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Introduction: Sentencing Policy in India

Justice V. Gopal Gowada

Sentence: General Concept:

The term sentence is defined as, "the judicial determination of the punishment to be inflicted on a convicted criminal".[1] Every criminal trial is essentially divided into two stages, the conviction, and sentencing. Conviction is where the guilt of the accused is determined. The sentencing thus, comes at a stage after the person has been found guilty. The stage of sentencing and conviction are thus two different stages. This was held in the case of *Standard Charted Bank v. Directorate of Enforcement.*[2] It was also held in the case of *State of Punjab v. Prem Sagar.*[3]

> *"A sentence is a judgment on conviction of a crime. It is resorted to after a person is convicted of the offence. It is the ultimate goal of any justice delivery system. The Parliament, however, in providing for a hearing on sentence, as would appear from Sub-section (2) of section 235, Sub-section (2) of Section 248, Section 325 as also Sections 360 and 361 of the Code of Criminal Procedure, has laid down certain principles. The said provisions lay down the principle that the court in awarding the sentence must take into consideration a large number of relevant factors; sociological backdrop of the accused being one of them."*[4]

Under the Indian Penal Code[5], there are six types of punishments which can be imposed, in the order of harshness are:

1) Death Penalty
2) Life Imprisonment
3) Rigorous Imprisonment
4) Simple Imprisonment
5) Forfeiture of Property
6) Fine

Importance of the stage of Sentencing under Indian Law:

The fact that sentencing is an equally important stage can be derived from the provisions of s. 235(2) and s. 248(2) of the Code of Criminal Procedure, which mandates that the accused found guilty has to be heard on sentence, and the sentence passed has to be in accordance with law. These provisions were not in the old code, under which there was no separate stage for arguments on sentencing. It was observed in the case of *Santa Singh v. State of Punjab*[6] that:

[1] Ramanatha Aiyer, 'Advanced Law Lexicon', Vol. 43rd edn, Lexis Nexis Butter worths Wadhwa Nagpur, Delhi, 2009, p. 4294.
[2] (2005) 4 SCC 530, at para 43.
[3] (2008) 7 SCC 550.
[4] Ibid, at para 7.
[5] S. 53, Indian Penal Code
[6] (1976) 4 SCC 190.

> *"Sentencing is an important stage in the process of administration of criminal justice as important as the adjudication of guilt and it should not be consigned to a subsidiary position as if it were a matter of not much consequences.."*[7]

The fact that the accused must mandatorily be head on the question of sentence, was reiterated in the case of Allaudin Mian v. State of Bihar[8] in the following terms:

> *"It is a fundamental requirement of fairplay that the accused who was hitherto concentrating on the prosecution evidence on the question of guilt should, on being found guilty, be asked if he has anything to say or any evidence to tender on the question of sentence. This is all the more necessary since the Courts are generally required to make the choice from a wide range of discretion in the matter of sentencing. To assist the Court in determining the correct sentence to be imposed and legislature introduced Sub-section (2) to Section 235. The said provision therefore satisfies a dual purpose; it satisfies the rule of natural justice by according to the accused an opportunity of being heard on the question of sentence and at the same time helps the Court to choose the sentence to be awarded. Since the provision is intended to give the accused an opportunity to place before the Court all the relevant material having a bearing on the question of sentence there can be no doubt that the provision is salutary and must be strictly followed. It is clearly mandatory and should not be treated as a mere formality."*[9]

In the same case, the court also went on to state the importance of the arguments on sentencing, and held that not providing a person who has been convicted with ample chance to argue on the matter of sentencing, amounts to a violation of the principle of natural justice.

> *"If the choice is made, as in this case, without giving the accused an effective and real opportunity to place his antecedents, social and economic background, mitigating and extenuating circumstances, etc., before the Court, the Court's decision on the sentence would be vulnerable… The sentencing court must approach the question seriously and must endeavor to see that all the relevant facts and circumstances bearing on the question of sentence are brought on record. Only after giving due weight to the mitigating as well as the aggravating circumstances placed before it, it must pronounce the sentence."*[10]

Why is the question of Sentence so Important?

So far, we have understood what is sentencing and the position on sentencing hearing in the Indian context. The question then arise is, why is the question of sentence so important. It was explained in the case of Alister Anthony Pareira v. State of Maharashtra[11]

"Sentencing is an important task in the matter of crime. One of the prime objectives of the criminal law is imposition of appropriate, adequate, just and proportionate sentence commensurate with the nature and gravity of crime and the manner in which the crime is done. There is no straitjacket formula for sentencing an Accused on proof of crime. The courts have evolved certain principle: the twin objective of the sentencing policy is deterrence and correction. What sentence would meet the

[7] Ibid, at para 3.
[8] (1989) 2 SCC 5.
[9] Ibid, at para 10.
[10] Ibid.
[11] (2012) 2 SCC 648

ends of justice depends on the facts and circumstances of each case and the court must keep in mind the gravity of the crime, motive for the crime, nature of the offence and all other attendant circumstances."[12]

In the case of *State of Uttar Pradesh v. Virendra Prasad*[13] it was held that: the most relevant determinative factor of sentencing is *proportionality between crime and punishment keeping in mind the social interest and consciousness of the society.*[14]

In the case of **Modi Ram v. State of U.P**[15] the purpose of a just sentence was explained as:

> *"…The question of sentence is always a difficult and complex question. The accused persons found guilty may be hardened or professional criminals having taken to the life of crime since long, or they may have taken to crime only recently or may have committed the crime under the influence of bad company of again commission of a solitary offence may be due to provocative wrongful action seriously injuring the feelings and sentiments of the accused. Human nature being what it is men are at times moved by the impulse of the moment rather than by rational, cool, calculated estimate of the future good and evil. At such moments they are ordinarily inclined to be ready to face any future evil falling short of the inevitable. Keeping in view the broad object of punishment of criminals by courts in all progressive civilized societies true dictates of justice seem to us to demand that all the attending relevant circumstances should be taken into account for determining the proper and just sentence. The sentence should bring home to the guilty party the consciousness that the offence committed by him was against his own interests of the society of which he happens to be a member."*[16]

Apart from the principle of proportionality, what also has to be borne in mind that not only must justice be done; it must also seem to have been done. Thus, over the years, the court has in various cases adopted the policy that the punishment must not just punish the criminal, but also provide an effective deterrent to the society as a whole.

This was held in the case of State of U.P. v. Shri Kishan[17]:

> *"The Court will be failing in its duty if appropriate punishment is not awarded for a crime which has been committed not only against the individual victim but also against the society to which the criminal and victim belong. The punishment to be awarded for a crime must not be irrelevant but it should conform to and be consistent with the atrocity and brutality with which the crime has been perpetrated, the enormity of the crime warranting public abhorrence and it should 'respond to the society's cry for justice against the criminal."*[18]

The challenge in forming a uniform Sentencing policy:

The fact that a uniform sentencing policy is nearly impossible to formulate, is a fact that has been long recognized by the court. As far back as 1972, it was held in the case of *Jagmohan v. State of U.P.*[19],

[12] Ibid, at para 84.
[13] (2004) 9 SCC 37.
[14] Ibid, at para 23.
[15] (1972) 2 SCC 630.
[16] Ibid, at para no. 4.
[17] (2005) 10 SCC 420
[18] Ibid, at para 9.
[19] (1973) 1 SCC 20.

wherein the court went on to state that the lack of uniformity is infact the best safeguard for the accused.

> *"The impossibility of laying down standards is at the very core of the criminal law as administered in Indian which invests the judges with a very wide discretion in the matter of fixing the degree of punishment… The exercise of Judicial discretion on well-recognized principles is, in the final analysis, the safeguard for the accused."*[20]

The evolution of the Sentencing Policy in India:

1. Death Penalty:

1.1 The difference between the 'old' and 'new' Code:

The Code of Criminal Procedure of 1888, did not contain any separate provisions with respect to the arguments on sentencing. Specifically in relation to the cases of death sentence, in terms of s. 375(2) of the Code, the death sentence had to be awarded in every case of conviction in case of murder, and Life Imprisonment could be given by the judge, if he recorded his reasons in writing. Not much scope for judicial discretion, thus, emerged at this stage.

The Code of Criminal Procedure, 1973, was a drastic departure from its predecessor. Under this, it was now mandatory to hear the accused on the question of sentence after he had been declared guilty. Further, the more radical departure it made from the previous code was as far as the punishment in case of murder was concerned. It now made Life Imprisonment the "rule", and death penalty, the exception, in the sense that the judges had to now record their reasons in writing for awarding death penalty to a convict.

