnapa Reddy vs Govt. of A.P 2014 (1) ALD (Crl) 568 (A.P.)

It is not enough that the contents of the final report or the complaint make out an offence. It is further necessary that there must be a *prima facie* material to show that the accused had committed the offence. The Court has to scrutinize the material placed on record by applying its judicial mind and for the purpose of framing the charge, it has to arrive at a positive opinion that *prima facie* case bas been made out that the accused committed the offence.

***B.S.Neelakanta and another Vs The State of A.P.* 2014 (1) ALD (Crl) 611 (A.P.)**

the High Court shall refuse to exercise the discretionary power under Section 482 Cr.P.C. if the party has approached the Court with unclean hands like suppression of facts.

Mere pendency of Civil case not sufficient to quash FIR

Kusuma Lokanadham Vs State of A.P. 2014 (1) ALD (Crl) 620 (A.P)

Amendment to AP High Court Appellate Rules Gazette is available in Gazette zone

NEWS

- Prosecution Replenish congratulates Sri Subramanyam Garu, J.D.-III for being elevated as ADOP (FAC).
- The Seniority list of the Sr.APPôs has been dispatched to individuals for filing objections if any.
- The Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014 (7 of 2014), have come into force from the 1st day of May, 2014 . (Copy available in Gazette Zone)
-

ON A LIGHTER VEIN

In this experiment they put eight monkeys in a room. In the middle of the room is a ladder, leading to a bunch of bananas hanging from a hook on the ceiling. Each time a monkey tries to climb the ladder, all the monkeys are sprayed with ice water, which makes them miserable. Soon enough, whenever a monkey attempts to climb the ladder, all of the ther monkeys, not wanting to be sprayed, set upon him and beat him up. Soon, none of the eight monkeys ever attempts to climb the ladder.

One of the original monkeys is then removed, and a new monkey is put in the room. Seeing the bananas and the ladder, he wonders why none of the other monkeys are doing the obvious, but, undaunted, he immediately begins to climb the ladder. All the other monkeys fall upon him and beat him silly. He has no idea why. However, he no longer attempts to climb the ladder.

A second original monkey is removed and replaced. The newcomer again attempts to climb the ladder, but all the other monkeys hammer the crap out of him.

This includes the previous new monkey, who, grateful that he's not on the receiving end this time, participates in the beating because all the other monkeys are doing it. However, he has no idea why he's attacking the new monkey.

One by one, all the original monkeys are replaced, eight new monkeys are now in the room. None of them have ever been sprayed by ice water. None of them attempt to climb the ladder. All of them will enthusiastically beat up any new monkey who tries, without having any idea why.

AND THAT'S EXACTLY HOW MOST OF THE COMPANY POLICIES & PROCEDURES GET ESTABLISHED.

Experts Speak

Q: Can a trial court add or alter charges that are quashed by High Court?

Ans: Yes, Please refer the paras 23 to 25 in judgment reported as AIR 2014 SC 1106 = Umesh Kumar Vs. State of Andhra Pradesh 2014(1) ALT (Crl.) 479 (SC).

QUESTION zone

Q: Can information U/right to information act, be given of the investigation being done by the police?
A: The information which would impede the progress of investigation, is exempted from disclosure or apprehension or prosecution of the offenders, as per sec 8(1) (h) of the RTI Act.

The names of the patrons who send the answers, before the next edition would be acknowledged here.

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PROSECUTION REPLENISH

(An Endeavour for learning and excellence)


పోగిడే ప్రతిఒక్కరు మిత్రులు కారు,
తిట్టే వారందరు శత్రువులు కారు.
పొగడ్తల వెనుక అసూయ,
ద్వేషం ఉండొచ్చు.
తిట్ల వెనుక ప్రేమ, ఆప్యాయతలు ఉండొచ్చు.
గమనించు మిత్రమా..!

Sir,

Your kind self has left an indelible mark on all of us, your good self's guidance on professional front as well as personal aspects will be greatly missed. Sir, we all desire you a wonderful retirement in advance and we wish your good self and your family with all blessings of Almighty all throughout the retired life.

Editorial Team

CITATIONS

SUPREME COURT

(2014) 2 SCC (CRI) 78 = (2014) 3 SCC 421 Birju vs state of Madhya Pradesh
evidence of a nostalgic witness cannot be discarded as a whole and relevant parts thereof, which are admissible in law, can be used either with prosecution or defence
courts can call for report from probation officer, by applying criminal test guideline III, as laid down in Shanker Kisan Rao Khade case {(2013) 5 SCC 546 = (2013) 3 SCC (CRI) 402 }

Prisons act, 1894~ section 45~applicable only to prisoners but not to visitors of the jail.
(2014) 2 SCC (CRL) 130 = (2014) 3 SCC 151 Varindu Singh vs state of Punjab and another

sessions court can take cognizance against persons not mentioned as offender but whose complicity is evident from the materials available on record even without recording evidence
(2014) 2 SCC (CRI) 159= (2014) 3 SCC 306. Dharampal & other Vs state of Haryana and others

Criminal conspiracy~is actually in secrecy~no direct evidence is available~should be presumed from the circumstances
non~examination of recovery punch~not fatal~when IO was not cross~examined on that aspect~even defence did not choose to summon the unexamined witnesses. (2014) 2 SCC (CRI) 195= (2014) 3 SCC 401 Gulam Sarbar Vs versus state of Bihar.

Interim bail to accused on ground that some accused were granted bail
(2014) 2 SCC (CRL) 220= (2014) 3 SCC 480 Lingaram Kodopi vs state of Chhattisgarh.

Custodial torture~procedure for investigation.
(2014) 2 SCC (CRI) 222= (2014) 3 SCC 482 Soni Sori & Anr Vs state of Chhattisgarh

Court cannot acquit accused on the ground that there are some defects in the investigation, but if the defects in the investigation are such as to cast a reasonable doubt in the prosecution case, then of course the accused is entitled for acquittal on such doubt.
Sec 376 IPC~ No corroboration of evidence of victim required.
When no question was put in cross~examination~ No doubt regarding veracity~ can be entertained.
2014(1) ALD (Crl) 782 (SC) Ganga Singh Vs State of M.P.

No presumption or proof that victim was not raped as her hymen was not ruptured. 2014 (1) ALD (Crl) 850 (SC) Parminder @ Ladka Pola Vs State of Delhi.

Section 6~ A(1), which requires approval of the Central Government to conduct any inquiry or investigation into any offence alleged to have been committed under the PC Act, 1988 where such allegation relates to (a) the employees of the Central Government of the level of Joint Secretary and above and (b) such officers as are appointed by the Central Government in corporations established by or under any Central Act, government companies, societies and local authorities owned or controlled by the Government, is invalid and violative of Article 14 of the Constitution. As a necessary corollary, the

provision contained in Section 26 (c) of the Act 45 of 2003 to that extent is also declared invalid. 2014 STPL(Web) 356 SC Dr. Subramanian Swamy Vs. Director, Central Bureau of Investigation & Anr.

the complaint filed against the respondents under Section 195(1)(b) of the Code of Criminal Procedure, 1973, was without authority and sanction~ hence legally no valid complaint~ hence the cognizance on such complaint is bad in law. 2014 STPL(Web) 346 SC Central Bureau of Investigation , Lucknow, U.P. Vs. Indra Bhushan Singh & Ors.

Exorbitant delay in disposal of mercy petition renders the process of execution of death sentence arbitrary, whimsical and capricious V.Sriharan @ Murugan V. Union of India 2014 (2) ALT (Crl.) 1 (SC)

On the culmination of a criminal case in acquittal, the concerned investigating/prosecuting officials responsible for such acquittal State of Gujarat V. Kishanbhai etc. 2014 (2) ALT (Crl.) 32 (SC)

The unbiased and trained judicial mind free from all prejudices and notions is the only asset which would guide the judge to reach the truth.Mahesh Dhanaji Shinde V. State of Maharastra 2014 (2) ALT (Crl.) 55 (SC)

S.216 Cr.P.C. confers jurisdiction on all Courts including the Designated Courts to alter or add to any charge framed earlier, at any time before the judgment is pronounced. C.B.I Vs. Karimullah Osan Khan2014 (2) ALT (Crl.) 73 (SC)

One of the essential elements of S.504IPC is that there should have been an act or conduct amounting to intentional insult.
It is not the law that actual words/language used should figure in complaint. Complainant not required to verbatim reproduce each word/words capable of provoking the other person to commit any other offence. Fiona Shrikande V, State of Maharastra & anr. 2014 (2) ALT (Crl.) 97 (SC)

In a prosecution for rape u/s 376(2)(g) of IPC, where sexual intercourse by accused was proved and question is whether it was without consent of the victim, and where the victim deposes that she did not consent, court to presume U/s114A of Evidence Act that she did not consent.
Where a woman is raped by one or more, in a group of persons, acting in furtherance of their common intention, each of such persons be deemed, under Explanation I to Section 376(2) (g) IPC to have committed gang rape. State of Rajasthan V. Roshan Khan & ors, 2014 (2) ALT (Crl.) 124 (SC)

A.P.HIGH COURT

Sec 284 Cr.P.C. an Advocate commissioner can be appointed sparingly for examination of witnesses. Commission for noting down the physical features etc cannot be issued.
2014 (1) ALD (Crl) 711 (A.P) Boya Kothi Lakshmamma & anr Vs State of A.P.

In a case in which one accused was acquitted, and when the other accused was being convicted, the specific reasons for believing the contents of FIR against this accused are to be mentioned.
2014 (1) ALD (Crl) 714 (A.P) S.Inderjeet Singh Vs State of A.P.

Petitioner engaged the services of the victim for beating drums on the occasion of the marriage of his daughter. The victim did not comply. Dispute arose. The essential ingredient of MENSREA is absent, as

such the Sec 3(1) (x) of the S.C.'s & S.T's (POA) act are not attracted. Anticipatory bail granted. 2014 (1) ALD (Crl) 717 (A.P) S.Venkata Lakshmamma Vs State of A.P.

The prosecution has to establish that the respondent/accused by playing deception and fraud and under a promise to marry the de facto complainant, had sexual intercourse with her. If the prosecution succeeds in proving that the respondent/accused is the biological father of the child born to the de facto complainant, that would be only a piece of evidence and that by itself cannot establish any offence of rape.
the report relating to DNA profiling is not conclusive of the factum of paternity of the respondent/accused.
Mere doubts regarding the first DNA test report, without any basis, cannot be a ground to send the sample again for second DNA test report. 2014 (1) ALD (Crl) 719 (A.P) S.Swarnalaxmi Vs State of A.P.

Mere lodging in jail for 86 days not relevant for grant of bail and it also does not qualify for CHANGED CIRCUMSTANCES for grant of bail on second application. Prosecution version that petitioner sent men, even while he was in jail, to threaten the witnesses, not considered while granting bail. Bail Cancelled.
2014 (1) ALD (Crl) 722 (A.P) Syed Chand Pasha Vs State of A.P.

Police have no power to accept any representation or material concerning the case from the accused persons without the PERMISSION of the court. Police cannot act like adjudicator.
No provision to order notice to accused on protest petition.
2002 (1) ALD (crl) 725 (SC)= (2002) 5 SCC 82- CBI Vs R.S.Pai. The Word shall in 173(5) Cr.P.C. is only directory and not mandatory. I.O. can file documents subsequently after filing report U/Sec. 173 Cr.P.C.- reiterated.
2014 (1) ALD (Crl) 727 (A.P) Shaheen Hussain Khan Vs State of A.P.

Dispute-not serious-not effecting the society at large- case booked under sec 3(1)(x) of S.C.'s & S.T's (POA) act & 506 IPC- matter settled between the parties- investigation quashed- 2014(1) ALD (Crl) 733 (A.P) P.Srinivas Rao Vs State of A.P.

Case registered against the petitioners under provision of SC's & ST's (POA) act and other IPC provisions, after the complaint lodged by the petitioners against the defacto complainant, who is a Sub-Inspector of Police. There is no occasion to know the caste of the S.I. Hence, anticipatory bail granted. 2014(1) ALD (Crl) 747 (A.P) Joginipally Venugopal Rao Vs State of A.P

The object of Prevention of Atrocities Act, 1989 is to prevent atrocities against members of Scheduled Caste and Scheduled Tribe. The provisions of the Act however cannot be used as a weapon to settle personal scores against the members of non-scheduled caste or scheduled tribe or to settle the property dispute with them or to wreak vengeance. If such a course is allowed, the very object of the Act would be defeated. 2014(1) ALD (Crl) 749 (A.P) Ch.Srinivas Rao Vs State of A.P

The Sub-Inspector of Police directed to pay a sum of Rs. 500/- for each day from 12-11-2013 to 12-12-2013 from his personal funds for the delay in lodging FIR u/Sec 420 IPC and keeping the same pending for enquiry.2014(1) ALD (Crl) 768 (A.P) A.V.Santhosh Kumar Vs Sajid Hussain

S.C's & ST's (POA) act Investigation- Sections 41-A and 161 Cr.P.C enable the Investigating Officer to direct either the accused or the complainant to appear before him for examination. The aforesaid

provisions of the Code of Criminal Procedure empower the Investigating Officer to direct either the complainant or the accused to produce their community certificate issued under the 1993 Act.

It is only in cases where the complainant DOES NOT PRODUCE the community certificate, in support of his claim to be a member of the Scheduled Castes or the Scheduled Tribes, would the Investigating Officer be justified in seeking information regarding his caste status from the concerned Mandal Revenue Officer/Tahsildar. Ordinarily a community certificate issued under the 1993 Act, reflecting the caste status of the complainant to be a member of the Scheduled Castes or the Scheduled Tribes, should be accepted, and investigation should be completed as mandated by Rule 7(2) of the 1995 Rules. It is only in cases where the complainant does not produce the community certificate, or the Investigating Officer has BONAFIDE REASONS TO DOUBT the genuineness of the certificate so produced, would he be justified in seeking information from the Mandal Revenue Officer/Tahsildar regarding the caste status of the complainant. While the accused cannot be said to have committed an offence under the 1989 Act, in case he also belongs to the Scheduled Castes or the Scheduled Tribes, it is for him to produce his community certificate, issued under the 1993 Act, before the Investigating Officer when he is asked to appear before him in accordance with Section 41-A Cr.P.C, or at any time thereafter. The guidelines dated 25.06.2008 cannot be so read as to flout the aforesaid statutory provisions. { Memo dated 25.06.2008, issued by the Additional Director General of Police, wherein the caste certificate of the victim is required to be obtained and the caste of the complainant ascertained by the Investigating Officer from the Mandal Revenue Officer, or the authority concerned, during investigation.}
2014(1) ALD (Crl) 775 (A.P) Yakasiri Chinnaiah Vs State of A.P

A-1's appeal – decided to be acquitted. A-3 Juvenile already extended benefit- A-2 did not file any appeal for want of resources- A-2 also acquitted.
2014(1) ALD (Crl) 879 (A.P) Andhavarapu Chandrasekhar @ Chandra Vs State of A.P.

FIR has to be registered by police if complaint discloses cognizable offence Guidelines to include criminal action to be taken against erring SHOS U/s 217 IPC as prescribed in the police manual besides disciplinary measures. T.V.G.Chandrasekhar V. State of A.P. rep. by its Principal Secretary, Home Department & ors 2014 (2) ALT (Crl.) 6 (AP)

Order granting anticipatory bail should not hamper the further investigation. Therefore, there is no difficulty to reconsider the order of anticipatory bail with the help of the material subsequently placed before the court.State of A.P. rep. by Public Prosecutor V. Surender Kumar Joshi & anr. 2014 (2) ALT (Crl.) 35 (AP)

NEWS

- Please find the gazette publications

1. Whistle Blowers Protection act, 2011, which received the assent of the H.E. the President on 09/05/2014
2. The extension of repatriation of Prisoners act to the republic of Germany.

- Andhra Pradesh Reorganization Act, 2014 ï Reorganization of Secretariat Departments and Heads of Departments ï Creation of new Drawing and Disbursing OfficerCodes for all DDOs of all Secretariat Departments and Heads of Departments for residuary State of Andhra Pradesh for preferring claims through Pay and Accounts Offices and collection of receipts from the appointed day i.e., 02-06-2014 ï Orders ï Issued. Vide FINANCE (TFR) DEPARTMENT G.O.Ms.No. 116 Dated: 21.05.2014 .

- Rules regarding the TIP Parade- The Criminal Rules of Practice and Circular Orders, 1990 ï Amendment ï Orders ï Issued LAW (L.A. & J ï HOME ï COURTS-B) DEPARTMENT G.O.Rt.No. 56 Dated: 23-05-2014

- The Andhra Pradesh Reorganisation Act, 2014 ï Advocate General (s) /State Public Prosecutor (s) / Government Pleaders and Standing Counsel at the State Level Courts/Tribunals of the State of Andhra Pradesh ï Continuance for the State of Telangana ï Orders ï Issued. G.O.Rt.No. 698 dated: 23.05.2014

ON A LIGHTER VEIN

A Polish man married a Canadian girl after he had been in Canada a year or so, and although his English was far from perfect, the couple got on very well. One day, though, he rushed into a lawyer's office and asked if he could arrange a divorce for him, "Very quick"!
The lawyer explained that the speed of getting a divorce would depend on the circumstances, and asked these questions:
LAWYER: "Have you any grounds?"
POLE: An acre and half, and a nice 3 bedroom house.
LAWYER: "No, I mean what is the foundation of the case?"
POLE: "It is made of concrete, bricks & mortar."
LAWYER: Does either of you have a real grudge?"
POLE: No, We have a carport and don't need a grudge.
LAWYER: "I mean, what are your relations like?"
POLE: "All my relations live in Poland."
LAWYER: "Is there any infidelity in your marriage?"
POLE: "Yes, we have hi-fidelity stereo set & DVD player with 6.1 sound.
LAWYER: "No, I mean does your wife beat you up?"
POLE: "No, I'm always up before her."

LAWYER: "Why do you want this divorce?" POLE: "She going to kill me!"
LAWYER: "What makes you think that?"
POLE: "I got proof."
LAWYER: "What kind of proof?"
POLE: "She going to poison me. She buy bottle at drug store and I read label. It say "Polish Remover"

Experts Speak

Q: Can a default bail granted U/Sec. 167 (2) Cr.P.C. be cancelled?

Ans: YES, read Raghubir Singh Vs. State of Bihar. 1987 AIR 149, 1986 SCR (3) 802

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SAVE PAPER SAVE TREES.

PROSECUTION REPLENISH

(An Endeavour for learning and excellence)

Isabella:

Merciful heaven,
Thou rather with thy sharp and sulphurous bolt
Splits the unwedgeable and gnarlèd oak
Than the soft myrtle; but man, proud man,
Dress'd in a little brief authority,
Most ignorant of what he's most assur'dð
His glassy essenceð like an angry ape
Plays such fantastic tricks before high heaven
As makes the angels weep; who, with our spleens,
Would all themselves laugh mortal.