1.2 The case of s. 303, Indian Penal Code:

The s. 303 of the IPC, mandated that anyone who was undergoing a life imprisonment committed a murder, would be a given a mandatory death sentence.

Holding the section to be unconstitutional in the case of *Mithu v. State of Punjab*[21], the opinion of the court was that:

> "Thus there is no justification for prescribing a mandatory sentence of death for the offence of murder committed inside or outside the prison by a person who is under the sentence of life imprisonment. A standardized mandatory sentence, and that too in the from of a sentence of death, fails to take into account the facts and circumstances of each particular case. It is those facts and circumstances which constitute a safe guideline for determining the question in each individual case."[22]

1.3 The Focus on the 'Crime and the Criminal':

The earliest two landmark decisions on the sentencing policy are the cases of *Jagmohan v. State of U.P and Bachan Singh v. State of Punjab*.

[20] Ibid, at para 26.
[21] (1983) 2 SCC 277
[22] Ibid, at para 16.

In **Jagmohan**[23], recognizing the power and the discretion placed in the hands of the judges, the court observed that:

> *"The structure of our criminal law which is principally contained in the Indian Penal Code and the Criminal Procedure Code underlines the policy that when the Legislature has defined an offence with sufficient clarity and prescribed the maximum punishment therefore, a wide discretion in the matter of fixing the degree of punishment should be allowed to the judge."*[24]

The court also observed that all that could be reasonable done by the Legislature is to tell the Judges that between the maximum and minimum prescribed for an offence. They should, on balancing the aggravating and mitigating circumstances as disclosed in the case, judicially decide what would be the appropriate sentence.[25]

In the case of *Bachan Singh*[26]**,** a bench of 5 judges opined that the judges cannot be the guardians of the will of people, and they must not give judgments based on the popular public perception:

> *"..When judges, acting individually or collectively, in their benign anxiety to do what they think is morally good for the people, take upon themselves, the responsibility of setting down social norms of conduct. There is every danger, despite their effort to make a rational guess of the notions of right and wrong prevailing in the community at large and despite their intention to abide by the dictates of mere reason, that they might write their own peculiar view or personal predilection into the law, sincerely mistaking that changeling for what they perceive to be the community ethic. The perception of 'community' standards or ethics may vary from Judge to Judge. In this sensitive, highly controversial area of death penalty, with all its complexity, vast implications and manifold ramifications, even all the Judges sitting cloistered in this Court and acting unanimously, cannot assume the role which properly belongs to the chosen representatives of the people in Parliament, Particularly when Judges have no divining rod to divine accurately the will of the people."*[27]

In the case of *Ramashraya Chakravarti v. State of Maharashtra*[28], the court had earlier held the view that:

> *"In judging the adequacy of sentence the nature of the offence, the circumstances of its commission, the age and character of the offender, injury to individuals or to society, effect of the punishment on the offender, eye to correction and reformation of the offender, are some amongst many other factor which would be ordinarily taken into consideration by courts."*[29]

1.4 The Shift to focus on the Criminal:

This is where the problem started. The subsequent judgments, in their attempt to crystallize the guidelines laid down in *Bachan Singh***,** in fact went against the very spirit of the judgment, and ended up shifting the focus from the Crime, to the Criminal.

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[23] (1973) 1 SCC 20.
[24] Ibid, at para 21.
[25] Ibid.
[26] (1980) 2 SCC 684.
[27] Ibid, at para 175.
[28] (1976) 1 SCC 281.
[29] Ibid, at para 6.

The case of *Macchi Shing v. State of Punjab*[30], which was a decision rendered by a three judge bench, laid down a few categories, which could help the courts in deciding whether to award the death penalty to a convict. These categories[31] were:

1) Manner of Commission of Murder.
2) Motive for Commission of Murder
3) Anti Social or abhorrent nature of crime.
4) Magnitude of Crime.
5) Personality of Victim of murder

This categorization, and the reasoning adopted by the court, denoted a significant departure from the reasoning given in the case of *Bachan Singh*. The court here, shifted the focus completely to the circumstance of the crime, and did not leave any scope for the courts to ponder over the situation of the convict, or the scope of his reform.

In the case of *Dhanonjoy Chatterjee v. West Bengal*[32], it was held that the courts must not only keep in view the rights of the criminal but also the rights of the victim of crime and the society at large while considering the imposition of appropriate punishment.

In another case, that of *Kunal Majumdar v. State of Rajasthan*[33] the court opined that the factors which need to be taken into account while sentencing are:

> *"Nature and manner in which the offence was committed, the mens rea if any of the culprit, the plight of the victim as noticed by the trial court, the diabolic manner in which the offence was committed, the mens rea if any of the culprit, the plight of the victim as noticed by the trial court, the diabolic in which the offence was said to have been performed, past history of the culprit, magnitude of the crime etc."*[34]

In the case of *Rajiv v. State of Maharashtra*[35], the court went a step further to hold that it is just the crime, and not the situation of the criminal which should be taken into consideration while deciding whether or not to award death penalty to the convict.

> *"It is the nature and gravity of the crime but not the criminal, which are germane for consideration of appropriate punishment in a criminal trial. The Court will be failing in its duty if appropriate punishment is not awarded for a crime which has been committed not only against the individual victim but also against the society to which the criminal and victim belong. The punishment to be awarded for a crime must not be irrelevant but it should conform to end be consistent with the atrocity and brutality with which the crime has been perpetrated, the enormity of the crime warranting public abhorrence and it should respond to the society's cry for justice against the criminals."*[36]

[30] 1983 SCC (3) 470
[31] Ibid, at para nos. 34-37
[32] (1994) 2 SCC 220 at para.
[33] (2012) 9 SCC 320
[34] Ibid, at para 18.
[35] (1996) 2 SCC 175.
[36] Ibid, at para 24.

[This was subsequently held per incuriam in the case of *Santosh Kumar Bariyar vs. State of Maharashtra*[37]**,** for being in direct contravention with the principles laid down in a higher bench decision of *Bachan Singh*]

1.4 The recognition of the problem of non uniformity:

Gradually, over the years, the court has started recognizing this dichotomy that exists among the various decisions rendered by the Supreme Court.

In the case of *Santosh Kumar Bariyar v. State of Maharashtra* [38] the court examined in some detail the case of **Bachan Singh**, the reasoning given therein, and how the subsequent decisions by the court did not take into consideration the factors to be considered while awarding the death penalty. The court examined the principle of reformation laid down in *Bachan Singh*, and held that subsequent decisions, which focus on the brutality of the crime, rather than scope of reformation of the convict are violative of the spirit of the judgment of Bachan Singh. It was opined that:

> "We have previously noted that the Judicial principles for imposition of death penalty are far from being uniform. Without going into the merits and demerits of such discretion and subjectivity, we must nevertheless reiterate the basic principle, stated repeatedly by this Court, that life imprisonment is the rule and death penalty an exception. Each case must therefore be analyzed and the appropriateness of punishment determined on a case-by-case basis with death sentence not to be awarded save in the 'rarest of rare' case where reform is not possible."[39]

Along the same lines, was the case of *Rajesh Kumar v. State* [40], wherein the court held that the sentencing policy of a state reflect the progress of a maturing democracy:

> *"…These changes in the sentencing structure reflect the evolving standards of decency that mark the progress of a maturing democracy and which are in accord with the concept of dignity of the individual one of the core values in our preamble to the constitution. In a way these changes signify a paradigm shift in our jurisprudence with the gradual transition of our legal regime from the rule of law to the 'due process of law'…"*[41]

The lament of the non uniform sentencing policy was also observed in the case of *Swamy Shraddananda @ Murali Manohar Mishra v. State of Karnataka*[42]

> *"… Coupled with the deficiency of the Criminal Justice System is the lack of consistency in the sentencing process even by this Court. It is noted above that Bachan Singh laid down the principle of the rarest of rare cases. Machhi Singh for practical application crystallized the principle into five definite categories of cases of murder and in doing so also considerably enlarged the scope for imposing death penalty. But the unfortunate reality is that in later*

[37] (2009) 6 SCC 498, at para 63.
[38] Ibid.
[39] Ibid, at para 172
[40] (2011) 13 SCC 706.
[41] Ibid, at para 53.
[42] (2008) 13 SCC 767

decisions neither the rarest of rare cases principle nor the Macchi Singh categories were followed uniformly and consistently."[43]

The essential problem in evolving a uniform sentencing policy remains that this is very judge centric, and that as long as there is discretion provided to the judges, uniformity will be difficult to achieve.

Harbans Singh v. State of UP[44] is a fit case to explain this principle. The three accused namely Jeeta Singh, Kashmira Singh and Harbans Singh were sentenced to death by Allahabad High Court by a judgment and order dated 20 August 1975 for playing equal role in jointly murdering a family of four persons. Each accused preferred to file separate SLPs against the common judgment. In the petition of Kashmira Singh which came up before the Bench comprising Fazal ali, J. and Bhagwati, J., the death sentence was commuted to imprisonment for life. On the other hand the death sentence imposed on Jeeta singh was confirmed by another Bench and was executed. The SLP filed by Harbans Singh was rejected by a Bench composed of Sarkaria and Singhal, JJ. The execution was, however, stayed by a writ petition which came up before Chandrachud, CJ, D.A. Desai and A.P. Sen, JJ. And the case was sent back to President for reconsideration of the clemency petition. The same offence and similar involvement in crime, but the difference in composition of judges brought about a different fate.

2. Number of Years of Imprisonment:

Not just in deciding whether to award a convict death penalty or life imprisonment, the problem of uniformity of sentence also comes, when what has to be decided by the judge is the number of years that the convict has to be sentenced for. This was described by the court in the case of *Ramashraya Chakravarti v. State of Maharashra*[45] *:*

"To adjust the duration of imprisonment to the gravity of a particular offence is not always an easy task. Sentencing involves an element of guessing but often settles down to practice obtaining in a particular court with inevitable differences arising in the context of the times and events in the light of social imperatives. It is always a matter of judicial discretion subject to any mandatory minimum prescribed by law."[46]

The court also went on to quote the philosopher Hegel, who puts the problem very aptly"

"Reason cannot determine, nor can the concept provided any principle whose application could decide whether justice requires for an offence (i) a corporal punishment of forty lashes or thirty-nine, or (ii) a fine of five dollars or four dollars ninety-three, four, etc., cents, or (iii) imprisonment of a year or three hundred and sixty-four, three etc., days , or a year and one, two, or three days. And yet injustice is done at once if there is one lash too many, or one dollar or one cent, one week in prison or one day, too many or too few."[47]

The purpose and justification of a sentence of imprisonment were explained by the court in the case of *Nadella Venkata Krishna Rao v. State of Andhra Pradesh*[48]

[43] Ibid at para 48.
[44] 1982 (2) SCC 101
[45] 1976 (1) SCC 281
[46] Ibid, at para 1.
[47] Ibid, at para 2.
[48] (1978) 1 SCC 208

> *"The accent must therefore be more and more on rehabilitation, rather than retributive punitivity inside the prison. The purpose and justification of a sentence of imprisonment or a similar measure derivative of liberty is ultimately to protect society against crime. This end can only be achieved if the period of imprisonment is used to ensure, so-far as possible, that upon his return to society the offender is not only willing but able to lead a law-abiding and self-supporting life."*[49]

It was further reiterated in the case of *Sevaka Perumal v. State of Tamil Nadu*[50]

> "*The criminal law adheres in general to the principle of proportionality in prescribing liability according to the culpability of each kind of criminal conduct. It ordinarily allows some significant discretion to the Judge in arriving at a sentence in each case, presumably to permit sentences that reflect more subtle considerations of culpability that are raised by the special facts of each case. Judges in essence affirm that punishment ought always to fit the crime; yet in practice sentences are determined largely by other considerations. Sometimes it is the correctional needs of the perpetrator that are offered to justify a sentence. Sometimes the desirability of keeping him out of circulation, and sometimes even the tragic results of his crime. Inevitably these considerations cause a departure from just desert as the basis of punishment and create cases of apparent injustice that are serious and widespread."*

The court also went on to state that a non uniform sentencing policy is also not a very desirable practical position.

> *"..But in fact, quite apart from those considerations that make punishment unjustifiable when it is out of proportion to the crime, uniformly disproportionate punishment has some very undesirable practical consequences."*[51]

Sentencing, thus, is one of the most important aspects of a Criminal Trial. What becomes important then, is to ensure that these is principle based sentencing, which demonstrates respect for precedent, instead of decisions which are judge centric, and vary greatly from case to case.

[49] Ibid, at para 2.
[50] 1991SCC (3) 471
[51] Ibid, at para9.

Session 1: Sentencing in Murder Trials

1. Vijay Kumar v. State of Rajasthan (2014) 3 SCC

Hon'ble Judges/Coram: T.S. Thakur and C. Nagappan, JJ.

Facts:

The Sessions Court found accused Nos. 1 Dr. Atma Ram and accused No 3 Vijay Kumar (Appellants here in the present case) guilty and sentenced them each to suffer imprisonment for life and to pay a fine of Rs. 5000/- each in default to undergo rigorous imprisonment for six months each for the offence under Section 302 read with Section 120B Indian Penal Code and further sentenced them each to undergo rigorous imprisonment for eight years and to pay a fine of Rs. 1000/- each and in default to undergo rigorous imprisonment for six months each for the offence under Section 460 Indian Penal Code and also sentenced them each to undergo rigorous imprisonment for eight years and to pay a fine of Rs. 1000/- each and in default to undergo rigorous imprisonment for six months each for the offence under Section 382 Indian Penal Code.

The Sessions Court also found accused Nos. 2, 4 and 5 guilty of the offence under Section 411 Indian Penal Code and sentenced them each to undergo rigorous imprisonment for two years and each to pay a fine of Rs. 500 and in default each to undergo rigorous imprisonment for three months.

Aggrieved by the conviction and sentence imposed by Session Court accused Nos. 1 to 5 preferred appeal to High Court. The High Court by judgment dated 2.5.2007 dismissed the appeal preferred by the accused No. 1 Atma Ram and accused No. 3 Vijay Kumar/Appellants herein and at the same time allowed the appeal pertaining to accused No. 2 Kailash Chand, A-4 Gyan Chand and Accused No. 5 Radha Devi and acquitted them of charge under Section 411 Indian Penal Code.

Challenging their conviction and sentence accused No. 1 Atma Ram and accused No. 3 Vijay Kumar have preferred the present appeals.

The issue was whether both the Courts below fell in error in coming to the conclusion that the prosecution has established its case based on circumstantial evidence beyond all reasonable doubt?

Decision: The Supreme Court allowed both the appeals and conviction and sentence imposed on the Appellants by the courts below are set aside.

Reasoning :

Recovery of ornaments belonging to the deceased (victim) from the accused, this alone can not be the basis for conviction for life sentence. Benefit of doubt will have to be given to both the Appellants. In a case based on circumstantial evidence the settled law is that the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature. Moreover, all the circumstances should be complete and there should be no gap left in the chain of evidence. Further the proved circumstances must be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence.

2. Alber Oraon v. State of Jharkhand AIR 2014 SC 3202

Hon'ble Judges/Coram: K.S. Panicker Radhakrishnan and Vikramajit Sen, JJ.

Facts:

The Sessions Judge found Appellant/ accused guilty of offence under section 302 and sentenced him to death sentence. The session Court found that the Accused had committed murder of Pushpa and her two children and concealed their exhumed bodies in a soak tank for about three weeks. Accused failed to answer as to why de did not tried to search deceased person for long time. He was living with Pushpa as if her husband. He committed murder of for lust of property of deceased. Aggrieved by decision of Session Court accused preferred appeal to High Court. The High Confirmed the conviction and sentenced imposed by the Session Court. Therefore Appellant made present Appeal to this Court.

The issue was whether death sentence awarded to Appellant required interference? It is not a case a case of direct evidence to the occurrence of the crime, but death of three deceased was unnatural and homicidal in nature. Autopsy Report has deposed that there were ante mortem injuries on each of the three dead bodies, which had been caused by a hard and blunt substance. But there was no recovery of any such weapon by the investigating officer.

Another issue involved in the case was shifting of burden on appellant/accused to prove facts within his exclusive knowledge.

Decision:

The Supreme Court disposed of appeals, without cost but reduced sentence of death to that of life term of which minimum 30 years imprisonment without any remission in addition to the sentence already undergone.

Reasoning: The Supreme Court observed that there is no iota of doubt of the culpability of appellant but still it is not a rarest of rare case to award with death sentence. Hence reduced death sentence to life team as mentioned above. As far as the second issue is concerned in the facts and circumstance of the present case the appellant failed to discharge reverse burden of proof created by Sec 106 of Indian evidence Act, because he was leaving with the deceased as if her husband and no third person had entered the premises further he failed to answer satisfactorily as to why he did not report prolonged missing of deceased.

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3. Amar Singh Yadav v. State of U.P AIR2014SC2486

Hon'ble Judges/Coram: S.J. Mukhopadhaya and Dipak Misra, JJ.