Measure For Measure Act 2, scene 2, 114–123

CITATIONS

SUPREME COURT

mere marginal variations in the statements of a witness cannot be dubbed as improvements as the same may be elaborations of the statement made by the witness earlier. "Irrelevant details which do not in any way corrode the credibility of a witness cannot be labelled as omissions or contradictions." The omissions which amount to contradictions in material particulars, i.e., materially affect the trial or core of the prosecution's case, render the testimony of the witness liable to be discredited. Where the omission(s) amount to a contradiction, creating a serious doubt about the truthfulness of a witness and other witness also make material improvements before the court in order to make the evidence acceptable, it cannot be safe to rely upon such evidence.
it is evident that
deceased has been done away in close proximity of time of last seen. None of the accused could furnish any explanation in their statement under Section 313 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C.') as where did they drop him or where he had gone.
2014 STPL(Web) 403 SC Mahavir Singh Vs. State of Haryana

Akshardham Temple Attack- we intend to express our anguish about the incompetence with which the investigating agencies conducted the investigation of the case of such a grievous nature, involving the integrity and security of the Nation. Instead of booking the real culprits responsible for taking so many precious lives, the police caught innocent people and got imposed the grievous charges against them which resulted in their conviction and subsequent sentencing
2014 STPL(Web) 398 SC Adambhai Sulemanbhai Ajmeri & Ors. Vs. State of Gujarat.

Clause (m) postulates a situation where the articles fall below the prescribed standard even if it is not injurious to health. It is clear from this provision that if salt is added to chillies even if it would not be rendered injurious to health, nevertheless the quality/purity of the article would fall below the prescribed standards/its constituents as prescribed in A.05.05.01 limit. It would be adulterated.

2014 STPL(Web) 393= legalcrystal.com/1141835 SC Mithilesh Vs. State of NCT, Delhi

The evidence of identification of an accused at a trial is admissible as substantive piece of evidence, would depend on the facts of a given case as to whether or not such a piece of evidence can be relied upon as the sole basis of conviction of an accused

Statements made to the police during investigation were not substantive piece of evidence and the statements recorded under Section 161 CrPC can be used only for the purpose of contradiction and not for corroboration. In our view, if the evidence tendered by the witness in the witness box is creditworthy and reliable, that evidence cannot be rejected merely because a particular statement made by the witness before the Court does not find a place in the statement recorded under Section 161 CrPC.

the mere fact that they had not named the accused persons in Section 161 statement, at that time, that would not be a reason for discarding the oral evidence if their evidence is found to be reliable and creditworthy.

Ashok Debbarma @ Achak Debbarma vs State Of Tripura 2014(1) ALD (Crl) 883 (SC)

The accused has a duty to furnish an explanation in his statement under Section 313 Cr.P.C. regarding any incriminating material that has been produced against him. If the accused has been given the freedom to remain silent during the investigation as well as before the court, then the accused may choose to maintain silence or even remain in complete denial when his statement under Section 313 Cr.P.C. is being recorded. However, in such an event, the court would be entitled to draw an inference, including such adverse inference against the accused as may be permissible in accordance with law.

Phula Singh vs State Of H.P 2014(1) ALD (Crl) 900 (SC) = (2014) 2 SCC (Cri) 232 = (2014) 4 SCC 9.

the per incuriam rule is strictly and correctly applicable to the ratio decidendi and not to obiter dicta. It is often encountered in High Courts that two or more mutually irreconcilable decisions of the Supreme Court are cited at the Bar. We think that the inviolable recourse is to apply the earliest view as the succeeding ones would fall in the category of per incuriam.

Upholding the view of the High Court, this Court went on to observe that before the Magistrate any person (except a police officer below the rank of Inspector) could conduct the prosecution, but that this laxity is impermissible in Sessions by virtue of Section 225 of the CrPC, which pointedly states that the prosecution shall be conducted by a Public Prosecutor.

Sundeep Kumar Bafna vs State Of Maharashtra & Anr 2014(2) ALT (Crl) 132 (SC)

Police can register cases Under Electricity Act. **Vishal Agrawal & Anr. Vs Chhattisgarh State Electricity Board & Anr. 2014(2) ALT (Crl) 152 (SC)**

Sec 197 Cr.P.C.- Previous sanction is required for prosecuting only such public servants who could be removed by sanction of the Government. **FakhruzammaVs State of Jharkhand & Anr. 2014(2) ALT (Crl) 165 (SC)**

Witnesses tend to exaggerate the prosecution story. If the exaggeration does not change the prosecution story or convert it into an altogether new story, allowance can be made for it. If evidence of a witness is to be disbelieved merely because he has made some improvement in his evidence, **there would hardly be any witness on whom reliance can be placed by the courts.** It is trite that the maxim 'falsus in uno falsus in omnibus' has no application in India. It is merely a rule of caution. It does not have the status of rule of law. **SHEESH RAM AND ORS. Vs THE STATE OF RAJASTHAN 2014(2) ALT (Crl) 173 (SC)**

It is trite that at the stage of consideration of an application for discharge, the court has to proceed with an assumption that the materials brought on record by the prosecution are true and evaluate the said materials and documents with a view to find out whether the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. At this stage, probative value of the materials has to be gone into and the court is not expected to go deep into the matter and hold that the materials would not warrant a conviction. In our opinion, what needs to be considered is whether there is a ground for presuming that the offence has been committed and not whether a ground for convicting the accused has been made out. To put it differently, if the court thinks that the accused might have committed the offence on the basis of the materials on record on its probative value, it can frame the charge; though for conviction, the court has to come to the conclusion that the accused has committed the offence. The law does not permit a mini trial at this stage. **STATE OF TAMILNADU BY INS.OF POLICE VIGILANCE AND ANTI CORRUPTION Vs N.SURESH RAJAN & ORS. 2014(2) ALT (Crl) 203 (SC)**

The defence evidence has to be tested like any other testimony, always keeping in mind that a person is presumed innocent until he or she is found guilty. **Jumni and Others Vs State of Haryana 2014(2) ALT (Crl) 213 (SC)**

minor incoherence in the statement with regard to the facts and circumstances would not be sufficient ground for not relying upon statement, which was otherwise found to be genuine. Hence, as a rule of prudence, there is no requirement as to corroboration of dying declaration before it is acted upon.

Examining Section 85 IPC, this Court held that the evidence of drunkenness which renders the accused incapable of forming the specific intent essential to constitute the crime should be taken into account with the other facts proved in order to determine whether or not he had the intention. Court held that merely establishing that his mind was affected by drink so that he more readily gave way to some violent passion, does not rebut the presumption that a man intends the natural consequences of his acts. This Court, in that case, rejected the plea of drunkenness after noticing that the crime committed was a brutal and diabolic act. Accused rightly charged for the offence U/Sec. 302 IPC and held that Sec 304 II not applicable.

Bhagwan Tukaram Dange Vs State of Maharastra 2014(2) ALT (Crl) 237 (SC) = (2014) 2 SCC (Cri) 302 = (2014) 4 SCC 270.

It would be evident from a plain reading of Section 306 read with Section 107 IPC that, in order to make out the offence of abetment or suicide, necessary proof required is that the culprit is either instigating the victim to commit suicide or has engaged himself in a conspiracy with others for the commission of suicide, or has intentionally aided by act or illegal omission in the commission of suicide.

We are of the view that the mere fact that if a married woman commits suicide within a period of seven years of her marriage, the presumption under Section 113A of the Evidence Act would not automatically apply. The legislative mandate is that where a woman commits suicide within seven years of her marriage and it is shown that her husband or any relative of her husband has subjected her to cruelty, the presumption as defined under
Section 498-A IPC, may attract, having regard to all other circumstances of the case, that such suicide has been abetted by her husband or by such relative of her husband. The term "the Court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband" would indicate that the presumption is discretionary. So far as the present case is concerned, we have already indicated that the
prosecution has not succeeded in showing that there was a dowry demand, nor the reasoning adopted by the Courts below would be sufficient enough to draw a presumption so as to fall under Section 113A of the Evidence Act. In this connection, we may refer to the judgment of this Court in Hans Raj v. State of Haryana (2004) 12 SCC 257, wherein this Court has examined the scope of Section 113A of the Evidence Act and Sections 306, 107, 498-A etc. and held that, unlike Section 113B of the Evidence Act, a statutory presumption does not arise by operation of law merely on the proof of circumstances enumerated in Section 113A of the Evidence Act. **This Court held that, under Section 113A of the Evidence Act, the prosecution has to first establish that the woman concerned committed suicide within a period of seven years from the date of her marriage and that her husband has subject her to cruelty. Even though those facts are established, the Court is not bound to presume that suicide has been abetted by her husband. Section 113A, therefore, gives discretion to the Court to raise such a presumption having regard to all other circumstances of the case, which means that where the allegation is of cruelty, it can consider the nature of cruelty to which the woman was subjected, having regard to the meaning of the word 'cruelty' in Section 498-A IPC.**

Mangat Ram Vs State of Haryana. 2014(2) ALT (Crl) 237 (SC)

We have to examine whether the photograph of Boris Becker with his fiancée Barbara Fultus, a dark-skinned lady standing close to each other bare bodied but covering the breast of his fiancée with his hands can be stated to be objectionable in the sense it violates Section 292 IPC. Applying the community tolerance test, we are not prepared to say such a photograph is suggestive of deprave minds and designed to excite sexual passion in persons who are likely to look at them and see them, which would depend upon the particular posture and background in which the woman is depicted or shown. Breast of Barbara Fultus has been fully covered with the arm of Boris Becker, a photograph, of course, semi-nude, but taken by none other than the father of Barbara. Further, the photograph, in our view, has no tendency to deprave or corrupt the minds of people in whose hands the magazine Sports World or Anandabazar Patrika would fall.

We may also indicate that the said picture has to be viewed in the background in which it was shown, and the message it has to convey to the public and the world at large. The cover story of the Magazine carries the title, posing nude, dropping of harassment, battling racism in Germany. We should, therefore, appreciate the photograph and the article in the light of the message it wants to convey, that is to eradicate the evil of racism and apartheid in the society and to promote love and marriage between white skinned man and a black skinned woman. When viewed in that angle, we are not prepared to say that the picture or the article which was reproduced by Sports World and the Anandabazar Patrika be said to be objectionable so as to initiate proceedings under Section 292 IPC or under Section 4 of the Indecent Representation of Women

(Prohibition) Act, 1986. **Aveek Sarkar & Another Vs State of West Bengal & others. (2014) 2 SCC (Cri) 291 = (2014) 4 SCC 257.**

Sec 7, 10 & 16 of Prevention of food Adulteration Act, 1954- a person shall be deemed to store any adulterated food or misbranded food or any article of food referred to in clause (iii) or clause (iv) or clause (v) if he stores such food for the manufacture there from of any article of food **for sale.**

'storage' of an adulterated article of food other than for sale does not come within the mischief of Section 16 of the Act.

The terms "store" and "distribute" take their colour from the context and the collocation of words in which they occur in Sections 7 and 16. "Storage" or "distribution" of an adulterated article of food for a purpose other than for sale does not fall within the mischief of this section……"

Rupak Kumar Vs State of Bihar (2014) 2 SCC (Cri) 308 = (2014) 4 SCC 277.

A.P.HIGH COURT

Extradicted for certain offences and charged and convicted for other offences too- no illegality as the other offences are punishable for periods less than the extradicted offences.

Abu Salem Abdul Qayoom Ansari @ Abu Salem Vs State of A.P. 2014(1) ALD (Crl) 951 (AP)

Whatever be the truthfulness or otherwise of the evidence of a police official, it is not at all safe to convict an individual on the basis of that. It is only in extreme cases where other evidence is not available and the suspicion that surrounds the evidence of a police official is almost removed, that the Court can rest its conclusions on the evidence of the police officials

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Adapa Ram Babu @ Ramu vs State of A.P. 2014(1) ALD (Crl) 966 (A.P)

Call data will be preserved by the service providers for a limited period. In the instant case, failure of the Investigating Officer to act promptly in collecting the call data has resulted in failure to collect a possible and significant clue to the crime.

The role played by the persons (suspected to have played a role in the crime by the petitioner) has been allowed to slip through the fingers.

By collecting the call data, perhaps, may not be much helpful for the investigation on all occasions. But, however, the failure to collect it might prove to be harmful in certain cases.

The Director General of Police, who is impleaded as the 2nd respondent in this case, should therefore, intervene in the matter. He shall circulate immediately instructions to all the Superintendents of Police and the Sub-Divisional Police Officers in the State that they shall order promptly all Investigating Officers to collect the call data from the respective service providers by making a request promptly, whenever and wherever it is required. Failure to call for the call data.

Shaik Shamhuddin vs State of A.P. 2014(1) ALD (Crl) 971 (AP)

Competence of Maharastra Police to investigate offence not doubted. High Court of A.P. will not have jurisdiction to quash the said case, just because some offices and bank accounts are in A.P., when the alleged offence took place entirely at Mumbai.
Metkore Alloys & Industries Ltd. Hyderabad & others Vs Union of India 2014(1) ALD (Crl) 980 (AP)

Court is the competent authority to decide forfeiture or seizure of property u/sec. 50 (4) of Wild Life(Protection) Act 1972. Forest Officer does not have power of ordering forfeiture. **Bhola Kundu Vs Prl. Secy to Govt, Forest Department, Govt. Of A.P. 2014(1) ALD (Crl) 1009 (AP)**

ON A LIGHTER VEIN

Robert went to his lawyer and said, 'I would like to make a will but I don't know exactly how to go about it.' The lawyer smiled at Robert and replied, 'Not a problem, leave it all to me.'

Robert looked somewhat upset and said, 'Well, I knew you were going to take a big portion, but I would like to leave a little to my family too!

Experts Speak

Q: Can Can an accused be deleted by the Police officers of the rank of DSP etc?

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 (Crl) 675 (A.P) Kotla Hari Chakrapani Reddy Vs. State of Andhra Pradesh.

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What lies behind you and what lies in front of you,
pales in comparison to what lies inside of you.
Ralph Waldo Emerson

CITATIONS

SUPREME COURT

the following general principles regarding powers of appellate Court while dealing with an appeal against an order of acquittal emerge;
(1) An appellate Court has full power to review, re-appreciate and reconsider the evidence upon which the order of acquittal is founded;
(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate Court on the evidence before it may reach its own conclusion, both on questions of fact and of law;
(3) 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 emphasize 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.
(4) An appellate Court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.
(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.ò
2014 STPL(Web) 466 SC C.K. Dasegowda & Ors. Vs. State of Karnataka.

The question of repugnancy arises only in connection with the subjects enumerated in the Concurrent List (List ï III), on which both the Union and the State Legislatures have concurrent powers to legislate on the same subject i.e. when a Stale Law and Central Law pertain to the same entry in the Concurrent List. Article 254(1) provides that if a State law relating to a concurrent subject is órepugnantô to a Union law then irrespective of the Union law being enacted prior to or later in time, the Union law will prevail over the State law. Thus, prior to determining whether there is any repugnancy or not, it has to be determined that the State Act and the Central Act both relate to the same entry in List-III and there is a ódirectô and irreconcileôconflict between the two. i.e. both the provisions cannot stand together.
47. Article 254 of the Constitution is only applicable when the State Law is in its ópith and substanceô a law relating to an entry of the Concurrent List on which the Parliament has legislated. It has been well established that to determine the validity of a statute with reference

to the entries in the various lists, it is necessary to examine the pith and substance of the Act and to find out if the matter comes within an entry in List-III. The Court while examining the pith and substance of a statute must examine the whole enactment, its objects, scope and effect of its provision. Only if it is found that the two enactments cover the same matter substantially and that there is a direct and irreconcilable conflict between the two, the **issue of repugnancy arises.**

2014 STPL(Web) 464 SC Security Association of India & Anr. Vs. Union of India & Ors.

we find that the harassment of the deceased was with a view to coerce her to convince her parents to meet demand of dowry. The said willful conduct has driven the deceased to commit the suicide or not is a matter of doubt, in absence of specific evidence. Therefore, in the light of Clause (b) of Section 498-A IPC, when we hold all the accused Nos.1 to 6 guilty for the offence under Section 498-A IPC, we hold that the prosecution failed to prove that the deceased committed suicide. The accused are, therefore, acquitted for the offence under Section 306 r/w 34 IPC. This part of the judgment passed by the Trial Court thus cannot be upheld.

32. The prosecution on the basis of evidence has successfully proved that the deceased died within 7 years of her marriage; the death of the deceased is caused by burns i.e. nor under normal circumstances. It has also been proved that soon before her death, during her pregnancy the deceased was subjected to cruelty and harassment by her husband and relatives of accused that is accused No.1-Shivpujan, accused No.2-Rajendra, accused No.3-Malti Devi, accused No.4-Anita, accused No.5-Surendra and accused No.6-Virendra in connection with demand of dowry. Therefore, we hold that the prosecution successfully proved with beyond reasonable doubt that accused Nos.1 to 6 are guilty for the offence under Section 304-B, r/w 34 IPC.

2014 STPL(Web) 461 SC State of Maharashtra Vs. Rajendra & Ors

In this case, it is not alleged that the Sessions Judge has not followed Sections 226 and 227 Cr.P.C before framing the charge. Further, it is not the case of the appellant that the court has not given him hearing at the stage of discharge u/s 227 Cr.P.C. For framing of charge u/s 228, the judge is not required to record detail reasons as to why such charge is framed. On perusal of record and hearing the parties at the stage of discharge u/s 227 Cr.P.C. if the Judge is of opinion that there is ground for presuming that the accused has committed an offence, he is competent to frame charge for such offence even if not mentioned in the charge sheet.

2014 STPL(Web) 457 SC Dinesh Tiwari Vs. State of Uttar Pradesh & Anr

Dar-ul-Qaza is neither created nor sanctioned by any law made by the competent legislature. Therefore, the opinion or the Fatwa issued by Dar-ul-Qaza or for that matter anybody is not adjudication of dispute by an authority under a judicial system sanctioned by law. A Qazi or Mufti has no authority or powers to impose his opinion and enforce his Fatwa on any one by any coercive method. In fact, whatever may be the status of Fatwa during Mogul or British Rule, it has no place in independent India under our Constitutional scheme. It has no legal sanction and can not be enforced by any legal process either by the Dar-ul-Qaza issuing that or the person concerned or for that matter anybody. The person or the body concerned may ignore it and it will not be necessary for anybody to challenge it before any court of law. It can simply be ignored. In case any person or body tries to impose it, their act would be illegal.