Facts:

Accused with the help of co-accused had killed his wife and two daughters and seriously injured son by locking them inside the car and then setting it on fire. The Sessions Judge, Kanpur, on appreciation of the oral testimony of eye witness as well as documentary evidences and hearing the parties, held the Appellant-accused guilty for the offences Under Section 302, 307 and 436 Indian Penal Code and

accused was convicted and sentenced to rigorous imprisonment for life on count of Section 307 I.P.C. He was further convicted and sentenced to rigorous imprisonment for seven years on count of Section 436 I.P.C. The accused was further convicted and sentenced to death and Rs. 10,000/- fine on count of Section 302 I.P.C and it was directed that he shall be hanged by the neck till death. All sentences shall run concurrently. The High Court by the impugned judgment dated 16th February, 2010 upheld the conviction and death sentence of the accused.

The present appeal is filed before Supreme Court to challenge the conviction and sentenced of death awarded by Session Court and confirmed by the High Court.

The issue is whether the death sentence awarded to the Appellant is excessive, disproportionate on the facts and circumstances of the case, i.e. whether the present case can be termed to be a "rarest of the rare case"?

Decision:

Supreme Court held that, the imposition of death sentence to the accused Amar Singh Yadav was not warranted. Accordingly we commute the sentence to life imprisonment. Further, we hold that the accused Amar Singh Yadav must serve a minimum of 30 years in jail without remissions before consideration of his case for premature release. The criminal appeals stand disposed of with the aforesaid observations.

Reasoning: Though we are convinced that the prosecution has proved the guilt of the accused beyond all reasonable doubt, the accused committed the crime in a most cruel and inhuman manner. The helpless wife and young children, who fell victims to the avaricious conduct and lust of the Appellant still the case does not fall within the four corners of the principle of "the rarest of the rare case", though no leniency can be shown to the Appellant. There is no reason to believe that the accused cannot be reformed or rehabilitated and that he is likely to continue criminal acts of violence as would constitute a continuing threat to the society.

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4. Tara Singh v. State thr Home Secretary, Uttarakhand MANU/SC/0175/2014

Hon'ble Judges/Coram: K. S. Panicker Radhakrishnan and A.K. Sikri, JJ.

Facts:

The Appellants in these two separate appeals challenge the impugned judgment and order dated 16.5.2006 passed by the High Court of Uttranchal whereby the High Court has been pleased to confirm the conviction and sentence of the Appellant to undergo life imprisonment Under Section 302 Indian Penal Code and further sentence of four years rigorous imprisonment Under Section 201 Indian Penal Code. The Appellants were charged for committing murder of 5 years old boy named Bharat Singh. Sessions Judge acquitted accused No 1 and accused 2 of the charge of murder under Section 302 I. P. C. However appellants/ accused no 2 and 3 were convicted under Section 302 and Section 201 Indian Penal Code for committing the murder and for concealing the dead body in a cave. Both were sentenced to imprisonment for life and 4 years rigorous imprisonment for respective conviction. Both the convicted persons filed their separate appeals in the High Court questioning the veracity of the judgment of the learned Sessions Judge. State also filed appeal against that part of the

said judgment whereby other two accused persons were acquitted by the Sessions Judge. High Court after hearing all these three appeals together dismissed the same and affirmed the judgment of the Sessions Judge. Aggrieved by the decision of the High Court appellants made appeal before this Court.

The issue whether prosecution has proved charge under Sec 302 and 201 of I.P.C, because there was no direct eye witness to the offence. As per statement of (PW1), that on 15th October, 1982 while he was returning after grazing the cattle, he had seen two accused named Tara Singh and Ramesh Singh (Appellants herein) who were holding Bharat Singh (the deceased). They had clasped his mouth and were taking him from the side Ganga Nath Temple to downwards direction. He narrated the incidence after 5 to 6 days. In his cross-examination, he stated that he had seen accused carrying the child from a distance of 3/4 of a mile. He was 75 years of age. He admitted that his eye-sight was weak. Whether statement of PW 1 reliable?

Decision: Appeals are held to be devoid of any merit and are accordingly dismissed.

Reasoning:

Supreme Court observed that the incident which occurred in a hilly area and it is not difficult to spot a person from higher height at that distance. In the hilly terrain, the aerial distance is much below than the land distance. We have gone through the entire testimony of the said witness who seems to be the totally disinterested and independent witness. Further accused persons were harbouring enmity against the family of deceased. Immediately three days before the date of incident from the side of accused persons threat was given to the family of the deceased that their family lineage would be brought to an end. On postmortem of the dead body it was found that the boy had died of strangulation.

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5. State of Himachal Pradesh v. Raj KumarAIR2014SC1929

Hon'ble Judges/Coram: Ranjana Prakash Desai and Madan B. Lokur, JJ.

Facts:

Factual matrix of the case is that on 1/10/1998 Ashwani Kumar ("the deceased") was found dead on bed. PW-9 accompanied by PW-7 immediately lodged F.I.R. The Respondent/ Accused, who is the brother of the deceased also reached the Police station and disclosed to PW-7 that he had murdered his brother. Respondent/ accused was convicted under Section 302 of the I. P.C. and sentenced to suffer life imprisonment and to pay a fine of Rs. 3,000/- and in default of payment of fine, simple imprisonment for further period of three months. The Respondent preferred an appeal to the High Court, the High Court set aside the order of conviction and acquitted the accused. Being aggrieved the State preferred an Appeal to this court.

The issue was whether High Court rightly set aside conviction and acquitted Respondent?

Decision:

The Supreme Court dismissed appeal and held that the High Court has, rightly set aside the conviction and sentence and acquitted the Respondent.

Reasoning:

The Supreme Court observed that the chain of circumstances is not complete. It leaves reasonable ground for the conclusion towards innocence of the Respondent. The circumstances enumerated by the trial court are as under:

(1) that the relationship between the deceased and the accused was not cordial due to the dispute on account of the possession of the room;

(2) that on the evening of 30.9.1998, there was a scuffle between the accused and the deceased;

(3) that the accused had made an extra judicial confession of his guilt on the morning of 1.10.1998 in presence of Balbir Singh;

(4) that the accused got recovered the blood stained Darat from his possession Under Section 27 of the Indian Evidence Act;

(5) that he had handed over to the police his blood stained Pyazama and shirt to the police;

(6) that the accused was seen with the Darat coming out of the room of the deceased in the early morning of 1.10.1998 by his brother Naresh Kumar an Smt. Neelam Kumari;

(7) that the blood group of the Darat, Chadar and Pyazama of the accused was opined to be the same i.e. group B by the chemical analyst; and

(8) that the shirt of the accused the khessi and pillow cover of the deceased had the blood stains of human being."

The trial court held that the circumstances Nos. 3, 4 and 6 were not proved still convicted and sentenced Respondent/accused. This is the error on the part of Session Court. Therefore High Court rightly acquitted Respondent/accused.

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6. Ananda Poojary v. State of Karnataka MANU/SC/0936/2014

Hon'ble Judges/Coram: Jasti Chelameswar and A.K. Sikri, JJ.

Facts:

The present appeal is filed to challenged judgment of High Court of Karnataka dated 14.02.2013, whereby the appellant's conviction and sentence for life imprisonment_imposed by session Court for allege murder of his foster mother under Sec 302 and Sec 201 of I.P.C has been upheld. The factual matrix of the case is that on 1st March, 2006, Dorathi Kutinho (deceased) had to rush to a hospital by appellant/accused. As per the Appellant, she had complained of chest pain. By the time she reached the hospital, she had died. The doctor who examined her issued a certificate stating that she had died of cardiac arrest. However, as per the postmortem done few days later, the cause of death was found to be Asphyxia as a result of smothering. The Appellant was roped in as an accused committing murder of Dorathi Kutinho and was put to trial. Both the Session's court as well as the High Court have found the Appellant guilty of the offences as mentioned earlier.

The issues were whether Dorathi's demise was on account of cardiac arrest or the cause of death was asphyxia as a result of smothering? And in case Dorathi was murdered, whether the Appellant is the culprit?

Decision: The Supreme Court allowed appeal, and acquitted appellant/accused.

Reasoning: Answers to issues above mentioned are as follows;

(i) Whether Dorathi's demise was on account of cardiac arrest or the cause of death was asphyxia as a result of smothering?

Answer to Question No. 1

So far as cause of death of Dorathi is concerned, we have two conflicting documentary evidences on record. Certificate issued by Private Hospital choice by accused state cardiac arrest as cause of death and autopsy report state smothering as a cause of death. Both views can not be ignored, therefore it creates bout about the exact cause of death. Deceased was under medical treatment for hypertension and depression in the same hospital where appellant took her after alleged chest pain. Further it was also stated that deceased was addicted to drinking and doctor has suggested her to stop it. In autopsy report it was also found that she had consumed alcohol before her death. Therefore both the causes of death are possible. It is a principle of criminal law that benefit of doubt shall be given to the accused.