In any event, the decision or the Fatwa issued by whatever body being not emanating from any judicial system recognised by law, it is not binding on anyone including the person, who had asked for it. Further, such an adjudication or Fatwa does not have a

force of law and, therefore, cannot be enforced by any process using coercive method. Any person trying to enforce that by any method shall be illegal and has to be dealt with in accordance with law.
2014 STPL(Web) 453 SC Vishwa Lochan Madan Vs. Union of India & Ors

In Juvenile Court where some of the juveniles were tried, he gave evidence subsequently. He stated that he was not aware as to who attacked him. He was recalled by the Sessions Court and confronted with the statement given by him before the Juvenile Court on the basis of which the accused were acquitted. This Court did not approve of the procedure adopted by the Sessions Court. This Court observed that a witness could be confronted only with a previous statement made by him. The day on which he was first examined in the Sessions Court, there was no such previous statement. This Court observed that the witness must have given some other version before Juvenile Court for some extraneous reasons. He should not have been given an opportunity at a later stage to completely efface the evidence already given by him under oath. It is the wrong procedure and attempt to efface evidence which persuaded this Court to observe that once the witness was examined in-chief and cross-examined fully such witness should not have been recalled and re- examined to deny the evidence which he had already given in the court even though he had given an inconsistent statement before any other court subsequently. It is pertinent to note that this Court did not discuss Section 311 of the Code.
2014 STPL(Web) 452 SC Mannan Sk & Ors. Vs. State of West Bengal & Anr.

we have no manner of doubt that the word ñrelative of the husbandò in Section 304 B of the IPC would mean such persons, who are related by blood, marriage or adoption. When we apply this principle the respondent herein is not related to the husband of the deceased either by blood or marriage or adoption. Hence, in our opinion, the High Court did not err in passing the impugned order. We hasten to add that a person, not a relative of the husband, may not be prosecuted for offence under Section 304B IPC but this does not mean that such a person cannot be prosecuted for any other offence viz. Section 306 IPC, in case the allegations constitute offence other than Section 304B IPC.
2014 STPL(Web) 446 SC State of Punjab Vs. Gurmit Singh

Life imprisonment means imprisonment for the rest of the life of the convict and not 14 or 20 years. **2014 STPL(Web) 444 SC Arjun Jadav Vs. State of West Bengal & Ors.**

S.304B IPC- Cases of bride burning – Non availability of independent witnesses ï difficult to get independent witnesses, since harassment and cruelty is meted out to a woman within four walls of matrimonial home **Surinder Singh V. State of Haryana 2014(2) ALT (Crl.) 261 (SC).**

Delay in holding Test Identification Parade does not really affect the case of the prosecution.
In case of a conspiracy, there cannot be any direct evidence ï express agreement between the parties cannot be proved. Evaluation of proved circumstances play a vital role in establishing the criminal conspiracy. **Chandra Praksh V. State of Rajasthan 2014(2) ALT (Crl.) 271 (SC).**

Existence of Public Servant for facing trial into an offence under Prevention of Corruption Act, 1988 before Special Court is not a must ï Even in his absence, private persons can be tried for PC as well as non PC cases.
As long as charge u/s. 3(1) of PC Act is not framed, Special Judge has no occasion to ótry any caseô u/s.3(1) against Public Servant or Private person and consequently cannot exercise jurisdiction u/s. 4(3) in case of death of public servant, against private person for offence other than u/s.3(1) of PC Act. **State through CBI New Delhi V. Jitender Kumar Singh 2014(2) ALT (Crl.) 297 (SC). = 2014(2) ALD (Crl.) 106 (SC)**

Prosecution case under TADA cannot be rejected on the ground no independent witness has been examined.
Confessional statement recorded u/s.15 of TADA Act, if found to be voluntarily made, properly recorded and is truthful, can form basis of conviction. **Periyasami V. State rep. thr the Inspector of Police, Q Branch CID, Tiruchirappali, Tamil Nadu 2014(2) ALT (Crl.) 310 (SC)**

False answers often given by accused in Section 313 Cr.P.C. statement may offer an additional link in the chain of circumstances to complete the chain.
Expression custody appearing S.27 of Indian Evidence Act did not mean formal custody ï includes any kind of survelliance, restriction or restraint by police.
Assuming that accused was not in custody and thus S.27 of Indian Evidence Act is not attracted, still the information (statement so made) given by him would be admissible as conduct U/S.8 of IEA. **Dharm Deo Yadav V. State of U.P. 2014 (2) ALT (Crl.) 322 (SC)**

There is nothing in 173(8) Cr.P.C. to suggest that the court is obliged to hear accused before giving direction to police to conduct further investigation, even though final report was already laid and cognizance of offence was taken on the strength of the police report first submitted
Essence of criminal justice system is to reach the truth **Dinubhai Boghabai Solanki V. State of Gujarat 2014 (2) ALT (Crl.) 372 (SC)**

The intemperate language used by the appellant while addressing learned Judges of the High Court is most objectionable and contumacious. The intemperate language used by the appellant while addressing learned Judges of the High Court is most objectionable and contumacious.
He did not show any remorse. He did not tender any apology, but, continued his rude behaviour of shouting at the court and baiting the court. By this behaviour he lowered the dignity and authority of the High Court. He challenged the majesty of the High Court by showing utter disrespect to it. Undoubtedly he committed contempt of the High Court in its presence and hearing. He is, therefore, guilty of having committed contempt in the face of the High Court. His case is squarely covered by Section 14 of the Contempt of Courts Act, 1971.
the words 'didn't shout' have replaced the word 'shouted.'When we asked for an explanation, the appellant stated that there is no tampering, but it is merely a typing error. We refuse to accept this explanation. In this case, by replacing the word 'shouted' by the words 'didn't shout' the appellant has changed the entire meaning of the sentence to suit his case that he did not shout in the court. Thus, he is guilty of tampering with the High Court's order and filing it in this Court.

Since the contempt was gross and it was committed in the face of the High Court, learned Judges had to take immediate action to maintain honour and dignity of the High Court. There was no question of giving the appellant any opportunity to make his defence.

2014 (2) ALD (Crl.) 64 (SC) Ram Niranjan Roy Vs State of Bihar & ors.

Once the prayer for surrender is accepted, the Appellant before us would come into the custody of the Court within the contemplation of Section 439 CrPC. The Sessions Court as well as the High Court, both of which exercised concurrent powers under Section 439, would then have to venture to the merits of the matter so as to decide whether the applicant/Appellant had shown sufficient reason or grounds for being enlarged on bail.

The complainant or informant or aggrieved party may, however, be heard at a crucial and critical juncture of the Trial so that his interests in the prosecution are not prejudiced or jeopardized. It seems to us that constant or even frequent interference in the prosecution should not be encouraged as it will have a deleterious impact on its impartiality. If the Magistrate or Sessions Judge harbours the opinion that the prosecution is likely to fail, prudence would prompt that the complainant or informant or aggrieved party be given an informal hearing.

2014 (2) ALD (Crl.) 86 (SC) Sundeep Kumar Bafna Vs State of Maharastra

It is not the absence of laws , but lack of their effective execution . HATE SPEECHES- Given such disastrous consequences of hate speeches, the Indian legal framework has enacted several statutory provisions dealing with the subject which are referred to as under:

Sl.No.	Statute	Provisions
1.	Indian Penal Code, 1860	Sec124A, 153A, 153B, 295-A, 298, 505(1), 505(2)
2.	The Representation of People Act,	Sections 8, 123(3A), 125
3.	Information Technology Act, 2000 & Information Technology (Intermediaries guidelines) Rules,2011	Sections 66A, 69, 69A Rule 3(2)(b), Rule 3(2)(i)
4.	Code of Criminal Procedure, 1973	Sections 95, 107, 144, 151, 160
5.	Unlawful Activities (Prevention) Act, 1967	Sections 2(f), 10, 11, 12
6.	Protection of Civil Rights Act, 1955	Section 7
7.	Religious Institutions (Prevention of Misuse) Act, 1980	Sections 3 and 6
8.	The Cable Television Networks (Regulation) Act, 1995 and The Cable Television Network (Rules),1994	Sections 5,6,11,12,16, 17, 19, 20 & Rules 6 & 7
9.	The Cinematographers Act, 1952	Sections 4, 5B, 7

2014 (2) ALD (Crl.) 121 (SC) Pravasi Bhalai Sangathan Vs Union of India

a protection against a second or multiple punishment for the same offence, technical complexities aside, includes a protection against re-prosecution after acquittal, a protection against re-prosecution after conviction and a protection against double or multiple punishment for the same offence. These protections have since received constitutional guarantee under Article 20(2). But difficulties arise in the application of the principle in the context of what is meant by ñsame offenceò. The principle in American law is stated thus:

ñThe proliferation of technically different offences encompassed in a single instance of crime behaviour has increased the importance of defining the scope of the offence that controls for purposes of the double jeopardy guarantee. Distinct statutory provisions will be treated as involving separate offences for double jeopardy purposes only if ćeach provision requires proof of an additional fact which the other does notô (Blockburger v. United States). Where the same evidence suffices to prove both crimes, they are the same for double jeopardy purposes, and the clause forbids successive trials and cumulative punishments for the two crimes. The offences must be joined in one indictment and tried together unless the defendant requests that they be tried separately.
2014 (2) ALD (Crl.) 145 (SC) State of Rajasthan Vs Bhagwandas Agarwal.

Full bench judgment earlier reported in our replenish regarding Sec 319 Cr.P.C. is reported as 2014 (2) ALD (Crl.) 152 (SC)

Judgment in between State of Gujarat Vs Kishan Bhai & others reported as (2014)2 SCC (Crl) 457 = (2014) 5 SCC 108.

NDPS ACT. The expression 'chance recovery' has not been defined anywhere and its plain and simple meaning seems to be a recovery made by chance or by accident or unexpectedly. In Mohinder Kumar v. State, Panaji, Goa[4] his Court considered a chance recovery as one when a police officer "stumbles on" narcotic drugs when he makes a search. In Sorabkhan Gandhkhan Pathan v. State of Gujarat[5] the police officer, while searching for illicit liquor, accidentally found some charas. This was treated as a 'chance recovery'.
The recovery of charas on the body or personal search of Sunil Kumar was clearly a chance recovery and, in view of Baldev Singh, **it was not necessary for the police officers to comply with the provisions of Section 50 of the Act.**
(2014)2 SCC (Crl) 449 = (2014) 4 SCC 780 State of HP Vs Sunil Kumar.

This Court has repeatedly stated that the superior courts should not pass caustic remarks on the subordinate courts. Unless the facts disclose a designed effort to frustrate the cause of justice with malafide intention, harsh comments should not be made. Bonafide errors should not invite disparaging remarks. Judges do commit errors. Superior courts are there to correct such errors. They can convey their anxiety to subordinate courts through their orders which should be authoritative but not uncharitable. Use of derogatory language should be avoided. That invariably has a demoralizing effect on the subordinate judiciary.
" The higher courts every day come across

orders of the lower courts which are not justified either in law or in fact and modify them or set them aside. That is one of the functions of the superior courts. Our legal system acknowledges the fallibility of the judges and hence provides for appeals and revisions. A judge tries to discharge his duties to the best of his capacity. While doing so, sometimes, he is likely to err... 'It is well said that a judge who has not committed an error is yet to be born. And that applies to judges at all levels from the lowest to the highest. Sometimes, the difference in views of the higher and the lower courts is purely a result of a difference in approach and perception. On such occasions, the lower courts are not necessarily wrong and the higher courts always right. It has also to be remembered that the lower judicial officers mostly work under a charged atmosphere and are constantly under a psychological pressure with all the contestants and their lawyers almost breathing down their necks - more correctly upto their nostrils.

They do not have the benefit of a detached atmosphere of the higher courts to think coolly and decide patiently. Every error, however gross it may look, should not, therefore, be attributed to improper motive." **Sujoy Kumar Chanda Vs. Damayanti Majhi & Anr. (2014)2 SCC (Crl) 503 = (2014) 5 SCC 181.**

Rehabilitation measures for victims and guidelines for investigation and compensation for murder and rape victims of Communal riots.
Mohd Haroon Vs UOI. (2014)2 SCC (Crl) 510 = (2014) 5 SCC 252.

A mere reference to a precedent in judgment does not mean that the precedent is approved. **Common Cause Vs UOI. (2014)2 SCC (Crl) 557 = (2014) 5 SCC 338.**

Sec 50(1) notice under NDPS Act- A joint communication of the right may not be clear or unequivocal. It may create confusion. It may result in diluting the right. Individual notice to be given to each accused.
if merely a bag carried by a person is searched without there being any search of his person, Section 50 of the NDPS Act will have no application. But if the bag carried by him is searched and his person is also searched, Section 50 of the NDPS Act will have application.
State of Rajasthan Vs Parmanand & ors. (2014)2 SCC (Crl) 563 = (2014) 5 SCC 345.

the incriminating material placed by the trial court, the courts below have rightly drawn an adverse inference against him.
ñé .. if fact is especially in the knowledge of any person, then burden of proving that fact is upon him. It is impossible for the prosecution to prove certain facts particularly within the knowledge of the accused. Section 106 is not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt. But the section would apply to cases where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding the existence of certain other facts, unless the accused by virtue of his special knowledge regarding such facts, failed to offer any explanation which might drive the court to draw a different inference. Section 106 of the Evidence Act is designed to meet certain exceptional cases, in which, it would be impossible for the prosecution to establish certain facts which are particularly within the knowledge of the accused.ò
Rajkumar Vs State of MP. (2014)2 SCC (Crl) 570 = (2014) 5 SCC 353.

As regards charge under Section 34 IPC, the Trial Court relied on the settled position in law that it is not necessary that there should be a clear positive evidence about the meeting of mind before the occurrence and that if there are more than one accused a common intention to kill can be inferred from the circumstances of the case. The prosecution need not prove the overt act of the accused. **Pasupuleti Siva Ramakrishna Rao Vs State of A.P. (2014)2 SCC (Crl) 584 = (2014) 5 SCC 369.**

A police officer filing a charge-sheet does not make any statement on oath nor is bound by any express provision of law to state the truth though in our opinion being a public servant is obliged to act in good faith. Whether the statement made by the police officer in a charge-sheet amounts to a declaration upon any subject within the meaning of the clause ñbeing bound by law to make a declaration upon any subjectò occurring under section 191 of the IPC is a question which requires further examination.

when the appellant alleges that he had been prosecuted on the basis of a palpably false statement coupled with the further allegation in his complaint that the respondent did so for extraneous considerations, we are of the opinion that it is an appropriate case where the High Court ought to have exercised the jurisdiction under Section 195 Cr.P.C.. The allegation such as the one made by the complainant against the respondent is not uncommon. As was pointed earlier by this Court in a different context ñthere is no rule of law that common sense should be put in cold storageò[7]. Our Constitution is designed on the theory of checks and balances. A theory which is the product of the belief that all power corrupts - such belief is based on experience.
IN THIS CASE, THE ACCUSED IN A CHEATING CASE FILED A CASE AGAINST THE I.O., WHO FILED THE FALSE CHARGE SHEET.
Perumal Vs Janaki (2014)2 SCC (Crl) 591 = (2014) 5 SCC 377.

in his examination under Section 313 Cr.P.C., had denied the prosecution case completely, but the prosecution has succeeded in proving the guilt beyond reasonable doubt. Often, false answers given by the accused in the 313 Cr.P.C. statement may offer an additional link in the chain of circumstances to complete the chain.
Assuming that the recovery of skeleton was not in terms of Section 27 of the Evidence Act, on the premise that the accused was not in the custody of the police by the time he made the statement, the statement so made by him would be admissible as ñconductò under Section 8 of the Evidence Act.
Dharam Deo Yadav Vs UP (2014)2 SCC (Crl) 626 = (2014) 5 SCC 509.

It is common ground that the only evidence that the trial court has relied to summon the appellant to face the trial is the note written by the deceased in his own handwriting apprehending death at the appellantôs hand.
All these decisions support the view which we have taken that the note written by the deceased does not relate to the cause of his death or to any of the circumstances of the transaction which resulted in his death and therefore, is inadmissible in law.
Babubhai Bhimabhai Bokhiria Vs State of Gujarat. (2014)2 SCC (Crl) 644 = (2014) 5 SCC 568.

HIGH COURT

In the instant case, of course there are some allegations against the petitioners, in so far as the petitioners 3 to 6 are concerned, they are living at different places in Hyderabad. They are coming to the house of first accused and instigating him frequently does not seem to be probable. The 5th petitioner (A6) is a distant relative and some allegations have been made against him to the effect that he has been instigating the remaining accused. Whenever there are some allegations made in the complaint, the Court is not supposed to leave the allegations to be tried by the trial Court. The Court has to satisfy prima facie about the involvement of the relatives of the husband of the de facto complainant basing on the facts and circumstances of the case. **2014(2) ALD (CRL) 1(AP) Aruna Bai @ Andalu and others Vs. State.**

In an appeal against acquittal the scope of High Court is very limited and if there is any perversity or illegality appears on the face of the record, then only the court can interfere with

the findings of the lower court. **State of A.P. V. Kallepalli Giri & anr 2014 (2) ALT (Crl.) 169 (AP)**

Let down from a promise to marry does not in any way attract the offence under Section 420 IPC. **M.Giriprasad & ors V. K.Munikrishna Reddy & anr 2014 (2) ALT (Crl.) 171 (AP) = 2014 (2) ALD (Crl.) 52 (AP)**

Once dying declaration is found to be true and trustworthy and not an outcome of tutoring or prompting by any of the relatives, it can be acted upon and it can be a sole basis to convict the accused.**Billa Murali V. State of A.P. 2014 (2) ALT (Crl.) 181 (AP)**

provisions of Section 195 Cr.P.C are mandatory and no Court has jurisdiction to take cognizance of any of the offences mentioned therein unless there is a compliant in writing as required under that Section. It is settled law that every incorrect or false statement does not make it incumbent upon the Court to order prosecution, but requires the Court to exercise judicial discretion to order prosecution only in the larger interest of the administration of justice. Section 340 Cr.P.C prescribes the procedure has to how a complaint may be preferred under Section 195 Cr.P.C. A compliant out side the provisions of Section 340 Cr.P.C cannot be filed by any civil, revenue or criminal Court under its inherent jurisdiction.
2014(2) ALD (CRL) 4 (A.P) Setti Chinna Venkata Rao Vs. State of A.P.

Law does not require that the dying declaration of a deceased must be recorded by a particular official or in a particular form. Much would depend upon the availability of the concerned officials and the condition of the patient. If the condition of a patient is too precarious, the statement made even to a third party, who does not hold any official position, can be acted upon.
Though the dying declaration alone can constitute the basis for determining the guilt or otherwise of the accused, existence of corroborative evidence would strengthen the hands of the Court in this aspect. Here again, it needs to be observed that a dying declaration, if otherwise in order, does not lose its value, simply because there is no corroborative evidence.
2014(2) ALD (CRL) 20 (A.P) Bolla Vasantha Kumar vs State of A.P.

THE MEDICAL TERMINATION OF PREGNANCY ACT, 1971

As per Sec 3 of the act, Pregnancies can be terminated by registered medical practitioners i. where the pregnancy is not more than twelve weeks if the medical practitioner, or

ii.where the pregnancy is more than twelve but less than twenty weeks, at least two medical practitioners

are of the opinion that the continuance of the pregnancy would involve a risk to the life of the pregnant woman or of grave injury to her physical or mental health, or there is a substantial risk that if the child were born, it would suffer from such physical or mental abnormalities as to be seriously handicapped.

Pregnancy of any woman who is less than 18 years or who is a mentally ill person can be terminated only, with the consent in writing of her guardian.

GRAVE INJURY includes pregnancy caused by rape or failure of any contraceptive method.

As per Sec. 4 of the act, Pregnancy can be terminated either at a hospital established or maintained by Government or at a place which is approved by Government or district level committee constituted by that Government.

Sec 3 & 4 will not apply when there is imminent danger to the life of the mother. As per sec 5(1) of the act.

As per Sec. 5 [(2) Notwithstanding anything contained in the Indian Penal Code (45 of 1860), the termination of pregnancy by a person who is not a registered medical practitioner shall be an offence punishable with rigorous imprisonment for a term which shall not be less than two years but which may extend to seven years under that Code, and that Code shall, to this extent, stand modified.

(3) Whoever terminates any pregnancy in a place other than that mentioned in section 4, shall be punishable with rigorous imprisonment for a term which shall not be less than two years but which may extend to seven years.

(4) Any person being owner of a place which is not approved under clause (b) of section 4 shall be punishable with rigorous imprisonment for a term which shall not be less than two years but which may extend to seven years.