(ii) In case Dorathi was murdered, whether the Appellant is the culprit?

Answer to Question No. 2

Accused had informed her bother who was living in America about her death. It was the accused who suggested him to file F. I. R and further autopsy. Why he would have suggested these things if he had killed her. These points had been overlooked by both the courts below. Brother of deceased who was mentally retarded also died after few months because the Accused used to take care of him and then he was in jail. Another brother of deceased who was living in America had no time to take care of his mentally retarded brother. Another aspect was brought to the light that all property of the deceased was sold out by her brother who now left to America by that time accused was in jail. Therefore it can not be concluded that it was the accused who killed his foster mother (Dorathi).

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7. Bahadur Singh v. State of Madhya Pradesh (2014) 6 SCC 639

Hon'ble Judges/Coram: J.S. Khehar and C. Nagappan, JJ.

Facts:

These are five appeals of five appellants and they were charged along with ten other accused on the allegation that they armed with deadly weapons indulged in rioting and in furtherance of their common object committed the murder of Babulal and caused simple injury to Bhanwar. The Trial Court acquitted two of the accused persons and convicted the remaining thirteen accused for the offence Under Section 302 read with Section 149 I. P. C and sentenced each of them to undergo rigorous imprisonment for life and to pay a fine of Rs. 1000/- each in default to suffer three months rigorous imprisonment each. It also convicted them for offence under Sec 148 I. P. C and sentenced

each of them to undergo rigorous imprisonment for two years. Challenging the conviction and sentence all the convicted accused preferred six appeals to the High Court. The High Court confirmed the conviction and sentence of five accused by dismissing their appeals and acquitted the remaining eight accused by allowing their appeals. Aggrieved by the confirmation of their conviction and sentence the said five accused have preferred the present appeals before Supreme Court.

The issue is whether conviction and sentence confirmed by High Court call for any interference?

Decision: the Supreme Court dismissed the appeal and confirmed the conviction and sentence imposed by the High Court and Trial Court.

Reasoning: The Supreme Court observed that, the High Court after careful and close scrutiny of the evidence entertained doubt with regard to the participation of eight of the accused on account of absence of overt act attributable to them and gave them benefit of doubt and acquitted them. The ocular testimony of PW7 Shanti Lal about the attack made by the Appellants herein on Babu Lal is corroborated by the medical evidence and the recovery of weapons pursuant to the information furnished by them. In our considered view the conviction and sentence imposed on the Appellants does not call for any interference. There are no merits in the appeals and the same are dismissed.

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8. Balwan v. State of Haryana AIR2014SC3644

Hon'ble Judges/Coram: T.S. Thakur, C. Nagappan and A.K. Goel, JJ.

Facts:

These three appeals are preferred against the common judgment dated 27.01.2012 passed by the High Court of Punjab and Haryana at Chandigarh. The Appellants herein are six in numbers and were tried along with others for the charges Under Sections 148, 149, 302, 307, 449, 323 and 216 of Indian Penal Code and in addition Naresh one of the accused was also charged Under Section 25 of the Arms Act, 1959. the Trial Court found them guilty of the offence Under Section 302 read with Section 149 of I. P. C and sentenced them each to undergo imprisonment for life and to pay fine of Rs. 10,000/- each with default sentence; further found them guilty for the offence Under Section 307 read with Section 149 I. P. C and sentenced them each to undergo rigorous imprisonment for 8 years and to pay fine of Rs. 5000/- each with default sentence; further found them guilty for the offence Under Section 449 read with Section 149 I. P. C and sentenced them each to undergo rigorous imprisonment for 5 years and to pay fine of Rs. 3000/- each with default sentence; further found them guilty for the offence Under Section 148 I. P. C and sentenced them each to undergo rigorous imprisonment for 2 years each and found them guilty for the offence Under Section 323 read with Section 149 I. P. C and sentenced them each to undergo rigorous imprisonment for 9 months. In addition Appellant Naresh was found guilty for the offence Under Section 25 of the Arms Act and was sentenced to undergo rigorous imprisonment for 2 years and to pay fine of Rs. 2000/- with default sentence. The Trial Court directed the substantive sentences to run concurrently. Challenging the conviction and sentence the accused preferred appeals, High Court allowed the appeal preferred by accused Subhash and acquitted him of the charges. The appeals preferred by the other accused were dismissed. Aggrieved by the confirmation of their conviction and sentence six accused have preferred the present appeals.

The issue is whether it is required to intervene in the judgment of the High Court whereby conviction and sentence passed by Sessions Court was upheld partly? Whether non examination of two injured witness does in any way, affect the prosecution case? Whether some contradictions and variations in the testimonies of the aforesaid witnesses affect the case of prosecution in any way?

Decision: Appeal preferred by Satbir Singh is allowed and the conviction and sentences imposed on him is set aside and he is acquitted of the charges. The other two appeals are dismissed.

Reasoning: While considering the involvement of Satbir Singh in the occurrence, we find some difficulty. The two eye witnesses testified Satish gave a gandasa blow on the neck of Bani Singh (deceased) and thereafter Satbir Singh gave a gandasa blow on the neck of Bani Singh (deceased) autopsy report indicates only one injury on the body of Bani Singh. Hence the overt act attributed to Satbir Singh, becomes doubtful and his presence cannot be said to be established and therefore benefit of doubt has to be given to him and in result he is acquitted.

The testimonies of injured witnesses PW4 and PW5 are natural, cogent and trustworthy and non-examination of the other two injured witnesses does not, in any way, affect the prosecution case. It is trite law that the evidence of injured witness, being a stamped witness, is accorded a special status in law

The contradictions and variations in the testimonies of the aforesaid witnesses, in our considered view do not go to the root of the case and the substratum of the prosecution version remains undisturbed. It is to be borne in mind that both of them are rustic women and not tutored witnesses.

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9. Bastiram v. State of Rajasthan (2014) 5 SCC 398

Hon'ble Judges/Coram: Ranjana Prakash Desai and Madan B. Lokur, JJ.

Facts:

The High Court dismissed the appeal and upheld decision of Session Court which convicted four Appellants and acquitted five accused from various charges under I. P. C including Sec 302. The factual matrix of the case is as Sohan Lal (PW4) stated that on 20th May, 1995 sometime between 6.30 p.m. and 6.45 p.m., he and Om Prakash (PW-3-) were sitting in a temple near his (Sohan Lal's) house. At that time his two sons, namely, Ram Narain (deceased 1) and Mohanlal (deceased 2) came out of his house and went towards Ram Pratap's house. When they were near his house, they were attacked by the four Appellants, i.e. Bastiram, Mohan Lal, Ramnarayan and Banwari. These four Appellants were armed with pistols. Also participating in the attack were Mangilal, Ramjus, Hariram, Ram Pratap, Bhagwanaram and Maniram who were armed with either a barchi or a jayee or a sela. Thereupon Om Prakash and Sohan Lal's two other sons, namely, Rameshwarlal (deceased 3) and Rajaram (PW-10) rushed towards the site.

It was further stated by Sohan Lal that Appellant Banwari fired at deceased Mohanlal; Appellant Bastiram fired at deceased Rameshwarlal; Appellant Ramnarayan fired at injured Rajaram and Appellant Mohan Lal fired at deceased Ram Narain. Sohan Lal also stated that deceased Mohanlal died on the spot while injured Rajaram, Ram Narain and Rameshwarlal were taken to a hospital. Ram Narain and Rameshwarlal later succumbed to their injuries.

Before his death on 22nd May, 1995 deceased Rameshwarlal gave a dying declaration on 21st May, 1995. In his dying declaration deceased Rameshwarlal stated that Appellant Bastiram had fired at deceased Ram Narain who died on the spot. He stated that Appellant Bastiram also fired at deceased Mohanlal and Appellant Mohan Lal fired at him (deceased Rameshwarlal). Deceased Rameshwarlal also stated that Appellant Banwari fired at Maniram and that his brother Goverdhan also arrived at the scene and Maniram Patwari fired at him. The dying declaration is clearly at variance with the parcha bayan of Sohan Lal.

The Additional Sessions Judge convicted Appellants under Sec 302 read with Section 34 of the Indian Penal Code and sentenced them to imprisonment for life and fine. They were also convicted under Section 307 read with Section 34 of the Indian Penal Code and sentenced to rigorous imprisonment for five years and fine. The remaining five accused were acquitted.

The issues are whether there is any evidence that would warrant setting aside the conviction and sentence of the Appellants by the Trial Court and affirmed by the High Court?

Whether decision of the High Court needs to be intervened? And Whether the "medical evidence" should be believed or whether the testimony of the eye witnesses should be preferred? Whether plea of alibi by appellant Bastiram is proved?

Decision: There is no merit in these appeals and they are accordingly dismissed. We uphold the concurrent findings of the Trial Court and the High Court and confirm the conviction and sentence on the Appellants.

Reasoning:

There is also overwhelming evidence given by the eye witnesses about the use of firearms by Appellants. The evidence of the eye witnesses in regard to these Appellants is consistent and we see no reason to differ with the concurrent findings arrived at by the Trial Court as well as the High Court. Under the circumstances, on a consideration of the evidence on record there is no doubt that Appellant Bastiram was present when the incident occurred and, as stated by the eye witnesses, participated in it. We see no reason to upset the concurrent finding of fact in this regard by the Trial Court and the High Court.

Other Appellants: Similarly, a fact stated by a doctor in a post mortem report could be rejected by a Court relying on eye witness testimony, though this would be quite infrequent. This Court had rejected the "medical evidence" and upheld the view of the Trial Court (and the High Court) that the testimony of the eye witnesses supported by other evidence would prevail over the post mortem report and testimony of the doctor.

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10. Tukaram v. State of Chhattisgarh 2015(1) RCR (Criminal) 448

Hon'ble Judges/Coram: Pinaki Chandra Ghose and R.K. Agrawal, JJ.

Facts:

This criminal appeal arises from the final judgment and order dated 26.09.2007 passed by the High Court of Chhattisgarh in Criminal Appeal No. 577 of 2001 whereby the High Court sustained the

conviction and sentence of life imprisonment awarded by Session Court under Section 302 of I. P. C. The brief facts pertaining to this case are that the Appellant Tukaram, along with his wife Gaya Bai, It is alleged that on the night intervening between 26th and 27th November, 2000 when all the family members were sleeping, the Appellant-accused woke up them at about 12:30 am and made an extra judicial confession before P.W. 1 Chandra Kumar (brother-in-law of the accused), PW4 Durdeshi Ram (brother-in-law of the accused) and PW2 Dhruv Ram (cousin brother of the deceased), that he had committed the murder of his father-in-law Roopram because according to accused there was illicit relationship between his wife and his father in law (who is daughter of the deceased). Wife of the accused has deposed that he indeed had suspicion about the illicit relationship between herself and the deceased and for this reason accused killed the deceased.

The issue is whether the Judgment of High Court needs intervention?

Decision: Supreme Court dismissed appeal observing that High Court has rightly upheld conviction and life imprisonment awarded by Session Court.

Reasoning:

It would be pertinent to point out here that motive attributed to the commission of offence by the accused is his suspicion of existence of illicit relation between the deceased and the appellant's wife. The fact that whether illicit relationship indeed existed or not would not negate the suspicion that the accused had in his mind out of which he committed the offence further there is no evidence of any enmity between the members of the house and the accused to support the defence of false implication. The information given by the accused to his in-laws family members immediately after the commission of crime and the fact of seeing the deceased dead by the family members immediately after this information, confirms the extra judicial confession made by the accused. There is nothing on record from which it can be said that the extra judicial confession was made after considerable lapse of time and therefore it is not reliable. We, therefore, find that in this case the circumstantial evidence is clinching enough to hold the accused guilty under sec 302 of I. P. C.

Session No 2: Sentencing in Trials of Offences against Women

1. Md. Ali v. State of U.P.(2015)7SCC272

Hon'ble Judges/Coram: Dipak Misra and N.V. Ramana, JJ.

Facts:

The present appeals are directed against the common judgment and order passed by the High Court of Judicature at Allahabad whereby the judgment and order passed by the learned Additional Sessions Judge/F.T.C whereunder the Appellants were convicted under Section 363, 366 and 376 Indian Penal Code and sentenced each of them to undergo three years rigorous imprisonment Under Section 363 Indian Penal Code and to pay a fine of Rs. 2,000/- with a default clause, five years rigorous imprisonment and to pay a fine of Rs. 3,000/- Under Section 366 Indian Penal Code and ten years rigorous imprisonment and to pay a fine of Rs. 5,000/- Under Section 376 Indian Penal Code with the default sequitur was affirmed. All the sentences were directed to run concurrently.

The prosecution case, is that a written report was filed by the complainant, Smt. Aneesa, PW-2, on 3.12.1996 on the allegation that on 22.11.1996, around midnight, her daughter, Gulistan, PW-1, aged about 14 years, went out of her house to answer the call of nature but did not return for a considerable time. Being anxious, she went in search of her and at that time Ali Waris, one of the Appellants herein, informed her that he had left her daughter at his door. Thereafter, PW-2 and his son Abrar, PW-4, searched for her in the neighbourhood as well as amongst the relatives but as it turned out to be an exercise in futility, she sensed some foul play and eventually informed the police that Ali Waris and Mohammad Ali @ Guddu had kidnapped her daughter.

After the criminal law was set in motion, the investigating agency commenced the search of the victim. As the factual matrix would uncurtain, Abrar had along with co-villagers, namely, Arif s/o Md. Rafi, Zulfi, Papat, Shafiq and Ors. had gone in search of his sister, they had reached village Loni and Arif s/o Azam Khan brought Gulistan from a house and handed over to him. All of them along with Gulistan went to the police station on 18.1.1997 and PW-2 and Gulistan, PW-1, submitted an application at the police station Dhaulana. The statement of the victim was recorded Under Section 164 of the Code of Criminal Procedure. The investigating agency sent the victim for medical examination, recorded the statements of seven witnesses, prepared the site plan and after completing other formalities placed the chargesheet against eight accused persons, namely, Ali Waris, Md. Ali, Mehmood, Allahrakha, Sirajoo, Fazal, Shamshad and Sarfraz for the offences punishable Under Sections 363, 366, 368 and 376, Indian Penal Code before the competent Court which in turn committed the matter to the Court of Session.

The accused persons abjured their guilt and pleaded false implication due to political rivalry relating to Gram Sabha Pradhan elections.

The issue involved is, whether impugned order rightly convicted Appellant for offences in question?

Decision: The appeals are allowed, judgment of conviction and orders of sentence are set aside and as the Appellants are on bail, they are discharged of their bail bonds.

Reasoning:

We are convinced that the conclusions arrived at by the High Court are totally unsupportable on the basis of the evidence on record. For the aforesaid purpose, first we shall advert to the issue of lodging of the First Information Report. As is demonstrated, the victim missed from the house on 22.11.1996 but the mother lodged the FIR on 3.12.1996 almost after expiry of eleven days alleging the factum of kidnapping by the accused persons, namely, Ali Waris and Md. Ali @ Guddu. It is interesting to note that the mother, had alleged that Ali Waris had left the girl at her door steps. In such a circumstance, if nothing else, the PW-2, the mother, who is expected to have necessitous concern, could have gone to the police station to lodge a missing report which could have prompted the investigation officer to act. It baffles the commonsense that the mother after searching in the neighborhood as well as amongst the relatives still, for some unfathomable reason that defeats the basic human prudence approached the police station quite belatedly. It is apt to mention here that in rapes cases the delay in filing the FIR by the prosecuterix or by the parents in all circumstance is not of significance.

As is evident, she was missing from home on 22.11.1996 as alleged; she was fourteen years of age. The trial court on the basis of radiological test has opined that she was below eighteen years of age and the High Court has accepted the same. The factum of age only if the findings recorded by the trial court and High Court are accepted, for as we find, there is no proper appreciation of evidence by trial court and definitely the High Court has failed to exercise its appellate jurisdiction in proper perspective as is expected from it in law.

The obtaining factual matrix has to be appreciated on the touchstone of the aforesaid parameters. Be it clearly stated here delay in lodging FIR in cases Under Section 376 Indian Penal Code would depend upon facts of each case and this Court has given immense allowance to such delay, regard being had to the trauma suffered by the prosecutrix and various other factors, but a significant one, in the present case, it has to be appreciated from a different perspective.