As per sec 8 of the act, If any registered medical practitioner causes any damage by anything which is in good faith done or intended to be done under the Act, no suit or other legal proceedings can be instituted against him

ON A LIGHTER VEIN

The bidding was proceeding furiously and strong when the Head Auctioneer suddenly announced, 'A gentleman in this room has lost a wallet containing ten thousand pounds. If returned, he will pay a reward of two thousand pounds.

There was a moment's silence in the auction house and from the back of the room came a shout, 'Two thousand five hundred.'

Experts Speak

Q: Whether the judgment reported in 2010 (2) ALD (Crl) 684(A.P) = 2010(2) ALT (Crl) 271 (A.P) in Nallam Durga Vs State of A.P., binding in cases booked under Immoral Traffic Prevention Act, to the effect that Inspector of Police, cannot investigate the cases as there is no notification appointing them as Special Officer U/Sec. 13 of the Act.
Ans: The Government had already issued G.O.Rt. no. 475 Home (Pol.D) Dept. Dated 16.08.1991, appointing ALL Inspectors and ACPôs as special officer under ITP act. The same was not brought to the notice of the Honôble High court, hence the same is not binding.

NEWS

- **PLEASE FIND "SUPREME COURT RULES, 2013" ; "KEY FEATURES OF BUDGET 2014 -2015"; "AP REORGANISATION AMENDMENT ACT" are available under DOWNLOADS section.**

- **We regret to inform that Smt Sowdamini, Public Prosecutor, has succumbed to Cancer, Prosecution Replenish prays the almighty to give strength to her family to overcome the grief.**
- **We regret to inform that the one and odd year old daughter of our P.J.Ramakrishna, Sr.APP, has left for her heavenly abode, Prosecution Replenish prays the almighty to give strength to him and his family to overcome the grief.**

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

SAVE PAPER SAVE TREES.

PROSECUTION REPLENISH

(An Endeavour for learning and excellence)

For beautiful eyes,
look for the good in others;
For beautiful lips,
speak only words of kindness;
And for poise,
walk with the knowledge that you are never alone

----- Audrey Hopkins

CITATIONS

SUPREME COURT

Ss. 304-A and 336 to 338 - Criminal negligence - Causation of harm - Principle of causa causans explained – Causa causans distinguished from causa sine qua non - Act of the accused must be the causa causans i.e. proximate, immediate or efficient cause of the death of the victim without the intervention of any other person's negligence to attract liability under S. 304-A - Act of the accused must be proved to be the causa causans and not simply a causa sine qua non for the death of the victim in a case under S. 304-A - Death of patrons from outbreak of fire in cinema hall – Causa causans if fire or fact that patrons could not escape from balcony which had become full of poisonous gases caused by the fire, which caused the deaths - Incident caused by fire that started from a transformer on ground floor, adjacent to stilt parking lot, noxious smoke from which entering cinema, and due to obstructions and deviations from safety norms created by occupiers/licensees of cinema hall, victims who were unable to move out of the smoke filled area died because of asphyxiation not burn injuries - Held, failure to exit was the immediate cause of death, the causa causans -Causa causans was not the fire in the transformer but the breaches committed by occupiers of the cinema theatre which prevented or at least delayed rapid dispersal of the patrons thereby fatally affecting them because of poisonous gases in the smoke filled atmosphere inside cinema - Causa causans was closure of the exit on right side, closure of right side gangway, failure to provide required number of exits, failure to provide emergency alarm system and even emergency lights or to keep exit signs illuminated and to provide help to the victims when needed most, all attributable to A-1 and A-2, the occupiers of the cinema

Criminal negligence causing death - Joint and several liability when many persons grossly breached duties of care to victims concerned - Occupier's liability - Joint and several liability of all occupiers -Conviction of gatekeeper of balcony of cinema theatre who had locked balcony door from outside, and then run away, trapping patrons inside balcony who suffocated to death due to noxious fumes from a fire, for the offence punishable under S. 304-A - Joint and several liability of occupiers of Cinema - Held, appellant occupiers if have indeed committed gross negligence resulting in the death of a large number of people can be found to be equally rash or negligent and convicted for the same offence as the gatekeeper

Sushil Ansal v. State, (2014) 6 SCC 173 = (2014) SCC (Crl) 717

In all criminal cases, normal discrepancies are bound to occur in the depositions of witnesses due to normal errors of observation, namely, errors of memory due to lapse of time or due to mental disposition such as shock and horror at the time of occurrence. Where the omissions amount to a contradiction, creating a serious doubt about the truthfulness of the witness and other witnesses also make material improvement while deposing in the court, such evidence cannot be safe to rely upon. However, minor contradictions, inconsistencies, embellishments or improvements on trivial matters which do not affect the core of the prosecution case, should not be made a ground on which the evidence can be rejected in its entirety. The court has to form its opinion about the credibility of the witness and record a finding as to whether his deposition inspires confidence. "Exaggerations per se do not render the evidence brittle. But it can be one of the factors to test credibility of the prosecution version, when the entire evidence is put in a

crucible for being tested on the touchstone of credibility." Therefore, mere marginal variations in the statements of a witness cannot be dubbed as improvements as the same may be elaborations of the statement made by the witness earlier. "Irrelevant details which do not in any way corrode the credibility of a witness cannot be labelled as omissions or contradictions." The omissions which amount to contradictions in material particulars, i.e., materially affect the trial or core of the prosecution's case, render the testimony of the witness liable to be discredited. Where the omission(s) amount to a contradiction, creating a serious doubt about the truthfulness of a witness and other witness also make material improvements before the court in order to make the evidence acceptable, it cannot be safe to rely upon such evidence.

(See also: State of Rajasthan v. Rajendra Singh, AIR 1998 SC 2554; State Represented by Inspector of Police v. Saravanan & Anr., AIR 2009 SC 152; Arumugam v. State, AIR 2009 SC 331; Mahendra Pratap Singh v. State of Uttar Pradesh, (2009) 11 SCC 334; Vijay alias Chinee v. State of M.P., (2010) 8 SCC 191; State of U.P. v. Naresh & Ors., (2011) 4 SCC 324; Brahm Swaroop & Anr. v. State of U.P., AIR 2011 SC 280; and Dr. Sunil Kumar Sambhudayal Gupta & Ors. v. State of Maharashtra, (2010) 13 SCC 657).

It is a settled legal proposition that in case the question is not put to the witness in cross-examination who could furnish explanation on a particular issue, the correctness or legality of the said fact/issue could not be raised. (Vide: Atluri Brahmanandam (D), Thr. LRs. v. Anne Sai Bapuji, AIR 2011 SC 545; and Laxmibai (dead) Thr. L.Rs. & Anr. v. Bhagwantbuva (dead) Thr. L.Rs. & Ors., AIR 2013 SC 1204).

Mahavir Singh v. State of Haryana, (2014) 6 SCC 716= 2014 STPL(Web) 403 SC

Evidence of interested witnesses is not infirm. It would be good to have corroboration to their evidence as a matter of prudence. But corroboration is not always a must. If the evidence of interested witnesses is intrinsically good, it can be accepted without corroboration. However, as held by this Court in Raju@Balachandran, the evidence of interested witnesses must be scrutinized carefully. So scrutinized, the evidence of PW1, PW2 and PW4 appears to be acceptable.

Ashok Rai Vs state of U.P. 2014 Crl.L.J. 3085 = (2014) 5 SCC 713=2014 STPL(Web) 269 SC

the Test Identification Parade is not a substantive piece of evidence and to hold the Test Identification Parade is not even the rule of law, but a rule of prudence so that the identification of the accused inside the Court room at the trial, can be safely relied upon. We are of the view that if the witnesses are trustworthy and reliable, the mere fact that no Test Identification Parade was conducted, itself, would not be a reason for discarding the evidence of those witnesses.

Statements made to the police during investigation were not substantive piece of evidence and the statements recorded under Section 161 CrPC can be used only for the purpose of contradiction and not for corroboration. In our view, if the evidence tendered by the witness in the witness box is creditworthy and reliable, that evidence cannot be rejected merely because a particular statement made by the witness before the Court does not find a place in the statement recorded under Section 161 CrPC.

Ashok Debbarma v. State of Tripura, (2014) 4 SCC 747= 2014 (2) ALT (Crl) 400

Arnesh Kumar Vs State of Bihar- Judgment regarding the guidelines for sec 41A notice and remand of accused in offences punishable under 7 years of punishment. Reported as **2014 (2) ALT (Crl) 457 (SC)**. Full judgment available under latest judgment section.

the differences in the juvenile justice system and the criminal justice system working in India. This would have relevance to the arguments made in W.P. No.204 of 2013. It may be convenient to notice the differences by means of the narration set out hereinunder:

Pre-trial Processes

Filing of FIR:

Criminal Justice System: The system swings into action upon receipt of information (oral or written) by the officer in charge of a police station with regard to the commission of a **cognizable offence**.

JJ System: Rule 11(11) of the JJ Rules, 2007 states that the Police are not required to file an FIR or a charge-sheet while dealing with cases of juveniles in conflict with the law. Instead, they must only record

the information of the offence in the general daily diary, followed by a report containing the social background of the juvenile, circumstances of the apprehension and the alleged offence.
An FIR is necessary only if the juvenile has (i) allegedly committed a serious offence like rape or murder, or (ii) has allegedly committed the offence with an adult.
Investigation and Inquiry:
Criminal Justice System: Ss. 156 and 157, **CrPC** deals with the power and procedure of police to investigate cognizable offences. The police may examine witnesses and record their statements. On completion of the investigation, the police officer is required to submit a Final Report to the Magistrate u/s 173(2).
JJ System: The system contemplates the immediate production of the apprehended juvenile before the JJ Board, with little scope for police investigation. Before the first hearing, the police is only required to submit a report of the juvenileâ€™s social background, the circumstances of apprehension and the alleged offence to the Board (Rule 11(11)). In cases of a non-serious nature, or where apprehension of the juvenile is not in the interests of the child, the police are required to intimate his parents/guardian that the details of his alleged offence and his social background have been submitted to the Board (Rule 11(9)). Arrest
Criminal Justice System: Arrest of accused persons is regulated under Chapter V of the CrPC. The police are empowered to arrest a person who has been accused of a cognizable offence if the crime was committed in an officerâ€™s presence or the police officer possesses a reasonable suspicion that the crime was committed by the accused. Further, arrest may be necessary to prevent such person from committing a further crime; from causing disappearance or tampering with evidence and for proper investigation (S.41). Persons accused of a non-cognizable offence may be arrested only with a warrant from a Magistrate (S.41(2)).
JJ System: The JJ Rules provide that a juvenile in conflict with the law need not be apprehended except in serious offences entailing adult punishment of over 7 years (Rule 11(7)). As soon as a juvenile in conflict with the law is apprehended, the police must inform the designated Child/Juvenile Welfare Officer, the parents/guardian of the juvenile, and the concerned Probation Officer (for the purpose of the social background report) (S.13 & R.11(1)). The juvenile so apprehended is placed in the charge of the Welfare Officer. It is the Welfare Officerâ€™s duty to produce the juvenile before the Board within 24 hours (S. 10 & Rule 11(2)). In no case can the police send the juvenile to lock up or jail, or delay the transfer of his charge to the Welfare Officer (proviso to S.10 & R.11(3)). Bail
Criminal Justice System: Chapter XXXIII of the CrPC provides for bails and bonds. Bail may be granted in cases of bailable and non-bailable offences in accordance with Ss. 436 and 437 of the CrPC. Bail in non-bailable offences may be refused if there are reasonable grounds for believing that the person is guilty of an offence punishable with death or imprisonment for life, or if he has a criminal history (S.437(1)). JJ System: A juvenile who is accused of a bailable or non-bailable offence â€œshallâ€ be released on bail or placed under the care of a suitable person/institution. This is subject to three exceptions: (i) where his release would bring him into association with a known criminal, (ii) where his release would expose him to moral, physical or psychological danger, or (iii) where his release would defeat the ends of justice. Even where bail is refused, the juvenile is to be kept in an observation home or a place of safety (and not jail).
Trial and Adjudication
The trial of an accused under the criminal justice system is governed by a well laid down procedure the essence of which is clarity of the charge brought against the accused; the duty of the prosecution to prove the charge by reliable and legal evidence and the presumption of innocence of the accused. Culpability is to be determined on the touchstone of proof beyond**reasonable doubt** but if convicted, punishment as provided for is required to be inflicted with little or no exception. The accused is entitled to seek an exoneration from the charge(s) levelled i.e. discharge (amounting to an acquittal) mid course.
JJ System: Under S.14, whenever a juvenile charged with an offence is brought before the JJ Board, the latter must conduct an â€˜inquiryâ€™ under the JJ Act. A juvenile cannot be tried with an adult (S.18).
Determination of the age of the juvenile is required to be made on the basis of documentary evidence (such as birth certificate, matriculation certificate, or Medical Board examination).
The Board is expected to conclude the inquiry as soon as possible under R.13. Further, the Board is required to satisfy itself that the juvenile has not been tortured by the police or any other person and to

take steps if ill-treatment has occurred. Proceedings must be conducted in the simplest manner and a child-friendly atmosphere must be maintained (R.13(2)(b)), and the juvenile must be given a right to be heard (clause (c)). The inquiry is not to be conducted in the spirit of adversarial proceedings, a fact that the Board is expected to keep in mind even in the examination of witnesses (R.13(3)). R.13(4) provides that the Board must try to put the juvenile at ease while examining him and recording his statement; the Board must encourage him to speak without fear not only of the circumstances of the alleged offence but also his home and social surroundings. Since the ultimate object of the Act is the rehabilitation of the juvenile, the Board is not merely concerned with the allegations of the crime but also the underlying social causes for the same in order to effectively deal with such causes.

The Board may dispense with the attendance of the juvenile during the inquiry, if thought fit (S. 47). Before the Board concludes on the juvenileâ€™s involvement, it must consider the social investigation report prepared by the Welfare Officer (R.15(2)).

The inquiry must not prolong beyond four months unless the Board extends the period for special reasons due to the circumstances of the case. In all non-serious crimes, delay of more than 6 months will terminate the trial (R.13(7)).

Sentencing: The Board is empowered to pass one of the seven dispositional orders u/s 15 of the JJ Act: advice/admonition, group counseling, community service, payment of fine, release on probation of good conduct and placing the juvenile under the care of parent or guardian or a suitable institution, or sent to a Special home for 3 years or less. Where a juvenile commits a serious offence, the Board must report the matter to the State Govt. who may keep the juvenile in a place of Safety for not more than 3 years. A juvenile cannot be sentenced to death or life imprisonment.

Post-trial Processes

JJ System: No disqualification attaches to a juvenile who is found to have committed an offence. The records of his case are removed after the expiry of period of appeal or a reasonable period.

S. 40 of the JJ Act provides that the rehabilitation and social reintegration of the juvenile begins during his stay in a childrenâ€™s home or special home. â€œAfter-care organizationsâ€ recognized by the State Govt. conduct programmes for taking care of juveniles who have left special homes to enable them to lead honest, industrious and useful lives.

Differences between JJ System and Criminal Justice System

1. FIR and charge-sheet in respect of juvenile offenders is filed only in â€˜serious casesâ€™, where adult punishment exceeds 7 years.

2. A juvenile in conflict with the law is not â€œarrestedâ€, but â€œapprehendedâ€, and only in case of allegations of a serious crime.

3. Once apprehended, the police must immediately place such juvenile under the care of a Welfare Officer, whose duty is to produce the juvenile before the Board. Thus, the police do not retain pre- trial custody over the juvenile.

4. Under no circumstances is the juvenile to be detained in a jail or police lock-up, whether before, during or after the Board inquiry.

5. Grant of Bail to juveniles in conflict with the law is the Rule.

6. The JJ board conducts a child-friendly â€œinquiryâ€ and not an adversarial trial. This is not to say that the nature of the inquiry is non-adversarial, since both prosecution and defence submit their cases. Instead, the nature of the proceedings acquires a child-friendly colour.

7. The emphasis of criminal trials is to record a finding on the guilt or innocence of the accused. In case of established guilt, the prime object of sentencing is to punish a guilty offender. The emphasis of juvenile â€˜inquiryâ€™ is to find the guilt/innocence of the juvenile and to investigate the underlying social or familial causes of the alleged crime. Thus, the aim of juvenile sentencing is to reform and rehabilitate the errant juvenile.

8. The adult criminal system does not regulate the activities of the offender once s/he has served the sentence. Since the JJ system seeks to reform and rehabilitate the juvenile, it establishes post- trial avenues for the juvenile to make an honest living.

Dr. Subramanian Swamy And Ors vs Raju Thr.Member Juvenile Justice Board & others 2014 (2) ALT (Crl) 477 (SC).

The earlier reported judgment 2014 STPL(Web) 334 SC = State of Karnataka by Nonavinakere Police Vs. Shivanna @ Tarkari Shivanna regarding guidelines in respect of sexual offences reported as **2014 (2) ALT (Crl) 500 (SC)**

Sections 34, 114 and 149 of the Indian Penal Code provide for criminal liability viewed from different angles as regards actual participants, accessories and men actuated by a common object or a common intention; and the charge is a rolled-up one involving the direct liability and the constructive liability without specifying who are directly liable and who are sought to be made constructively liable.
In such a situation, the absence of a charge under one or other of the various heads of criminal liability for the offence cannot be said to be fatal by itself, and before a conviction for the substantive offence; without a charge can be set aside, prejudice will have to be made out.
Pal Singh Vs State of Punjab 2014 (2) ALT (Crl) 507 (SC)

HIGH COURT

mere issuance of a NBW contemplated by Section 70(1) Cr.P.C. pending its execution or even after execution it does not tantamount to cancellation of a bail in a non-bailable offence once already granted in the absence of any such condition specific in the order granting bail. Here the remedy once the accused jumped for bail or failed to attend as per the terms and conditions of the bail by non-compliance from NBW issued if not recalled before execution, since its exeuction or recall it is in force, on execution only to deposit the amount of the bond executed by accused equally by sureties and on such deposit of the amount or after submission of the bonds and payment of any amount out of it as penalty by payment by accused, in such event again enforcing against the sureties does not arise, he has to submit fresh bonds. Here, instead of so doing the accused No.3, who is the petitioner herein moved a fresh bail before the trial Court (Assistant Sessions Judge). Fresh bail application is not maintainable per se for nothing to show earlier bail order ceased itsforce or cancelled otherwise as mere issuance of NBW or its execution per se does not tantamount if no such condition for cancellation of bail in the order of bail from the above provision supra. When such is the case, having went unsuccessful in moving the second bail application instead of paying the penalty for the bonds earlier executed and submit fresh solvency by the accused before the concerned Court, from dismissal of that application by the learned trial Judge the petitioner/A.3 cannot knock the doors of this Court by moving the bail application saying that the bail application thereby is not maintainable because of the bail order no way shows cancelled or ceased its force, but for the remedy to seek to recall of NBW if at all pending and in this case since executed, by payment of the penalty for the bonds forfeited and to submit fresh solvency as per Chapter 33 Cr.P.C.
Dasari Satyanarayana Vs State of A.P. 2014 (2) ALD (Crl) 228.

Any claim in a written statement, counter or evidence is tantamount to a publication, which is viewed not only by the other side but also by the counsel, perhaps the Pleader's Clerk, Judge and the staff of the Court and particularly the Bench Clerk. Consequently, the contentions in the counter certainly are liable to be treated as publication within the meaning of Section 499 IPC.
Merely because the averments in the counter regarding the defamatory imputation against the 1st respondent have not been referred to in the order by this Court, those imputations do not cease to be defamatory.
Dr.R.MahaLakshmi Vs Nirmala Reddy 2014 (2) ALD (Crl) 231

this is a case relying on circumstantial evidence, as there are no eyewitnesses of the crime. It is true that motive is important in cases of circumstantial evidence, but that does not mean that all cases of circumstantial evidence if the prosecution has been unable to satisfactorily prove a motive, its case must

fail. It all depends on the facts and circumstances of the case. As is often said, men may lie but circumstances do not.

State of A.P. vs Adukkalpathu Mani & others. 2014 (2) ALD (Crl) 233.

Section 3 of the Act imposes punishment for maintaining a brothel house or allowing premises to be used as a brothel house. Section 4 imposes penalty for living on the earnings of prostitution. Section 5 deals with the procurement, inducement or inducing for a person for the sake of prostitution. Section 6 of the Act speaks about detaining a person in the premises where prostitution is carried out. None of these sections speak about punishment to the customer of a brothel house.

Goenka Sajan Kumar Vs State of A.P. 2014 (2) ALD (Crl) 264.

To attract the offence punishable under Section 3(1)(x) of the SC/ST (Prevention of Atrocities) Act, 1989, the Mens rea is the essential ingredient. The utterances made in the name of caste should be with an intention to humiliate or intimidate the persons belonging to Schedule Caste or Schedule Tribe in a place within public view. If in the course of a quarrel took place in the fields the petitioners abused the de facto complainant and his people by using the caste name, the said act by itself in my view does not automatically attract the offence punishable under Section 3(1)(x) of the SC/ST (POA) Act, 1989. The manner in which the utterances were made must be with an intention to humiliate or intimidate the persons belonging to Schedule Caste or Schedule Tribe.

Parsa Somaiah Vs State of A.P, 2014 (2) ALT (Crl) 259

ON A LIGHTER VEIN

Two lawyers arrive at the pub and ordered a couple of drinks. They then take sandwiches from their briefcases and began to eat.

Seeing this, the angry publican approaches them and says, 'Excuse me, but you cannot eat your own sandwiches in here!'

The two look at each other, shrug and exchange sandwiches.

Experts Speak

Q: Whether a Magistrate after accepting a negative final report submitted by the Police can take action on the basis of the protest petition filed by the complainant/first informant?

Ans: Yes. It was urged that having accepted the final report the learned Magistrate had become ñfunctus officioò and was denuded of all power to proceed in the matter- negatived by the Supreme court in 2014 STPL(Web) 524 SC Rakesh & Anr Vs. State of U.P. & Anr. Decided on 13/04/2014.

NEWS

Under the Lokpal and Lokayuktas Act, 2013, it is mandatory for every public servant, which includes Central Government employees also, to declare **assets and liabilities** in the manner provided by or under the said Act.

Government has notified the Public Servants (Furnishing of Information and Annual Return of Assets and Liabilities and the Limits for Exemption of Assets in Filing Returns) Rules, 2014, under the Lokpal and Lokayuktas Act, 2013, laying down the form and manner of submission of information and annual return.

The Central Government has notified fresh rules for the public servants to furnish information and annual return containing declaration of **assets and liabilities**. Under the Public Servants (Furnishing of Information and Annual Return of Assets and Liabilities and the Limits for Exemption of Assets in Filing Returns) Rules, 2014 every public servant shall made a declaration of his/her assets and liabilities in the specified formats as on the 31st day of **March** every year to the competent authority on or before of 31st day of July of that year.

Making an exception for the current year the notification stipulates that public servants who have filed declarations, information and annual return of property under the prevailing rules shall file the revised declaration, information or annual returns as on **August** 1, 2014 on or before September 15, 2014. However, employees may be exempted by the competent authority for reasons recorded in writing from declaring assets if its value does not exceed 4 months basic pay or rupees two lakhs, whichever is higher.

Detailed notification dated July 14, 2014 and formats are available in download section.

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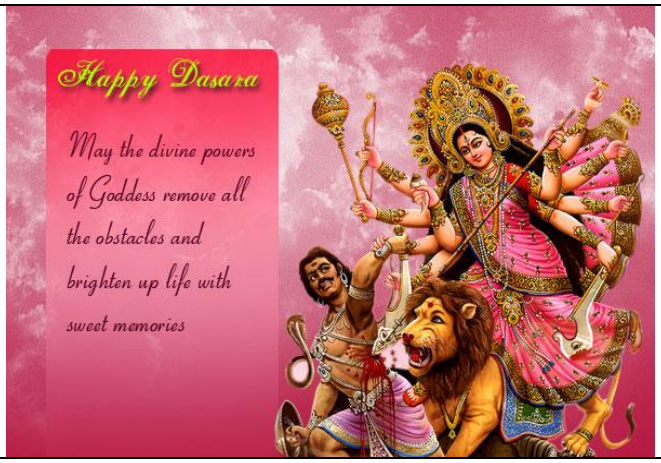
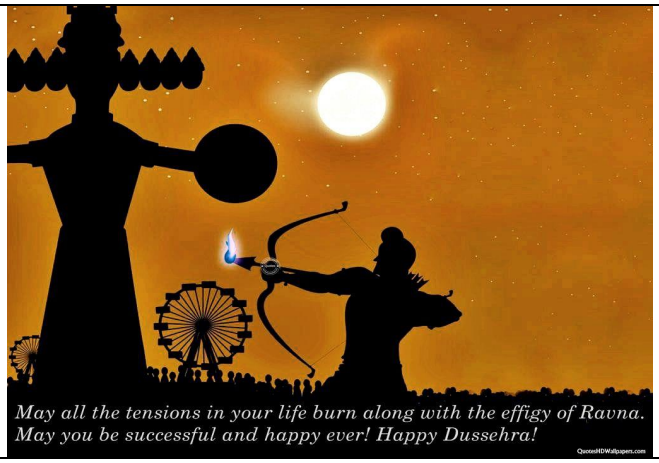
Vol- III Part 10 Monthly Leaflet October, 2014





Never Hate people ,
who are jealous of you,
but respect their jealousy.
They're people who think that you're better than them.
Anonymous.

CITATIONS

SUPREME COURT

Word ótranshipsôin S.23 of NDPS Act, 1985 be understood to mean only transhipment for the purposes of either import into India or export out of India. **Union of India V. Sheo Shambu Giri 2014(3) ALT (Crl.) 21 (SC).**

S.304B IPC – Expression ósoon beforeôis a relative term and be considered under specific circumstance of each case. No straight jacket formula, fixing any period to fall within ósoon beforeôbe laid down **Dinesh V. State of Haryana 2014(3) ALT (Crl.) 67 (SC).**

It is not requirement of S.452 IPC that for ótrespassôto be an offence, the house must be a óprivate placeôand not an óofficeô
An act committed with intention or knowledge that it would amount to murder if that act caused death, and such an act, even if does not cause any injury, still is punishable with imprisonment upto 10yrs under first part of S.307 IPC.**Pasupuleti Siva Ramakrishna Rao V. State of Andhra Pradesh & ors 2014(3) ALT (Crl.) 107 (SC).**

S.321 Cr.P.C. It is obligatory on the part of the Court to satisfy itself that, from the material it can reasonably be held that withdrawal of prosecution would serve the public interest.
It is necessary on the part of the court to see whether the grant of consent would thwart or stifle the course of law or cause manifest injustice.
Public Prosecutor cannot act like a Post Office on behalf of State Government.

Public Prosecutor is required to act in good faith, peruse the material on record and form an independent opinion that the withdrawal of the case would really subserve the public interest at large.
An order of Government is not binding on Public Prosecutor in this regard. **Bairam Muralidhar V. State of Andhra Pradesh 2014(3) ALT (Crl.) 113 (SC).**

The non-examination of an eye-witness was not fatal when the facts were spoken by another witness , who withstood the vigor of cross examination and nothing was elicited to discredit the testimony. **Bahadur Singh Vs. State of M.P. 2014(3) SCC (Crl) 90 = (2014) 6 SCC 639.**

It is a settled legal proposition that in case the question is not put to the witness in cross-examination who could furnish explanation on a particular issue, the correctness or legality of the said fact/issue could not be raised. (Vide: Atluri Brahmanandam (D), Thr. LRs. v. Anne Sai Bapuji, AIR 2011 SC 545; and Laxmibai (dead) Thr. L.Rs. & Anr. v. Bhagwantbuva (dead) Thr. L.Rs. & Ors., AIR 2013 SC 1204).
In all criminal cases, normal discrepancies are bound to occur in the depositions of witnesses due to normal errors of observation, namely, errors of memory due to lapse of time or due to mental disposition such as shock and horror at the time of occurrence. Where the omissions amount to a contradiction, creating a serious doubt about the truthfulness of the witness and other witnesses also make material improvement while deposing in the court, such evidence cannot be safe to rely upon. However, minor contradictions, inconsistencies, embellishments or improvements on trivial matters which do not affect the core of the prosecution case, should not be made a ground on which the evidence can be rejected in its entirety. The court has to form its opinion about the credibility of the witness and record a finding as to whether his deposition inspires confidence. "Exaggerations per se do not render the evidence brittle. But it can be one of the factors to test credibility of the prosecution version, when the entire evidence is put in a crucible for being tested on the touchstone of credibility." Therefore, mere marginal variations in the statements of a witness cannot be dubbed as improvements as the same may be elaborations of the statement made by the witness earlier. "Irrelevant details which do not in any way corrode the credibility of a witness cannot be labelled as omissions or contradictions." The omissions which amount to contradictions in material particulars, i.e., materially affect the trial or core of the prosecution's case, render the testimony of the witness liable to be discredited. Where the omission(s) amount to a contradiction, creating a serious doubt about the truthfulness of a witness and other witness also make material improvements before the court in order to make the evidence acceptable, it cannot be safe to rely upon such evidence. **2014 STPL(Web) 403 SC= 2014(3) SCC (Crl) 107= 2014 (6) SCC 716. Mahavir Singh Vs. State of Haryana**

recovery of an object is not a discovery of fact, as per the decision of this Court in Mano vs. State of Tamil Nadu(2007) 13 SCC 795. Recovery must be of a fact which was relevant to connect it with the commission of crime. Therefore, even if the recovery of goods is reliable then it does not indicate that the accused appellants committed the murder and the only admissible fact which can be inferred is that they are in possession of stolen goods.
Dhanraj Alias Dhand vs State of Haryana 2014 (3) SCC (Crl) 126 = 2014 (6) SCC 745.

It will be apposite to recall that in Rabindra Kumar Dey vs State of Orissa 1976 (4) SCC 233, this Court has opined that - âúî âú¦ Merely because a witness in an unguarded moment speaks the truth which may not suit the prosecution or which may be favourable to the accused, the discretion to allow the party concerned to cross-examine its own witness cannot be allowed. In other words a witness should be regarded as adverse and liable to be cross-examined by the party calling him only when the court is satisfied that the witness bears

hostile animus against the party for whom he is deposing or that he does not appear to be willing to tell the truth.
Prosecutrix having consensual sex with accused, knowing that he is already married, accused cannot be charged for the offence of Rape.
Vinod Kumar v. State of Kerala, (2014) 5 SCC 678= 2014(2) ALD (Crl) 433.

The Khasara entries do not convey title of the suit property as the same is only relevant for the purposes of paying land revenue and it has nothing to do with ownership. **AIR 2014 SC 2665 Municipal corporation, Gwalior Vs Puran Singh.**
the decision reported in Ram Singh vs. State of Rajasthan - (2012) 12 SCC 339 followed. In paragraphs 8 and 10, this Court has also held that the non-production of the weapon used in the attack is neither fatal to the Prosecution case nor any adverse inference can be drawn on that score.
AIR 2014 SC 2587 Md Jamiluddin Nasir Vs State of West Bengal.

Age of Juvenile- documents pertaining to list mentioned at Rule 12 (3) (a) (i) are found fabricated- Medical report should be obtained. **AIR 2014 SC 2726 Kulai Ibrahim Vs State thru P.S. Coimbatore.**

Entries in General Land Register (GLR), maintained under Cantonment Land Administration Rules, showing suit land given to plaintiff's predecessor as old grant - Conclusive proof of Central Government's title over suit land - Non-production of original grant by defendant-petitioner State authorities would not raise any adverse inference - Plaintiff-respondent, private person, claiming title, failed to produce any document to show title of predecessor-in-interest - Maxim nemo dat quod non habet (no one gives what he does not possess) applies - Plaintiff successor will not have better title than what his predecessor had. **Union of India v. Robert Zomawia Street, (2014) 6 SCC 707= AIR 2014 SC 2721.**

Ss. 50, 41 to 43 and 20 - Chance recovery of narcotic substance during personal/body search by police, while checking for ticketless passengers on a bus - Compliance with S. 50 in such case - Not required, in view of Baldev Singh, (1999) 6 SCC 172-- **State of H.P. v. Sunil Kumar, (2014) 4 SCC 780= AIR 2014 SC 2564**

HIGH COURT

The rights of the parties, such as title and possession, cannot be adjudicated in criminal proceedings. When there is a bonafide dispute between the parties in relation to the rights in the property, including that of possession, resorting to criminal proceedings is nothing but abuse of process of law.
Fayaz Ahmed @ Hasan and others Vs State of A.P. and another. 2014(2) ALD (Crl) 379.

To attract an offence under Section 306 IPC, an active act or direct act, which led the deceased to commit suicide must be established.
I n S.S. Chheena vs. Vijaya Kumar Mahajan 2001 (1) ALD (Crl.) 227 (SC), Hon'ble Supreme Court while considering a case under Section 306 IPC observed as follows:-

> ñAbetment 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 this Court is clear that in order to convict a person under Section 306 IPC there has to be a clear mens rea to commit the offence. It is also requires an active act or direct act which led 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.òREITERATED

G.Venkanna Vs Anjamma & others. 2014(2) ALD (Crl) 382.

Though in a given case, subsequent information can also be taken into account, that would be possible if only it is not tainted with any manipulations. **Ellala Linga Reddy Vs. State of A.P. 2014(2) ALD (Crl) 388.**

An MoU that the husband should pay some consideration to the wife on the condition that the wife should obtain divorce from the appropriate Court is a contract which is against public policy and cannot be implemented. **A.Ashok Vardhan Reddy Vs P.Saritha and others 2014(2) ALD (Crl) 408.**

ON A LIGHTER VEIN

A policeman spotted a jay walker and decided to challenge him, 'Why are you trying to cross here when there's a zebra crossing only 20 metres away?'

'Well,' replied the jay walker, 'I hope it's having better luck than me.'

NEWS

- Arnesh Kumar Vs state of Bihar, regarding the safeguards during the arrest of a person in offence punishable with imprisonment of less than 7 years has been reported as AIR 2014 SC 2756.
- Regarding the cases involving ENCOUNTERS the Supreme Court issued following Guidelines in case between PUCL Vs State of Maharastra (Criminal Appeal 1225 of 1999)

  (1) Whenever the police is in receipt of any intelligence or tip-off regarding criminal movements or activities pertaining to the commission of grave criminal offence, it shall be reduced into writing in some form (preferably into case diary) or in some electronic form. Such recording need not reveal details of the suspect or the location to which the party is headed. If such intelligence or tip-off is received by a higher authority, the same may be noted in some form without revealing details of the suspect or the location.

  (2) If pursuant to the tip-off or receipt of any intelligence, as above, encounter takes place and firearm is used by the police party and as a result of that, death occurs, an FIR to that effect shall be registered and the same shall be forwarded to the court under Section 157 of the Code without any delay. While forwarding the report under Section 157 of the Code, the procedure prescribed under Section 158 of the Code shall be followed.

(3) An independent investigation into the incident/encounter shall be conducted by the CID or police team of another police station under the supervision of a senior officer (at least a level above the head of the police party engaged in the encounter). The team conducting inquiry/investigation shall, at a minimum, seek:

(a) To identify the victim; colour photographs of the victim should be taken;

(b) To recover and preserve evidentiary material, including blood-stained earth, hair, fibers and threads, etc., related to the death;

(c) To identify scene witnesses with complete names, addresses and telephone numbers and obtain their statements (including the statements of police personnel involved) concerning the death;

(d) To determine the cause, manner, location (including preparation of rough sketch of topography of the scene and, if possible, photo/video of the scene and any physical evidence) and time of death as well as any pattern or practice that may have brought about the death;

(e) It must be ensured that intact fingerprints of deceased are sent for chemical analysis. Any other fingerprints should be located, developed, lifted and sent for chemical analysis;

(f) Post-mortem must be conducted by two doctors in the District Hospital, one of them, as far as possible, should be In- charge/Head of the District Hospital. Post-mortem shall be video- graphed and preserved;

(g) Any evidence of weapons, such as guns, projectiles, bullets and cartridge cases, should be taken and preserved. Wherever applicable, tests for gunshot residue and trace metal detection should be performed.

(h) The cause of death should be found out, whether it was natural death, accidental death, suicide or homicide.

(4) A Magisterial inquiry under Section 176 of the Code must invariably be held in all cases of death which occur in the course of police firing and a report thereof must be sent to Judicial Magistrate having jurisdiction under Section 190 of the Code.

(5) The involvement of NHRC is not necessary unless there is serious doubt about independent and impartial investigation. However, the information of the incident without any delay must be sent to NHRC or the State Human Rights Commission, as the case may be.

(6) The injured criminal/victim should be provided medical aid and his/her statement recorded by the Magistrate or Medical Officer with certificate of fitness.

(7) It should be ensured that there is no delay in sending FIR, diary entries, panchnamas, sketch, etc., to the concerned Court.

(8) After full investigation into the incident, the report should be sent to the competent court under Section 173 of the Code. The trial, pursuant to the chargesheet submitted by the Investigating Officer, must be concluded expeditiously.

(9) In the event of death, the next of kin of the alleged criminal/victim must be informed at the earliest.

(10) Six monthly statements of all cases where deaths have occurred in police firing must be sent to NHRC by DGPs. It must be ensured that the six monthly statements reach to NHRC by 15th day of January and July, respectively. The statements may be

sent in the following format along with post mortem, inquest and, wherever available, the inquiry reports:

(i) Date and place of occurrence.

(ii) Police Station, District.

(iii) Circumstances leading to deaths:

(a) Self defence in encounter.

(b) In the course of dispersal of unlawful assembly.

(c) In the course of affecting arrest.

(iv) Brief facts of the incident.

(v) Criminal Case No.

(vi) Investigating Agency.

(vii) Findings of the Magisterial Inquiry/Inquiry by Senior Officers:

(a) disclosing, in particular, names and designation of police officials, if found responsible for the death; and

(b) whether use of force was justified and action taken was lawful.

(11) If on the conclusion of investigation the materials/evidence having come on record show that death had occurred by use of firearm amounting to offence under the IPC, disciplinary action against such officer must be promptly initiated and he be placed under suspension.

(12) As regards compensation to be granted to the dependants of the victim who suffered death in a police encounter, the scheme provided under Section 357-A of the Code must be applied.

(13) The police officer(s) concerned must surrender his/her weapons for forensic and ballistic analysis, including any other material, as required by the investigating team, subject to the rights under Article 20 of the Constitution.

(14) An intimation about the incident must also be sent to the police officer's family and should the family need services of a lawyer / counselling, same must be offered.