The prosecutrix was missing from home. In such a situation, it was a normal expectation that either the mother or the brother would have lodged a missing report at the police station. The same was not done. This action of PW-2 really throws a great challenge to common sense. No explanation has been offered for such delay. The learned trial Judge has adverted to this facet on an unacceptable backdrop by referring to the principle that prosecutrix suffered from trauma and the constraint of the social stigma. The prosecutrix at that time was nowhere on the scene. It is the mother who was required to inform the police about missing of her grown up daughter. In the absence of any explanation, it gives rise to a sense of doubt. That apart, the factum that the Appellant informed the mother of the victim that he had left the prosecutrix at the door of her house also does not command acceptance. The recovery of the prosecutrix by the brother and her friends also creates a cloud of suspicion. We are not inclined to believe the prosecution version as has been projected that one Arif had informed the brother of the prosecutrix that his sister was at his place but for reasons best known to the prosecution, Arif has not been examined. That apart, the persons who were accompanying the brother have also not been examined by the prosecution. Thus, the manner of recovery of the prosecutrix from the house of Arif remains a mystery.

Be it noted, there can be no iota of doubt that on the basis of the sole testimony of the prosecutrix, if it is unimpeachable and beyond reproach, a conviction can be based. In the case at hand, the learned trial Judge as well as the High Court have persuaded themselves away with this principle without appreciating the acceptability and reliability of the testimony of the witness. In fact, it would not be inappropriate to say that whatever the analysis in the impugned judgment, it would only indicate an impropriety of approach. The prosecutrix has deposed that she was taken from one place to the other

and remained at various houses for almost two months. The only explanation given by her is that she was threatened by the accused persons. It is not in her testimony that she was confined to one place. In fact, it has been borne out from the material on record that she had travelled from place to place and she was ravished number of times. Under these circumstances, the medical evidence gains significance, for the examining doctor has categorically deposed that there are no injuries on the private parts. The delay in FIR, the non-examination of the witnesses, the testimony of the prosecutrix, the associated circumstances and the medical evidence, leave a mark of doubt to treat the testimony of the prosecutrix as so natural and truthful to inspire confidence. It can be stated with certitude that the evidence of the prosecutrix is not of such quality which can be placed reliance upon. True it is, the grammar of law permits the testimony of a prosecutrix can be accepted without any corroboration without material particulars, for she has to be placed on a higher pedestal than an injured witness, but, a pregnant one, when a Court, on studied scrutiny of the evidence finds it difficult to accept the version of the prosecuterix, because it is not unreproachable, there is requirement for search of such direct or circumstantial evidence which would lend assurance to her testimony. As the present case would show, her testimony does not inspire confidence, and the circumstantial evidence remotely do not lend any support to the same. In the absence of both, we are compelled to hold that the learned trial Judge has erroneously convicted the accused-Appellants for the alleged offences and the High Court has fallen into error, without re-appreciating the material on record, by giving the stamp of approval to the same.

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2. Major Singh and Ors v. State of Punjab AIR2015SC2081

Hon'ble Judges/Coram: T.S. Thakur, R. Banumathi and Amitava Roy, JJ.

Facts:

This criminal appeal has been preferred against the judgment of High Court of Punjab and Haryana whereby the High Court confirmed the conviction of the Appellants Under Section 304B Indian Penal Code and the sentence of imprisonment of seven years imposed on each of them.

Brief facts which led to the filing of this appeal are as under: PW1-Sukhdev Singh's daughter Karamjit Kaur was married to accused Jagsir Singh son of Major Singh Jatt Appellant No. 1, $2^{1/2}$ years back. Deceased Karamjit Kaur informed PW1-Sukhdev Singh several times about the ill-treatment and harassment meted out to her and the demand of scooter raised by the accused. PW1-Sukhdev Singh reported that on 10.8.1996 at about 10.00 a.m., he went to village Badiala to enquire about the well-being of his daughter and when he reached there he witnessed that Jagsir Singh, his father-Major Singh, his mother-Mohinder Kaur and his sister-Golo @ Jaspal Kaur all were dragging his daughter Karamjit Kaur towards the 'subat' while she was struggling to breathe. On seeing PW1-Sukhdev Singh and his son PW3-Manga Singh, the accused persons ran away and Karamjit Kaur breathed her last.

He gave his statement to Kirpal Singh Sub Inspector of Police-PW6. On the basis of statement of PW1-Sukhdev Singh, F.I.R. No. 81 dated 14.8.1996 was registered Under Section 304B and 498A Indian Penal Code against the accused persons. PW6 had taken up the investigation and conducted inquest and recorded statement of witnesses. He sent the body of deceased-Karamjit Kaur for autopsy. After investigation, the accused persons were charge-sheeted for offences punishable Under Section 304B and 498A Indian Penal Code to which the accused persons pleaded not guilty and claimed trial.

The trial court convicted and sentenced the accused Jagsir Singh (husband), Major Singh (father-in-law), Mohinder Kaur (mother-in-law) Under Section 304B Indian Penal Code and sentenced each of them to undergo seven years rigorous imprisonment with a fine of Rs. 500/- each with default clause. The trial court, however, gave benefit of doubt to accused Golo @ Jaspal Kaur (sister of Jagsir Singh) and acquitted her and also acquitted all the accused Under Section 498A Indian Penal Code.

Aggrieved by their conviction, Appellants approached the High Court. During the pendency of the appeal before the High Court, Jagsir Singh (husband of the deceased) died and appeal against Jagsir Singh abated and appeal survived qua the Appellants viz., father-in-law and mother-in-law. High Court confirmed the conviction of the Appellants Under Section 304B Indian Penal Code and sentence of imprisonment imposed on each of them. Aggrieved by the same, Appellants who are father-in-law and mother-in-law are before this Court assailing the correctness of the impugned judgment.

The issue is whether there was no evidence to establish that deceased was subjected to harassment or cruelty in connection with demand of dowry which finally results in to dowry death?

Decision: This appeal is allowed and the conviction of the Appellants under Section 304B I. P. C is set aside and Appellant No. 2-Mohinder Kaur is on bail and her bail bonds stands discharged. Appellant No. 1-Major Singh who is in custody is ordered to be set at liberty forthwith.

Reasoning:

Prosecution has not examined any independent witness or the Panchayatdars to prove that there was demand of dowry and that the deceased was subjected to ill-treatment. Ordinarily, offences against married woman are being committed within the four corners of a house and normally direct evidence regarding cruelty or harassment on the woman by her husband or relatives of the husband is not available. But when PW3 has specifically stated that the demand of dowry by the accused was informed to the Panchayatdars and that Panchayat was taken to the village Badiala, the alleged ill-treatment or cruelty of Karamjit Kaur by her husband or relatives could have been proved by examination of the Panchayatdars. The fact that deceased was subjected to harassment or cruelty in connection with demand of dowry is not proved by the prosecution. It is also pertinent to note that both the courts below have acquitted all the accused for the offence punishable Under Section 498A Indian Penal Code.

Insofar as the occurrence on 14.08.1996, PWs 1 and 3 have stated that they saw the accused dragging Karamjit Kaur towards a room inside the house and that Karamjit Kaur was trembling and on seeing PWs 1 and 3, all the four accused persons ran away and after taking last breath Karamjit Kaur expired. Subsequent conduct of PWs 1 and 3 raises serious doubts about their presence in the house of the accused at the time of occurrence and witnessing accused dragging deceased-Karamjit Kaur. That PWs 1 and 3 have not raised any alarm nor tried to chase the accused and that PW1 did not inform anyone in the village of the accused looks quite unnatural. In the absence of proof that deceased was subjected to cruelty and harassment "soon before her death", the conviction of the Appellants cannot be sustained.

To attract conviction Under Section 304B Indian Penal Code, the prosecution should adduce evidence to show that "soon before her death", the deceased was subjected to cruelty or harassment. There must always be proximate and live link between the effects of cruelty based on dowry demand and the concerned death.

Applying these principles to the instant case, we find that there is no evidence as to the demand of dowry or cruelty and that deceased Karamjit Kaur was subjected to dowry harassment "soon before her death". Except the demand of scooter, there is nothing on record to substantiate the allegation of dowry demand. Assuming that there was demand of dowry, in our view, it can only be attributed to the husband-Jagsir Singh who in all probability could have demanded the same for his use. In the absence of any evidence that the deceased was treated with cruelty or harassment in connection with the demand of dowry "soon before her death" by the Appellants, the conviction of the Appellants Under Section 304B Indian Penal Code cannot be sustained. The trial court and the High Court have not analyzed the evidence in the light of the essential ingredients of Section 304B Indian Penal Code and the conviction of the Appellants under Section 304B Indian Penal Code is liable to be set aside.

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3. Sher Singh v. State of Haryana AIR2015SC980

Hon'ble Judges/Coram: Vikramajit Sen and Kurian Joseph, JJ.

Facts:

This Appeal has been filed against the judgment passed by the learned Single Judge of the High Court of Punjab and Haryana dismissing the appeal and affirming the conviction and sentenced passed against them by the Trial Court to undergo rigorous imprisonment for seven years under Section 304B; and to undergo rigorous imprisonment for three years and to pay a fine of Rs. 5,000/- and, in default of payment of such fine, to further undergo rigorous imprisonment for a period of six months under Section 498A.