(15) No out-of-turn promotion or instant gallantry rewards shall be bestowed on the concerned officers soon after the occurrence. It must be ensured at all costs that such rewards are given/recommended only when the gallantry of the concerned officers is established beyond doubt.

(16) If the family of the victim finds that the above procedure has not been followed or there exists a pattern of abuse or lack of independent investigation or impartiality by any of the functionaries as above mentioned, it may make a complaint to the Sessions Judge having territorial jurisdiction over the place of incident. Upon such complaint being made, the concerned Sessions Judge shall look into the merits of the complaint and address the grievances raised therein.

- A three Judge Bench of the Supreme Court today in *Ansar P.V. vs. P.K.Basheer & Ors.,* overruled the the statement of law on admissibility of secondary evidence in Parliament Attack Case [State v. Navjot Sandhu alias Afsan Guru (2005) 11 SCC 600] to the extend pertaining to electronic record. The Bench comprising of Chief Justice Lodha, Justice Kurian Joseph and Justice Rohinton Nariman held that "the

evidence relating to electronic record, being a special provision, the general law on secondary evidence under Section 63 read with Section 65 of the Evidence Act shall yield to the same. Generalia specialibus non derogant, special law will always prevail over the general law. It appears, the court omitted to take note of Sections 59 and 65A dealing with the admissibility of electronic record. Sections 63 and 65 have no application in the case of secondary evidence by way of electronic record; the same is wholly governed by Sections 65A and 65B. To that extent, the statement of law on admissibility of secondary evidence pertaining to electronic record, as stated by this court in Navjot Sandhu case (supra), does not lay down the correct legal position. It requires to be overruled and we do so"

- Competition Appellate Tribunal, empowered to hear appeals from the Competition Commission of India has finally got its new Chairman. Justice G S Singhvi, who retired from the Supreme Court in December 2013, is the new Chairman of the Tribunal as per its website.

- Jayalalitha Case judgment available in download section.

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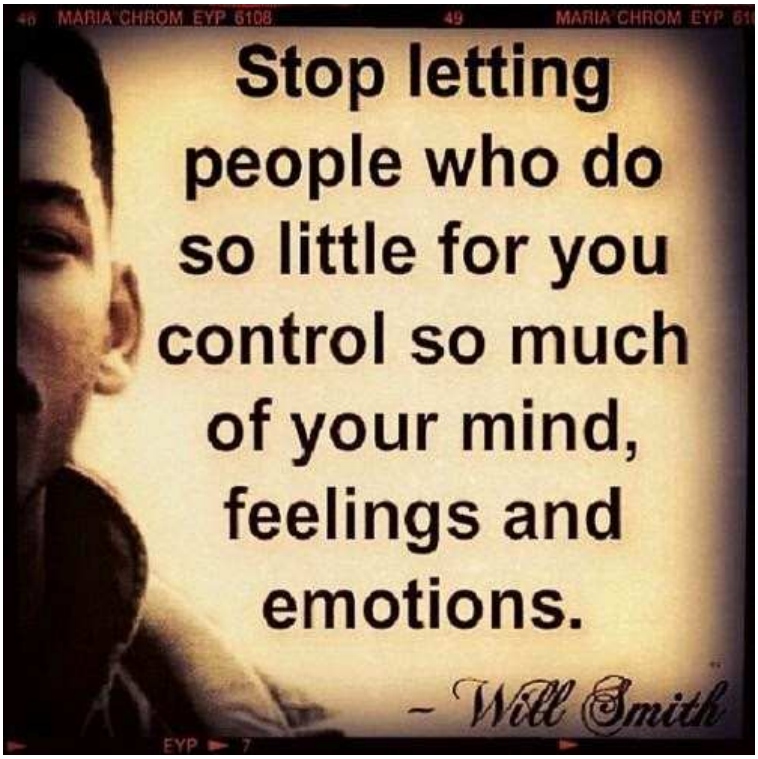
Vol- III Part 11 Monthly Leaflet November, 2014



CITATIONS

SUPREME COURT

The said principle has been reiterated in Esher Singh v.State of A.P.(2004) 11 SCC 585 by stating that this Court can entertain appeals against acquittal by the High Court at the instance of interested private parties, for the circumstances that the Code does not provide for an appeal to the High Court against an order of acquittal by a subordinate court, at the instance of the private party, has no relevance to the question of the power of this Court under Article 136.
Sumer Singh v. Surajbhan Singh, (2014) 7 SCC 323 = 2014 STPL(Web) 348 SC= 2014 (2) ALD (Crl) 535 (SC)= 2014 (6) Scale 187

Section 7 does not require a sanction but only consent for prosecuting a person for an offence under the Explosive Substances Act.
the decision in Ramanand Ramnath v. State of M.P.[1996) 8 SCC 514 wherein identification parade was held within a period of one month from the date of arrest. This Court observed that there was no unusual delay in holding the test identification parade.
Chandra Prakash v. State of Rajasthan, (2014) 8 SCC 340 =2014 (2) ALD (Crl) 548 (SC)

It is true that PW15-SI Dayal Mukherjee was once recalled but that does not matter. It does not prevent his further recall. Section 311 of the Code does not put any such limitation on the court. He can still be recalled if his evidence appears to the court to be essential to the just decision of the case. In this connection we must revisit Rajendra Prasad where this Court has clarified that the court can exercise power of re- summoning any witness even if it has exercised the said power earlier. Relevant observations of this Court run as under:
"We cannot therefore accept the contention of the appellant as a legal proposition that the court cannot exercise power of resummoning any witness if once that power was exercised, nor can the power be whittled down merely on the ground that the prosecution discovered laches only when the defence highlighted them during final arguments. The power of the court is plenary to summon or even recall any witness at any stage of the case if the court considers it necessary for a just decision. The steps which the trial court permitted in this case for resummoning certain witnesses cannot therefore be spurned down or frowned at."

16. It was strenuously contended that the incident had taken place on 13/12/1992 and, therefore, the application made after a gap of 22 years must be rejected. This submission must be rejected because PW15-SI Dayal Mukherjee was re-examined on 17/5/2011 and application for his recall was made just one month thereafter. It is true that the incident is dated 13/12/1992 and the trial commenced in 2001. These are systemic delays which are indeed distressing. But once the trial began and the Investigating Officer was re-examined on 17/5/2011, the prosecution made an application for recall just one month thereafter. There was no delay at that stage. The submissions that PW15-SI Dayal Mukherjee has grown old; that his memory must not be serving him right; that he can be tutored are conjectural in nature. In any case, the accused have a right to cross- examine PW15-SI Dayal Mukherjee. The accused are, therefore, not placed in a disadvantageous position.
Mannan Sk & Ors. Vs. State of West Bengal & Anr - AIR 2014 SC 2950

This Court in A. Shankar v. State of Karnataka, AIR 2011 SC 2302 held:
"17. In all criminal cases, normal discrepancies are bound to occur in the depositions of witnesses due to normal errors of observation, namely, errors of memory due to lapse of time or due to mental disposition such as shock and horror at the time of occurrence. Where the omissions amount to a contradiction, creating a serious doubt about the truthfulness of the witness and other witnesses also make material improvement while deposing in the court, such evidence cannot be safe to rely upon. However, minor contradictions, inconsistencies, embellishments or improvements on trivial matters which do not affect the core of the prosecution case, should not be made a ground on which the evidence can be rejected in its entirety.
The court has to form its opinion about the credibility of the witness and record a finding as to whether his deposition inspires confidence. "Exaggerations per se do not render the evidence brittle. But it can be one of the factors to test credibility of the prosecution version, when the entire evidence is put in a crucible for being tested on the touchstone of credibility." Therefore, mere marginal variations in the statements of a witness cannot be dubbed as improvements as the same may be elaborations of the statement made by the witness earlier. "Irrelevant details which do not in any way corrode the credibility of a witness cannot be labelled as omissions or contradictions." The omissions which amount to
contradictions in material particulars, i.e., materially affect the trial or core of the prosecution's case, render the testimony of the witness liable to be discredited. Where the omission(s) amount to a contradiction, creating a serious doubt about the truthfulness of a witness and other witness also make material improvements before the court in order to make the evidence acceptable, it cannot be safe to rely upon such evidence.
(See also: State of Rajasthan v. Rajendra Singh, AIR 1998 SC 2554; State Represented by Inspector of Police v.Saravanan & Anr., AIR 2009 SC 152; Arumugam v. State, AIR 2009 SC 331; Mahendra Pratap Singh v. State of Uttar Pradesh, (2009) 11 SCC 334; Vijay alias Chinee v. State of M.P., (2010) 8 SCC 191; State of U.P. v. Naresh & Ors., (2011) 4 SCC 324; Brahm Swaroop & Anr. v. State of U.P., AIR 2011 SC 280; and Dr. Sunil Kumar Sambhudayal Gupta & Ors. v.State of Maharashtra, (2010) 13 SCC 657).

It is a settled legal proposition that in case the question is not put to the witness in cross-examination who could furnish explanation on a particular issue, the correctness or legality of the said fact/issue could not be raised. (Vide: Atluri Brahmanandam (D), Thr. LRs. v. Anne Sai Bapuji, AIR 2011 SC 545; and Laxmibai (dead) Thr. L.Rs. & Anr. v. Bhagwantbuva (dead) Thr. L.Rs. & Ors., AIR 2013 SC 1204).
Mahavir Singh Vs State of Haryana 2014 (3) Crimes 416(SC)

As far as the contention made on behalf of the Appellant that nonproduction of the weapon used in the attack is fatal to the case of the Prosecution is concerned, the reliance placed upon by the learned Additional Solicitor General to the decision reported in Ram Singh vs. State of Rajasthan - (2012) 12 SCC 339 would meet the said contention. In paragraphs 8 and 10, this Court has also held that the non-production of the weapon used in the attack is neither fatal to the Prosecution case nor any adverse inference can be drawn on that score. Therefore, the said submission is also rejected.

Learned counsel for the Appellant also argued by stating that there was time delay involved considering the site of conspiracy the place of occurrence and the returning time to the site which was all improbable. As per the confession of Nasir, they all left No. 1, Tiljala lane at 5.30 a.m. The occurrence stated to have taken place at 6.30 a.m. at the American Centre. The contention is that having regard to the location of the place of conspiracy and the site of occurrence, it is highly improbable that the occurrence could have taken place at 6.30 a.m., when the conspirators left the place of conspiracy at 5.30 a.m. We do not find any substance in the said submission since with reference to such time factor there should always be some time allowance given, in which event, the said factor cannot be taken as a non-corroborative factor at all to reject the confession made by Nasir.

Before parting with the case, we must place on record and appreciate the work of the Investigation Team headed by PW-123-Anil Kar. On the very date of the incident when he was entrusted with the task of investigation, he swung into action and from then onwards, we found that he relentlessly carried on the investigation with the wholehearted assistance of each one of his team members and they deserve appropriate encouragement in their services.

[2014] 5 Supreme 135 =(2014) 3 SCC (Crl) 230 = (2014) 7 SCC 443 Md. Jamiludin Nasir Vs. State of West Bengal

prior to the date of expiry of 90 days which is the initial period for filing the charge-sheet, the prosecution neither had filed the charge-sheet nor had it filed an application for extension. Had an application for extension been filed, then the matter would have been totally different.

Union of India through C.B.I. Vs. Nirala Yadav @ Raja Ram AIR 2014 SC 3036.

While the award or refusal of compensation in a particular case may be within the Court's discretion, there exists a mandatory duty on the Court to apply its mind to the question in every criminal case. Application of mind to the question is best disclosed by recording reasons for awarding/refusing compensation. It is axiomatic that for any exercise involving application of mind, the Court ought to have the necessary material which it would evaluate to arrive at a fair and reasonable conclusion. It is also beyond dispute that the occasion to consider the question of award of compensation would logically arise only after the court records a conviction of the accused. Capacity of the accused to pay which constitutes an important aspect of any order under Section 357 Cr.P.C. would involve a certain enquiry albeit summary unless of course the facts as emerging in the course of the trial are so clear that the court considers it unnecessary to do so. Such an enquiry can precede an order on sentence to enable the court to take a view, both on the question of sentence and compensation that it may in its wisdom decide to award to the victim or his/her family.

63. Coming then to the case at hand, we regret to say that the trial Court and the High Court appear to have remained oblivious to the provisions of Section 357 Cr.P.C. The judgments under appeal betray ignorance of the Courts below about the statutory provisions and the duty cast upon the Courts. Remand at this distant point of time does not appear to be a good option either. This may not be a happy situation but having regard to the facts and the circumstances of the case and the time lag since the offence was committed, we conclude this chapter in the hope that the courts remain careful in future.

64. In the result, we allow this appeal but only to the extent that instead of Section 302 IPC the appellant shall stand convicted for the offence of culpable homicide not amounting to murder punishable under Section 304 Part II IPC and sentenced to undergo rigorous imprisonment for a period of five years. The fine imposed upon the appellant and the default sentence awarded to him shall remain unaltered. The appeal is disposed of in the above terms in modification of the order passed by the Courts below. A copy of this order be forwarded to the Registrars General of the High Courts in the country for circulation among the Judges handling criminal trials and hearing appeals.

Ankush Shivaji Gaikwad vs State of Maharashtra (2013) 6 SCC 770.

we are constrained to state oft-stated principles relating to the sacred role of the members of the Bar. A lawyer is a responsible officer of the court. It is his duty as the officer of the court to assist the court in a properly prepared manner. That is the sacrosanct role assigned to an advocate. In O.P. Sharma and others v. High Court of Punjab and Haryana[(2011) 6 SCC 86], dealing with the ethical standard

of an advocate, though in a different context, a two-Judge Bench has observed thus:- “An advocate is expected to act with utmost sincerity and respect. In all professional functions, an advocate should be diligent and his conduct should also be diligent and should conform to the requirements of the law by which an advocate plays a vital role in the preservation of society and justice system. An advocate is under an obligation to uphold the rule of law and ensure that the public justice system is enabled to function at its full potential. Any violation of the principles of professional ethics by an advocate is unfortunate and unacceptable. Ignoring even a minor violation/misconduct militates against the fundamental foundation of the public justice system.” 27. In Re: 1. Sanjiv Datta, Deputy Secretary, Ministry of information and Broadcasting, New Delhi, 2. Kailash Vasdev, Advocate, 3. Kitty Kumarmangalam (Smt.), Advocate[(1995) 3 SCC 619] the court observed that it is in the hands of the members of the profession to improve the quality of the service they render both to the litigants and public and to the courts and to brighten their image in the society. The perceptible casual approach to the practice of profession was not appreciated by the Court. As far as the counsel for the State is concerned, it can be decidedly stated that he has a higher responsibility. A counsel who represents the State is required to state the facts in a correct and honest manner. He has to discharge his duty with immense responsibility and each of his action has to be sensible. He is expected to have higher standard of conduct. He has a special duty towards the court in rendering assistance. It is because he has access to the public records and is also obliged to protect the public interest. That apart, he has a moral responsibility to the court. When these values corrode, one can say “things fall apart”. He should always remind himself that an advocate, while not being insensible to ambition and achievement, should feel the sense of ethicality and nobility of the legal profession in his bones. We hope, hopefully, there would be apposite response towards duty; the hollowed and honoured duty.

2014 STPL(Web) 473 SC =State of Rajasthan and Anr. Vs. Surendra Mohnot and Others= AIR 2014 SC 2925.

This is a very thin and subtle demarcation line between ‘hurt which endangers life’ and ‘injury as is likely to cause death’. Therefore, sometimes it becomes very difficult as to whether a person is liable under Section 325 IPC for causing grievous hurt or under Section 304 IPC for culpable homicide not amounting to murder when the injury results in the death of the victim. In the present case, the injuries nos. 1 and 2 are beyond `hurt which endanger life’ and clearly falls in the category of ‘injuries as are likely to cause death’ even though each injury may not be individually sufficient to cause death. 15. The High Court has set aside the conviction under Section 302 read with Section 149 IPC and the finding attained finality to that extent. There is ample evidence on record to draw the conclusion that the injury caused by the appellant was not sufficient to cause death independently. In such a fact-situation, the conviction of the appellant as recorded by the High Court under Section 304 Part I IPC is upheld.

2014 STPL(Web) 396 SC-Sompal Singh v. State of U.P., (2014) 7 SCC 316

FIR CASE- Lalitha Kumari case amended thus

After hearing him and in the light of the grievance expressed in the present criminal miscellaneous petition filed in the writ petition, we modify clause (vii) of paragraph 111 of our judgment dated 12th November, 2013, in the following manner:

"(vii) While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time bound and in any case it should not exceed fifteen days generally and in exceptional cases, by giving adequate reasons, six weeks time is provided. The fact of such delay and the causes of it must be reflected in the General Diary entry."

To this extent, clause (vii) of paragraph 111 of the judgment is modified.

Non explanation of injuries on person of accused, ipso facto cannot be held fatal to prosecution case

Manjeet Singh V. State of Himachal Pradesh 2014 (3) ALT (Crl.) 195 (SC)

S.106 of Indian Evidence Act envisages that when any fact is especially within the knowledge of the person, the burden of proving that fact is upon him. The section is not intended to shift burden of proof (in respect of crime) on the accused, but takes care of a situation where a fact is known only to

the accused and it is well high impossible or extremely difficult for prosecution. **State of Rajasthan V. Thakur Singh 2014 (3) ALT (Crl.) 216 (SC)**

Presumption envisages by S.114A of Evidence Act, though addresses on consent part of victim girl, can be stretched to proof of rape, where the victim prosecutrix had gone to the extent of committing suicide, due to trauma of rape. **Puran Chand V. State of H.P. 2014 (3) ALT (Crl.) 229 (SC)**

Extra Judicial Confession can solely form basis of conviction. **Baskaran & anr V. State of Tamil Nadu 2014 (3) ALT (Crl.) 261 (SC)**

As per S.149 if an offence is committed by any member of an unlawful assembly in prosecution of their common object, each of them is guilty of that offence. It is vicarious.
Core of the offence is óbject'meaning, purpose or design, and in order to make it 'çommon' should be shared by all.**Om Prakash V. State of Haryana 2014 (3) ALT (Crl.) 278 (SC)**

Hate speeches judgment reported herein earlier reported as 2014 (3) SCC 400 =2014 (11) SCC 477.

HIGH COURT

the source information led to the filing of the FIR. Indeed, the FIR is a suo motu action on the part of Sri Sudhakar who investigated the case. However, where Sri Sudhakar acted on source information, the contention of the learned Senior Counsel for the petitioner that the complainant and the Investigating Officer are one and the same and that the very FIR therefore is liable to be quashed cannot be accepted. This defence consequently is not accepted.
V.Suryanarayana Vs State. 2014(2) ALD (Crl) 617.

The Court below has taken into consideration the charge sheet, statements of the witnesses, copy of the message and the entire material available on record and dismissed the discharge petition.
Kujana Venu Vs State2014 (2) ALD (Crl)638.

The Report shows that both of them were in live in relationship for one and half years. Therefore, this is not a case wherein, the first respondent had sexual intercourse against the will of the de facto complainant nor played any deception against her to have physical relationship with the de facto complainant. The offence punishable under Section 376 of I.P.C., in the instant case is not at all attracted. From the contents of the First Information Report, the first respondent cheating the de facto complainant also seems to be doubtful. From the contents of the First Information Report, what all can be understood is that both of them intended to marry each other and subsequently the first respondent did not agree to marry the de facto complainant. In the opinion of this Court, the offence in the present case cannot be said to be exceptionally grave in character concerning the society at large. The offence in the considered opinion of this Court is not of serious in nature and is said to be a private one between the de facto complainant and the first respondent. Therefore, it cannot be said that the FIR., in this case cannot be quashed in exercise of the powers under Section 482 of Cr.P.C
Sahel Rabiani vs Mohammed Salman Murtaza And another 2014 (2) ALD (Crl) 649.

While deciding the cases on facts, more so in criminal cases the court should bear in mind that each case must rest on its own facts and the similarity of facts in one case cannot be used to bear in mind the conclusion of fact in another case (See: Pandurang and Anr. Vs. State of Hyderabad . It is also a well established principle that while considering the ratio laid down in one case, the court will have to bear in mind that every judgement must be read as applicable to the particular facts proved or assumed to be true. Since the generality of expressions which may be found therein are not intended to be expositions of the whole of the law, but are governed and qualified by the particular facts of the case in which such expressions are to be found. A case is only an authority for what it actually decides, and not what logically follows from it.

It is a settled legal position that the court which grants the bail also has the power to cancel it. 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.

State of Andhra Pradesh vs Kollam Gangi Reddy 2014 (2) ALD (Crl) 684.

As investigation into offences, both under the Indian Penal Code and the Act, are in the exclusive domain of the Investigating Officer, this Court called for a report from the first respondent whether there was any legal sanction for the police officers to seek a legal opinion, from the public prosecutors, on whether or not the statements of witnesses, recorded during the course of investigation, make out a case for filing a charge sheet. In his report dated 03.02.2014, the first respondent admits that the Public Prosecutors lack the power to give such opinions; as a matter of routine, and to overcome legal complications, if any, in most of the complicated cases, Investigating Officers were seeking legal opinion though there was no necessity for them to do so; a legal opinion is not binding, and the Investigating Officer should complete investigation on the basis of the statements of witnesses and the evidence adduced during the course of investigation, either oral or documentary; and must, thereafter, file an appropriate report under Section 173(2) Cr.P.C. The Superintendent of Police has expresses apology on behalf of his subordinate for having sought a legal opinion from the special public prosecutor.

The role of a Public Prosecutor is inside the court, whereas investigation is outside it.

Normally the role of the Public Prosecutor commences after the investigating agency presents the case in the court on culmination of investigation.

Its exception is that the Public Prosecutor may have to deal with bail applications moved by the parties concerned at any stage.

Involving the Public Prosecutor in investigation is not only unjudicious but is also pernicious in law.

The power of the officer in charge of the police station, under Sections 154 to 173 Cr.P.C, is subject only to the supervision of his superiors as envisaged in Section 36 Cr.P.C.There is no stage during which the investigating officer is legally obliged to take the opinion of a Public Prosecutor or any other authority.

As investigation, into complaints alleging commission of cognizable offences, is in the exclusive domain of the Investigating Officer, he is not justified in seeking the legal opinion of the Public Prosecutor on whether or not the evidence, collected during the couRs.of investigation, justifies a charge sheet being filed.

As several such cases, of legal opinions being sought from and given by the Public Prosecutors have come to the notice of this Court and as the public prosecutors appointed by the State Government under Sections 24(3) and (8) Cr.P.C, are subordinate to the Director of Prosecutions in terms of Section 25-A(6) Cr.P.C, the Director General of Police shall forthwith issue instructions to the Director of Prosecutions to make the public prosecutors in the district and subordinate courts, aware of the law declared by the Supreme Court and this Court in the aforesaid judgments; and that they should refrain from giving their legal opinion on whether or not the evidence collected, by the Investigating Officer, during the courts of investigation necessitates a charge sheet being filed under Section 173(2) Cr.P.C.

2014 (2) ALD (Crl) 693. =Bethalam Subbarao V. Superintendent of Police (Urban) Guntur, & ors. 2014 (3) ALT (Crl.) 95 (AP)

Cancellation of Bail - Application u/s 439(2) of Cr.P.C. for cancellation of bail can be maintained if impugned order granting bail is unjust.

Revision application not maintainable against order granting or refusing or cancelling bail. **Intelligence Officer, Narcotics Control Bureau Hyderabad Sub-Zone V. M.Shiva Kumar @ Raju 2014 (3) ALT (Crl.) 112 (AP)**

ON A LIGHTER VEIN

Sherlock Holmes and Dr. Watson go on a camping trip, set up their tent, and fall asleep. Some hours later, Holmes wakes his faithful friend.
'Watson, look up at the sky and tell me what you see.'
Watson replies, 'I see millions of stars.'
'What does that tell you?'
Watson ponders for a minute.' Astronomically speaking, it tells me that there are millions of galaxies and potentially billions of planets. Astrologically, it tells me that Saturn is in Leo. Time wise, it appears to be approximately a quarter past three. Theologically, it's evident the Lord is all-powerful and we are small and insignificant. Meteorologically, it seems we will have a beautiful day tomorrow. What does it tell you?
Holmes is silent for a moment, then speaks. 'Watson, you idiot, someone has stolen our tent.'

NEWS

- Guidelines for employee options and allocation are available under download section.
- Employee health cards for employees of Telangana state can be downloaded from ehf.telangana.gov.in.
- Employee health cards for employees of Andhra pradesh state can be downloaded from ehf.gov.in.
- GUIDELINES & PROTOCOLS Medico-legal care for survivors/victims of sexual violence along with the PROFORMA FOR MEDICO-LEGAL EXAMINATION OF SURVIVORS/VICTIMS OF SEXUAL VIOLENCE issued by Government of India Ministry of Health & Family Welfare, is available in download section.
- G.O.Ms no. 152 dated 31/10/2014 issued by Govt. of AP, appointing 12 members as Addl.PP. and also fixing their preliminary seniority inter-se.

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Vol- III Part 12 Monthly Leaflet December, 2014


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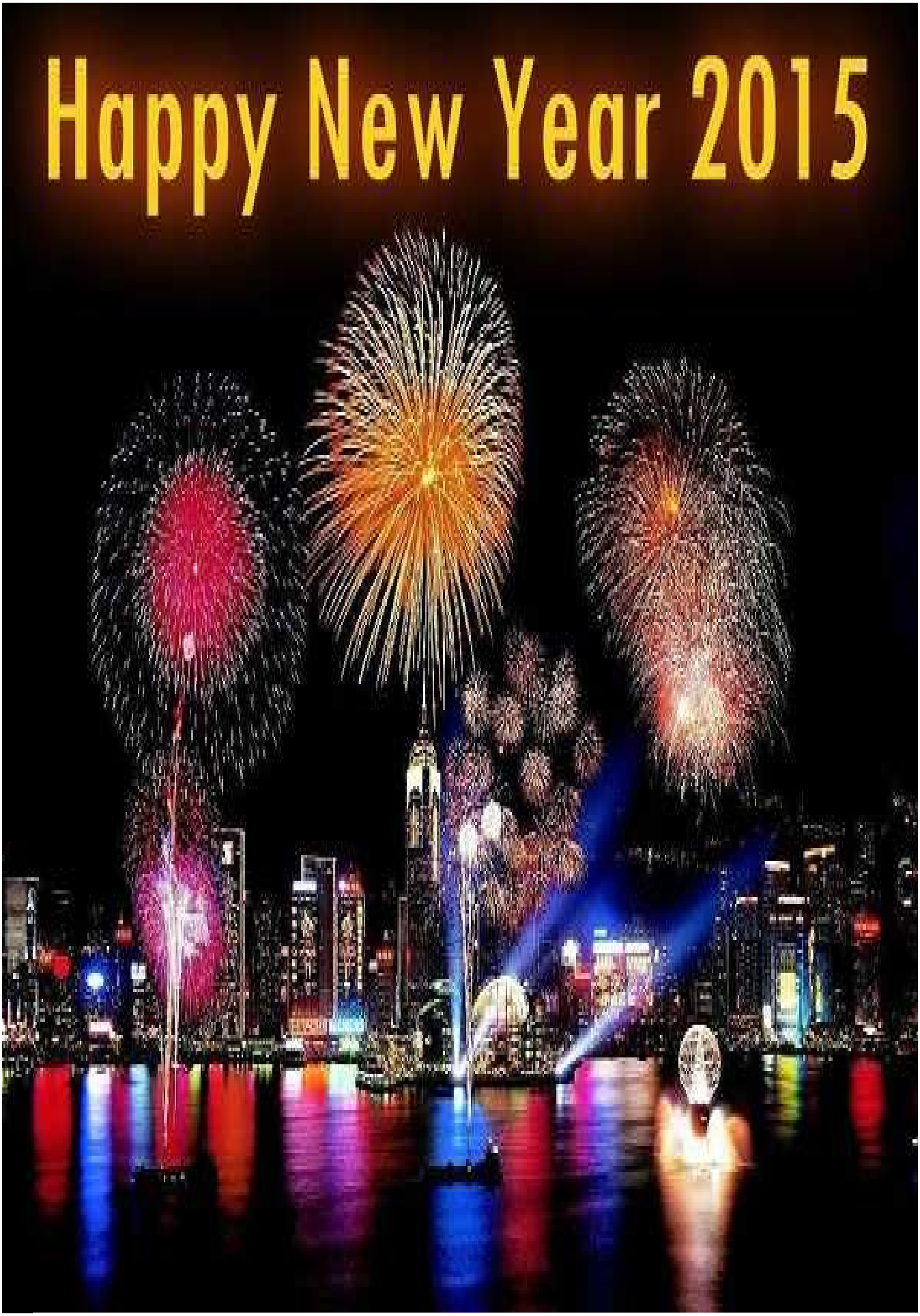
Happy New Year 2015

Never hate people
Who are jealous of you,
Respect their jealousy. They're
People who think you're
Better than them.

Anonymous

CITATIONS

It is settled by Swamy Shraddananda (2) v. State of Karnataka, (2008) 13 SCC 767 that awarding a sentence of life imprisonment means life and not a mere 14 years in jail.
In this case, it was held as follows:
"75. It is now conclusively settled by a catena of decisions that the punishment of imprisonment for life handed down by the Court means a sentence of imprisonment for the convict for the rest of his life. [See the decisions of this Court in Gopal Vinayak Godse v. State of Maharashtra (Constitution Bench), Dalbir Singh v. State of Punjab, Maru Ram v. Union of India (Constitution Bench), Naib Singh v. State of Punjab, Ashok Kumar v. Union of India, Laxman Naskar v. State of W.B., Zahid Hussein v. State of W.B., Kamalanantha v. State of T.N., Mohd. Munna v. Union of India and C.A. Pious v. State of Kerala.]
76. It is equally well settled that Section 57 of the Penal Code does not in any way limit the punishment of imprisonment for life to a term of twenty years. Section 57 is only for calculating fractions of terms of punishment and provides that imprisonment for life shall be reckoned as equivalent to imprisonment for twenty years. (See: Gopal Vinayak Godse and Ashok Kumar). The object and purpose of Section 57 will be clear by simply referring to Sections 65, 116, 119, 129 and 511 of the Penal Code."
2014 Crl.L.J. 4598 (SC) Mohd Arif alias Asfaq vs Registrar, Supreme Court.

The mere fact that PW-7 was also challaned along with Narinder Singh and that he was inimical towards the accused would not result in mechanical rejection of evidence of such a witness; but would only make the court cautious while evaluating the testimony of the witness and we do not find any infirmity in the appreciation of evidence of PW-7 by the courts and relying upon the same as corroborative evidence.
2014 Crl.L.J. 4844 (SC) Dilawar Singh Vs State of Haryana.

In a case like this, even when these two assailants had remained before his face for 90 seconds, these 90 seconds was sufficiently long time to observe them closely and the person encountering such an event would not forget those faces even for a life time, what to talk for 7½ years that have elapsed in between. We would like to support our hypothesis with an anecdote. Once a friend of Einstein, the renowned scientist who invented the theory of relativity, asked him to explain that theory. Mr. Newton explained it in a simple manner for common man's understanding as under: If a boy is sitting with his girlfriend/lover, he would feel the time fly away and 60 minutes would seem as 60 seconds. On the other hand, if a person puts his finger in a hot boiling water, 60 seconds would feel like 60 minutes. This is the theory of relativity.
19. In the present case, the circumstances on which the PW-2 seen the accused persons even for 90 seconds, that was sufficient to absorb their faces. In contrast, things would be different if it is a case of some large get together where two unknown persons have a chance meeting for 90 seconds. Therefore, **we reject the argument of learned counsel for the appellants that PW-2 could not recollect the face of the appellants after 7½ years and thus, he was not telling the truth. We have to keep in mind that PW-2 suffered serious injury because of the shot fired at him by the assailants and seriousness of the injury has resulted into conviction under Section 307 IPC as well. The testimony of an injured witness requires a higher degree of credibility and there have to be strong reasons to describe the same.** The appellants have not been able to demonstrate that the courts below unreasonably reached the conclusion as to the admissibility of the testimony of PW-2. Apart from a very feeble submission that this witness

identified the appellants 7½ years after the incident, their arguments do not address the issue of whether testimony of PW-2 was false. We are, thus, not at all impresses by this argument of the learned counsel for the appellants. Except that PW-3 is not an injured eye- witness, he has also seen the occurrence and the reasons given in support of attaching credibility to the statement of PW-2 would apply in his case as well.

20. We also do not find any merit in the argument of the appellants qua their refusal to participate in the Test Identification Parade. The argument that PW-2 was shown the faces of the appellants in Police Station after their arrest is raised for the first time before us and that too at the hearing of the case. **No reason was given as to why the appellants refused to participate in Test Identification Parade before the trial court at the time of refusal or even in their statements recorded under Section 313 of the Cr.P.C.** It was not an argument raised at the time of hearing before the trial court or even before the High Court when we examine the matter in the aforesaid prospective, the argument advanced by the learned counsel for the appellants to discredit the testimony of PW-1, also pales into insignificance.
2014 Crl.L.J. 4413 Pargan Singh Vs State of Punjab.

the Sessions Court was fully satisfied that the evidence of PW-6 Dr. Langkumer is true and there is no evidence to the contrary that any effort was made by anyone to induce the deceased to make the false statement. Further absence of smell of kerosene oil in the hair of the deceased sent for chemical examination does not render the dying declaration doubtful and unbelievable as held by this Court in the case of State of Rajasthan vs. Kishore – (1996) 8 SCC 217.
2014 Crl.L.J. 4514 Tanua Rabidas Vs State of Assam.

"29. In view of the aforesaid discussion, we sum up and lay down the following principles by which the High Court would be guided in giving adequate treatment to the settlement between the parties and exercising its power under Section 482 of the Code while accepting the settlement and quashing the proceedings or refusing to accept the settlement with direction to continue with the criminal proceedings:

29.1. Power conferred under Section 482 of the Code is to be distinguished from the power which lies in the Court to compound the offences under Section 320 of the Code. No doubt, under Section 482 of the [pic]Code, the High Court has inherent power to quash the criminal proceedings even in those cases which are not compoundable, where the parties have settled the
matter between themselves. However, this power is to be exercised sparingly and with caution.

29.2. When the parties have reached the settlement and on that basis petition for quashing the criminal proceedings is filed, the guiding factor in such cases would be to secure:

(i) ends of justice, or
(ii) to prevent abuse of the process of any court.
While exercising the power the High Court is to form an opinion on either of the aforesaid two objectives.
29.3. Such a power is not to be exercised in those prosecutions which involve heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. Such offences are not private in nature and have a serious impact on society. Similarly, for the offences alleged to
have been committed under special statute like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity are not to be quashed merely on the basis of compromise between the victim and the offender.
29.4. On the other hand, those criminal cases having overwhelmingly and predominantly civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes should be quashed when the parties have resolved their entire disputes among themselves.
29.5. While exercising its powers, the High Court is to examine as to whether the possibility of conviction is remote and bleak and continuation of criminal cases would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal cases.
29.6. Offences under Section 307 IPC would fall in the category of heinous and serious offences and therefore are to be generally treated as crime against the society and not against the individual alone. However, the High Court would not rest its decision merely because there is a mention of Section 307 IPC in the FIR or the charge is framed under this provision. It would be open to the High Court to examine as to whether

incorporation of Section 307 IPC is there for the sake of it or the prosecution has collected sufficient evidence, which if proved, would lead to proving the charge under Section 307 IPC. For this purpose, it would be open to the High Court to go by the nature of injury sustained, whether such injury is inflicted on the vital/delegate parts of the body, nature of weapons used, etc. Medical report in respect of injuries suffered by the victim can generally be the guiding factor. On the basis of this prima facie analysis, the High Court can examine as to whether there is a strong possibility of conviction or the chances of conviction are remote and bleak. In the former case it can refuse to accept the [pic]settlement and quash the criminal proceedings whereas in the latter case it would be permissible for the High Court to accept the plea compounding the offence based on complete settlement between the parties. At this stage, the Court can also be swayed by the fact that the settlement between the parties is going to result in harmony between them which may improve their future relationship.

29.7. While deciding whether to exercise its power under Section 482 of the Code or not, timings of settlement play a crucial role. Those cases where the settlement is arrived at immediately after the alleged commission of offence and the matter is still under investigation, the High Court may be liberal in accepting the settlement to quash the criminal proceedings/investigation. It is because of the reason that at this stage the investigation is still on and even the charge-sheet has not been filed. Likewise, those cases where the charge is framed but the evidence is yet to start or the evidence is still at infancy stage, the High Court can show benevolence in exercising its powers favourably, but after prima facie assessment of the circumstances/material mentioned above. On the other hand, where the prosecution evidence is almost complete or after the conclusion of the vidence the matter is at the stage of argument, normally the High Court should refrain from exercising its power under Section 482 of the Code, as in such cases the trial court would be in a position to decide the case finally on merits and to come to a conclusion as to whether the offence under Section 307 IPC is committed or not. Similarly, in those cases where the conviction is already recorded by the trial court and the matter is at the appellate stage before the High Court, mere compromise between the parties would not be a ground to accept the same resulting in acquittal of the offender who has already been convicted by the trial court. Here charge is proved under Section 307 IPC and conviction is already recorded of a heinous crime and, therefore, there is no question of sparing a convict found guilty of such a crime."

2014 Crl.L.J. 4509 State of M.P. vs Deepak & others

Bharati Tamang Vs. Union of India and Ors. 2014 (3) Crimes 300 (SC) Surinder Singh Nijjar and Fakkir Mohamed Ibrahim Kalifulla, JJ. Evidence obtained as a result of illegal search or seizure Admissibility of-Barring an express or implied prohibition in the Constitution or other law, evidence obtained as a result of illegal search or seizure is not liable to be shut out-**Test of admissibility of evidence lies in relevancy and unless there is an express or necessarily implied prohibition in the constitution or other law, evidence obtained as a result of illegal search or seizure is not liable to be shut out.**

merely because one of the witnesses to the confessional statement did not support the confession in its entirety, the entire confession should be brushed aside as unreliable even though independent witness like the Village Administrative Officer had supported the recording of conviction. However, we have further taken note of the fact that the conviction of the appellants is not based merely on the confessional statement but also on other substantial evidence relied upon by the prosecution viz. Recovery of the body, post-mortem report matching with confessional statement, evidence of other independent witness who corroborated the recording of confessional statement in their presence and thus do not create doubt about the credibility of the prosecution case so as to discard the same.

Baskaran & Another Vs State of Tamilnadu 2014(2) ALD(Crl) 716 (SC).

It was submitted that the test identification parade were delayed and the identification of these accused by the witness in Court was not reliable.

There is no evidence on record to show that the child witness had an opportunity to see and study the features of the accused between their arrest and test identification parade to enable a tutored identification. In any case, the period between the arrest and the identification parade was not large enough to constitute inordinate delay.

the child witness has been found to be reliable. His presence is not doubted, since he resided with the family for whom he worked. He had no axe to grind against any of the accused. He became the unfortunate witness of a gruesome murder and fearlessly identified the accused in Court. In his deposition he specified

the details of the part which the accused played with reasonable particularity. In such a situation, it is considered a safe rule of prudence to generally look for corroboration of the sworn testimony of witness in Court as to the identity of the accused who are strangers to them, in the form of earlier identification proceeding, as observed by this Court in Budhsen's case (supra). **This Court has not laid down the requirement in general that all identification parades must be under the supervision of a Magistrate as in Budhsen's case (supra).**
RAJU @ DEVENDRA CHOUBEY vs STATE OF CHHATISGARH 2014 (2) ALD (Crl) 772 (SC)

In Kusum Sharma v Batra Hospital and Medical Research Centre [(2010) 3 SCC 480 = AIR 2010 SC 1050] , the Supreme Court held as follows: 89. On scrutiny of the leading cases of medical negligence both in our country and other countries specially the United Kingdom, some basic principles emerge in dealing with the cases of medical negligence. While deciding whether the medical professional is guilty of medical negligence following well-known principles must be kept in view: I. Negligence is the breach of a duty exercised by omission to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do. II. Negligence is an essential ingredient of the offence. The negligence to be established by the prosecution must be culpable or gross and not the negligence merely based upon an error of judgment. III. The medical professional is expected to bring a reasonable degree of skill and knowledge and must exercise a reasonable degree of care. Neither the very highest nor a very low degree of care and competence judged in the light of the particular circumstances of each case is what the law requires. IV. A medical practitioner would be liable only where his conduct fell below that of the standards of a reasonably competent practitioner in his field.V. In the realm of diagnosis and treatment there is scope for genuine difference of opinion and one professional doctor is clearly not negligent merely because his conclusion differs from that of other professional doctor. VI. The medical professional is often called upon to adopt a procedure which involves higher element of risk, but which he honestly believes as providing greater chances of success for the patient rather than a procedure involving lesser risk but higher chances of failure. Just because a professional looking to the gravity of illness has taken higher element of risk to redeem the patient out of his/her suffering which did not yield the desired result may not amount to negligence. VII. Negligence cannot be attributed to a doctor so long as he performs his duties with reasonable skill and competence. Merely because the doctor chooses one course of action in preference to the other one available, he would not be liable if the course of action chosen by him was acceptable to the medical profession. VIII. It would not be conducive to the efficiency of the medical profession if no doctor could administer medicine without a halter round his neck. IX. It is our bounden duty and obligation of the civil society to ensure that the medical professionals are not unnecessarily harassed or humiliated so that they can perform their professional duties without fear and apprehension. X. The medical practitioners at times also have to be saved from such a class of complainants who use criminal process as a tool for pressurising the medical professionals/hospitals, particularly private hospitals or clinics for extracting uncalled for compensation. Such malicious proceedings deserve to be discarded against the medical practitioners. XI. The medical professionals are entitled to get protection so long as they perform their duties with reasonable skill and competence and in the interest of the patients. The interest and welfare of the patients have to be paramount for the medical professionals.
90. In our considered view, the aforementioned principles must be kept in view while deciding the cases of medical negligence. We should not be understood to have held that doctors can never be prosecuted for medical negligence. As long as the doctors have performed their duties and exercised an ordinary degree of professional skill and competence, they cannot be held guilty of medical negligence. It is imperative that the doctors must be able to perform their professional duties with free mind.
Dr. Dommati Siva Kumar Vs State. 2014 (2) ALD (Crl) 866

When the trial court declines to exercise its discretion U/s.31 of Cr.P.C. in issuing direction for concurrent running of sentences, normally the appellate court will not interfere, unless the refusal to exercise such discretion is shown to be arbitrary (or) unreasonable.**O.M.Cherian @ Thankachan V. State of Kerala & ors 2014 STPL (Web) 730 (SC) dt.11-11-14.**

Merely because of defective questioning u/s.313 Cr.P.C. it cannot be inferred that any prejudice had been caused to the accused, even assuming that some incriminating circumstances in the prosecution case has been left out.**Nar Singh V. State of Haryana 2014 STPL (Web) 729 (SC) dt.11-11-14**

Inherent jurisdiction to quash FIR not to be exercised unless allegations therein even if taken to be correct on their face value, disclosed no cognizable offence.
If allegations in FIR disclose commission of offence court shall not go beyond the same and quash it by holding absence of any mens rea or actus reus, and
Allegations if disclose civil dispute, that by itself no ground to hold that criminal proceedings should not be allowed to continue. **Mosiruddin Munshi Vs. M.D.Siraj 2014 (3) ALT (Crl.) 334 (SC)**

Convict sentenced to life imprisonment is bound to serve remainder of his life in prison, unless sentence is remitted by appropriate Government in terms of S.55, 433 and 433A of Cr.P.C.**Duryodhan Rout V. State of Orissa 2014 (3) ALT (Crl.) 348 (SC)**

Dying Declaration does not require any corroboration, as long as it inspires confidence in the mind of court and that it is free from any form of tutoring. **Umakanth & anr V. State of Chatishgarh 2014 (3) ALT (Crl.) 383 (SC)**

Provisions of Limitation Act are not applicable to the appeals in Excise Act. **Y.Krishna Kishore V. Government of Andhra Pradesh rep. by its Secretary, Department of Prohibition & Excise & ors 2014 (3) ALT (Crl.) 187 (AP)**

law does not discredit the dying declaration, simply because the person from whom it was recorded is not capable of putting his thumb impression, particularly when the statement is recorded by the Magistrate. **2014 Crl.L.J. NOC 535 (A.P) Veede Jaripati Mallikarjuna Vs State of A.P.**

As per the Apex Court's guidelines in Mhetre's case (referred supra) as part of the conditions of the bail besides property title deeds required to be deposited including bank accounts and deposit of even the passport of accused before the learned Magistrate though there are expressions in Sure Nanda v. Central Bureau of Investigation [2] and in Gian Singh v. State of Rajasthan [3] saying that the investigating officials have no right of their own to impound the passport, but for the passport officials under the provisions of the Indian Passport Act, 1967. Here, the impounding the passport by investigating officers is entirely different from seeking to deposit the passport by the Court as one of the conditions of the bail to see that the accused shall not jump the bail or form the clutches of the Justice by using or misusing the passport even there is a bar under Section 6 (2) (f) of the Indian Passport Act, 1967 of any person who is accused of crime in India, passport cannot be obtained and travel beyond the country without prior permission and there is a circular of the Central Government in GSR 570E, dated 25.08.1993 as per Section 22 of the Passport Act issued by the Ministry of External Affairs in the publicinterest that by said notification exempting the citizens of India against whom criminal proceedings are pending in India without facing any hardship for their requirement to travel abroad, a permission of the concerned Magistrate, where the case is pending for travel abroad.
in the event of the petitioner's application as contemplated by the Circular instructions of the Union of India in GSR 570E dated 25.08.1993 relaxing and modifying to some extent, the bar under Section 6 (2) (f) of the Indian Passport Act within its power under Section 22 of the Indian Passport Act to permit to have travel document pursuant to passport from the authorities concerned for integram period till end of December, 2014, and in such event, when the passport is required for such travel permit to return the passport subject to undertaking to re-deposit and subject to execution of a bond for Rs.2,00,000/- (Rupees Two Lakhs only) with affidavit undertaking of re-deposit the passport and return back to India and on failure to forfeit the said bond amount as one of the modes of penalty contemplated by section 53 (5) of Indian Penal Code.
Abdul Gaffur Khan vs State of Telangana 2014 (2)ALD (Crl) 807.

Dying Declaration does not require any corroboration, as long as it inspires confidence in the mind of court and that it is free from any form of tutoring.**Umakanth & anr V. State of Chatishgarh 2014 (3) ALT (Crl.) 383 (SC)**

Provisions of Limitation Act are not applicable to the appeals in Excise Act. **Y.Krishna Kishore V. Government of Andhra Pradesh rep. by its Secretary, Department of Prohibition & Excise & ors 2014 (3) ALT (Crl.) 187 (AP)**

Transplantation of Human Organ and Tissue act is not applicable in State of Andhra Pradesh.
2014 Crl.L.J. 4433 (Ori)

50. Maintenance of peace and public order, prevention of crime and investigation of cognizable offences are functions which Police Officers are, statutorily, obligated to discharge. While Section 154(1) Cr.P.C confers power, and casts a duty, on the police officer to register a cognizable offence, Section 155 Cr. P.C. enables a police officer to make an entry in the appropriate register, regarding information relating to a non-cognizable offence. He cannot investigate a non-cognizable offence without the order of the Magistrate. As a necessary corollary, any attempt by a police officer to investigate a complaint, which does not contain allegations of the commission of a cognizable offence, without permission from the Magistrate would violate Section 155(2) Cr. P.C and is, ex facie, illegal. There is no presumption in law that every rift in human relations would lead to a civil dispute, and a civil dispute is likely to result in clashes resulting in offences against the human body. A Police Officer would not be justified in saying that he/she is examining a complaint which, ex facie, has the trappings of a civil dispute. (S . Masthan Saheb 11). Even if a civil dispute has a criminal element, which falls within the ambit of a "cognizable offence", with the potential of a law and order problem posing threat to the society at large, a Police Officer can take up investigation only after registering the complaint under Section 154 Cr.P.C. (Lakshmi @ Lakshmamma v. Commissioner of Police [15]).
51. The function of resolving "civil disputes" is entrusted to the judiciary. Police officers lack jurisdiction to interfere in civil/property disputes between two citizens. Even in criminal case, their role is limited to the registration of complaints and causing investigation. The power to adjudge whether or not an accused is guilty of having committed a criminal offence, and to convict and sentence him therefor, is vested exclusively in the judicial branch of the State. Judicial power cannot be exercised by agencies outside the judicial orbit and, where there is no legislative foundation for exercise of judicial power by a forum, it has no legal capacity to entertain requests for adjudication. Judicial power is a facet of sovereign power and can be conferred only by a Statute or by a Statutory instrument. It cannot be assumed suo motu. No authority may exercise adjudicatory powers absent a conferment of such powers by Statutory instruments. The coercive power of the State may not be employed to adjudicate disputes. (M/s. Janathaeem Industries Ltd., rep., by its Public Relations Officer M.S. Ganesan, Vijayawada. v. The District Collector, Krishna district at Vijayawada [16]).
52. While the inordinate delay, in resolution of civil disputes before Civil Courts of competent jurisdiction, is undoubtedly a cause of concern that does not justify Police Officers exercising powers, conferred exclusively of the judicial branch of the State, to adjudicate civil disputes. While the need to strengthen judicial institutions, and to reduce the inordinate delay in disposal of Civil Suits, cannot be over emphasised, the highhanded acts of police officers in seeking to resolve civil disputes, that too in the precincts of a police station, must also be sternly dealt with. **Just as Courts would not undertake investigation of criminal offences, as these are matters in the exclusive realm of the investigating agency, the powers conferred and the duties cast upon Police Officers, under the Criminal Procedure Code, is only to register complaints regarding cognizable offences and investigate thereinto; and not adjudicate even criminal cases, much less resort tosettlement of civil disputes.**
53. Police officers should not usurp, or even seem to usurp, judicial functions of adjudication or to summon and force persons to resolve their inter-se civil disputes in a particular manner under the guise of "family counselling". In the present case the 3 rd respondent has, in effect, donned the robes of a judge in adjudicating property disputes between the petitioner and the 5 th respondent.
18. The question which necessitates examination is whether the petitioner could have been, orally and forcibly, summoned to his office by the 3 rd respondent even before registration of the complaint under Section 154 CrPC. The first information report is either given in writing or is reduced to writing. The Code contemplates two kinds of FIRs: the duly signed FIR under Section 154(1) is by the informant to the officer concerned at the police station. The second kind of FIR is one which is registered by the police officer himself on the basis of information received, or other than by way of an informant [Section 157(1)]. This information must also be duly recorded, and a copy should be sent to the Magistrate forthwith. (Lalita Kumari 1). The sine qua non for recording an FIR is that there must be an information, and that information must disclose a cognizable offence. If information disclosing a cognizable offence, satisfying the requirements of Section 154(1) Cr.P.C, is laid before him, the police officer has no option but to enter the substance thereof in the prescribed form i.e., to register a case on the basis of such information. (State of Haryana v. Bhajan Lal [2]). In registering an FIR the

consent, or otherwise, of the complainant is irrelevant. For "cognizable offences" a duty is cast upon the police to register an FIR, and conduct investigation. The legislative intent of Section 154(1) CrPC is to ensure that the information, relating to the commission of a cognizable offence, is promptly registered and investigated in accordance with law. (Lalita Kumari 1). The context in which the word "shall" appears in Section 154(1) CrPC, the object for which it has been used and the consequences that will follow from the infringement of the direction to register FIRs, show that the word "shall", used in Section 154(1), is "mandatory" in character. Section 154(1) of the Code places an unequivocal duty upon the police officer, in charge of a police station,to register an FIR on receipt of information that a cognizable offence has been committed, and does not confer any discretion on him to embark upon a preliminary inquiry prior to the registration of the FIR. (Lalita Kumari 1 ; Anju Chaudhary v. State of Uttar Pradesh [3] ; State of Uttar Pradesh v. Bhagwant Kishore Joshi [4]). 19. The requirement of Section 154 Cr.P.C is only that the report must disclose the commission of a cognizable offence, and that is sufficient to set the investigating machinery in motion. The intention of the legislature, by the insertion of sub-section (3) of Section 154, is to ensure that no information of the commission of a cognizable offence is ignored or is not acted upon. The obligation to register an FIR has inherent advantages. (a) It is the first step to "access to justice" for a victim; (b) It upholds the "rule of law" in as much as the ordinary person brings forth the commission of a cognizable crime to the knowledge of the State; (c) It also facilitates swift investigation and sometimes even prevention of the crime. In both cases, it only effectuates the regime of law; and (d) It leads to less manipulation in criminal cases and lessens incidents of "antedated" FIR or deliberately delayed FIR. The object sought to be achieved by registering the earliest information as an FIR is, inter alia, two fold: one, that the criminal process is set into motion and is well documented from the very start; and second, that the earliest information, received in relation to the commission of a cognizable offence, is recorded so that there cannot be any embellishment, etc. later. The FIR is registered in a book called the FIR book or the FIR register. A copy of each FIR is sent to the superior officers and to the concerned Judicial Magistrate. The signature of the complainant is obtained in the FIR book as and when a complaint is given at the police station. As each FIR has a unique annual number, it is possible for supervisory police officers and the courts, wherever necessary, to exercise strict control and keep track of registration of FIRs. The underpinnings of compulsory registration of the FIR is notonly to ensure transparency in the criminal justice-delivery system but also to ensure "judicial oversight". Section 157(1) deploys the word "forthwith". Any information received under Section 154(1), or otherwise, has to be promptly informed, in the form of a report, to the Magistrate. The commission of a cognizable offence is not only brought to the knowledge of the investigating agency but also to the subordinate judiciary. (Lalita Kumari 1).

G.B.C.Raj Gopa Vs State of A.P. 2014 (2) ALD (Crl) 810.

THE PRE-NATAL DIAGNOSTIC TECHNIQUES (PROHIBITION OF SEX-SECTION) ACT, 1994

27. Offence to be cognizable, non-bailable and non-compoundable.

23. Offences and Penalties : Any medical geneticist, gynaecologist, registered medical practitioner or any person who owns a Genetic Counselling Centre, a Genetic Laboratory or a Genetic Clinic or is employed therein and renders his professional or technical services there, whether on an honorary basis or other wise and who contravenes any of the provisions of the Act or rules made thereunder shall be punishable with imprisonment upto three years and with fine upto ten thousand rupees and on any subsequent conviction, with imprisonment upto five years and with fine upto fifty thousand rupees. The name of the registered medical practitioner shall be reported to the State Medical Council concerned for taking necessary action. If any person seeks aid for sex selection or for conducting pre-natal diagnostic techniques or any pregnant woman, he shall be punishable with imprisonment upto three years and with fine upto fifty thousand rupees for the first offence and for any subsequent offence, with imprisonment upto five years and with fine upto one lakh rupees.

24. Presumption in the case of conduct of pre-natal diagnostic techniques.—Notwithstanding anything contained in the Indian Evidence Act, 1872 (1 of 1872), the court shall presume unless the contrary is proved that the pregnant woman was compelled by her husband or any other relative, as the case may be, to undergo pre-natal diagnostic technique for the purposes other than those specified in sub-section (2) of section 4 and such person shall be liable for abetment of offence under sub-section (3) of section 23 and shall be punishable for the offence specified under that section.

25. Penalty for contravention of the provisions of the Act or rules for which no specific punishment is provided.—Whoever contravenes any of the provisions of this Act or any rules made thereunder, for which no penalty has been elsewhere provided in this Act, shall be punishable with imprisonment for a term which may extend to three months or with fine, which may extend to one thousand rupees or with both and in the case of continuing contravention with an additional fine which may extend to five hundred rupees for every day during which such contravention continues after conviction for the first such contravention.

28. Cognizance of offences.—(1) No court shall take cognizance of an offence under this Act except on a complaint made by—

(a) the Appropriate Authority concerned, or any officer authorised in this behalf by the Central Government or State Government, as the case may be, or the Appropriate Authority; or

(b) a person who has given notice of not less than [1][fifteen days] in the manner prescribed, to the Appropriate Authority, of the alleged offence and of his intention to make a complaint to the court.

Explanation.—For the purpose of this clause,"person" includes a social organisation.

(2) No court other than that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act.

(3) Where a complaint has been made under clause (b) of sub-section (1), the court may, on demand by such person, direct the Appropriate Authority to make available copies of the relevant records in its possession to such person.

ON A LIGHTER VEIN

The hospital's consulting dietician was giving a lecture to several community nurses from the Southampton area of Hampshire.

'The rubbish we put into our stomachs and consume should have killed most of us sitting here, years ago. Red meat is terrible. Fizzy drinks attack your stomach lining. Chinese food is loaded with msg. Vegetables can be disastrous because of fertilisers and pesticides and none of us realises the long-term damage being done by the rotten bacteria in our drinking water. However, there is one food that is incredibly dangerous and we all have, or will, eat it at some time in our lives.

Now, is anyone here able to tell me what food it is that causes the most grief and suffering for years after eating it?'

A 65-year-old nursing sister sitting in the front row stood up and said, 'Wedding cake.'

Experts Speak

Q: When giving or taking dowry is an offence under The Dowry Prohibition Act, 1961, can the (complainant's parents) bride's parents be prosecuted basing on the statement made in the complaint or their161 Cr.P.C. statements?

Ans: No, in view of the proviso to Sec 7(2) of the act which states that

"Notwithstanding anything contained in any law for the time being in force, a statement made by the person aggrieved by the offence shall not subject such person to a prosecution under this Act."

NEWS

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