The marriage between the deceased, Harjinder Kaur and the accused/ Appellant took place on 22.2.1997. The case of the prosecution is that two months prior to her death on one of her visits to her parental home, the deceased informed her two brothers of cruelty connected with dowry demands meted out to her by her husband and his family members. They, thereafter, conveyed this information to their uncle-Complainant, Angrej Singh viz. that the accused and his family have been harassing her with a demand for a motorcycle and a fridge. The Complainant advised her to return to her matrimonial house with the assurance that a motorcycle and a fridge would be arranged upon the marriage of her brothers. On 7.2.1998, one Rajwant Singh informed the Complainant that the deceased had committed suicide by consuming some poisonous substance at her matrimonial house in village Danoli. The Complainant, along with the brothers of the deceased and other members of the village, rushed to the matrimonial house of the deceased and after confirming her death, lodged an FIR on the next day i.e., on 8.2.1998.

The issue is whether the prosecution has successfully 'shown' that the deceased was subjected to cruelty which was connected with dowry demands which finally results into suicide by deceased?

Decision: The Appeal is allowed and the impugned judgment convicting and sentencing of appellants is set aside.

Reasoning:

The Complainant has admitted that there were no demands for dowry either at the betrothal or at the time of marriage. Her maternal uncle Gurdip Singh avowedly fixed/mediated/arranged the unfortunate

marriage, yet he was not apprised of the dowry demands by Angrez Singh. He has also denied that any panchayat was convened regarding these dowry demands, whereas Sukhwant Singh PW 7, the real brother of the deceased, has categorically stated in cross-examination that a panchayat comprising both Angrez Singh and Gurdip Singh and several others had held deliberations.

In cross-examination, the complainant has admitted that the deceased never spoke to him about her domestic problems or regarding demand of dowry by the accused except once, on the last occasion of her visit. He has further admitted that even her brothers had not conveyed any information to him in this regard.

He was informed of the death of the deceased on 7.2.98 by Angrez Singh/PW 4. In cross-examination even this witness has admitted that no dowry demands were made prior to or at the time of marriage. He has also deposed about a panchayat which included Gurdeep Singh (maternal uncle) as well as Angrez Singh/PW 4 who, as has already been noted, has categorically stated that no such Panchayat took place.

we are not satisfied that the prosecution has proved or even shown that she was treated with such cruelty, connected with dowry demands, as led her to commit suicide. In the normal course dowry demands are articulated when the marriage is agreed upon and is certainly reiterated at the time when it is performed and such demands continue into a couple of years of matrimony. In normal course, if a woman is being tortured and harassed, she would not remain reticent of this state of affairs and would certainly repeatedly inform her family.

Added to this are the inconsistencies and contradictions between the statements of PW 4 and PW 7 with regard to the panchayat and the presence of and knowledge of Gurdip Singh. It is for these reasons that we are of the opinion that the prosecution has not shown/presented and or proved even by preponderance of probabilities that the deceased had been treated with cruelty emanating from or founded on dowry demands. It is in the realm of a possibility that the ingestion of aluminium phosphate may have been accidental.

We may only observe that in his examination under Section 313 Code of Criminal Procedure the accused has proffered details of his defence. This is not a case where he has merely denied all the questions put by the Court to him. As already stated above, because of the insufficiency or the unsatisfactory nature of the facts or circumstances shown by the prosecution, the burden of proving his innocence has not shifted to the Appellant, in the present case.

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4. M. Narayan v. State of Karnataka (2015)6SCC465

Hon'ble Judges/Coram: T.S. Thakur and Amitava Roy, JJ.

Facts:

Aggrieved by the reversal of the verdict of his acquittal from the charge of having committed the offences Under Section 498A and Section 304B of the Indian Penal Code and Sections 3, 4 and 6 of the Dowry Prohibition Act, 1961 the Appellant has mounted this challenge against the judgment and order of the High Court of Karnataka at Bangalore.

The prosecution is traceable to an oral information lodged by Smt. Shivamma, the neighbour of the deceased Gangalakshmamma (for short 'Ganga'), to the effect that on her return to her house at about 5.30 p.m. on 08.09.1993, she found Ganga hanging by the neck by a rope from the roof. She also mentioned that a folding chair was found on the cot. According to the informant on this sight, she lost her consciousness and when she regained the same, she found that the body of Ganga had been meanwhile removed from the hook of the roof and had been laid in the house. She, however, expressed ignorance about the person or the agency, who/which had brought down the body.

Be that as it may, on 10.09.1993 Shri Siddagangaiah, the maternal uncle of the deceased, lodged a complaint about the death of her niece Ganga on 08.09.1993 with the same Police Station. The information revealed that the deceased had been given in marriage to the Appellant on 20.06.1991 and that on that occasion, gold ornaments and cash of Rs. 20,000/- had been given by way of dowry. It was alleged that for about six months after the marriage, the couple lived happily and thereafter the husband of the deceased (the Appellant herein) developed some illicit relationship with another girl of Nayak community and as a consequence, started to despise the deceased and often assaulted her in an inebriated condition besides intimidating and harassing her by demanding Rs. 50,000/- as dowry.

It was mentioned as well that about two months prior to the demise of the deceased, she had come to the village of the informant and had stayed there for a month for being unable to bear the harassment meted out to her by her husband. The informant asserted that during that time, the deceased had disclosed to him and his wife about the persistent demand of the Appellant -husband for Rs. 50,000/- by way of dowry. The informant mentioned as well about an incident of about the same time, i.e. two months before the incident, when the Appellant-husband had visited their house at Dasanapura village in the midnight in an intoxicated state, holding a knife in hand. According to the informant, the Appellant threatened to kill her (deceased) and the family members if the deceased was not able to arrange for Rs. 50,000/-. The informant mentioned as well of another incident thereafter, when the deceased had come to their house stating that her husband had tried to murder her and also showed to them the marks of assault on her body. The informant stated too that the deceased had disclosed to them that unless Rs. 50,000/- as demanded by her husband was paid, he would kill her. According to the informant, he thereafter did visit the house of the Appellant whereupon the deceased had repeated her apprehension that if the amount of Rs. 50,000/- was not paid, she would be continuously harassed and intimidated. The informant also mentioned that on 09.09.1993 at about 5.00 p.m., one of his relatives, Seenappa, having conveyed to them, the news of the death of his niece (Ganga) by hanging, he with his parents went to the house of the deceased at about 12.30 p.m. and saw the dead body lying there. Contending that all of them had noticed a ligature mark around the neck of the deceased and that she had died in suspicious circumstances relatable to the constant demand for dowry and the harassment and ill-treatment unleashed on her, suitable legal action was sought for. The police on this information registered CR. No. 318/93 Under Section 304(B), Indian Penal Code.

The learned trial court, on an appraisal of the evidence on record, disbelieved the case of the prosecution and consequently recorded the finding of acquittal of the Appellant qua all the charges.

In the appeal against such acquittal preferred by the State of Karnataka, to reiterate, the High Court of Karnataka has returned a finding of guilt against the Appellant, thus, convicting him Under Sections 498A and 304B of the Indian Penal Code as well as Under Sections 3, 4 and 6 of the Act. By the decision assailed, the Appellant has been awarded sentence of imprisonment: (a) for seven years with a fine of Rs. 5,000/- for the offence Under Section 304B, Indian Penal Code,; (b) three years with a fine of Rs. 5,000/- for the offence Under Section 498A, Indian Penal Code,; (c) five years and a fine

of Rs. 25,000/- for the offence Under Section 3 of the Act; and (d) six months with a fine of Rs. 1,000/- for the offence Under Section 4 of the Act. Provision to undergo further imprisonment in case of default in payment of fine was also made. All the sentences, however, were ordered to run concurrently.

The issue is whether order of acquittal having been recorded by Trial Court on appropriate evaluation of evidence on record and High Court had fallen in gross error in reversing same

Decision: The appeal is dismissed. We hereby affirm the conviction and sentence as recorded by the High Court. The Appellant's bail bond stands discharged and he is hereby ordered to surrender before the learned trial court to serve out the sentence awarded.

Reasoning:

There is no room for doubt that the unfortunate incident in which death had visited, Ganga (deceased) was barely over two years of her marriage with the Appellant. That the death had been otherwise than under normal circumstances is also indubitable. The testimony of PWs-2, 3, 4 and 10 in particular having a vital bearing on the accusations constituting the offences would, therefore, be revisited. The narration on oath by PW-2, Siddagangappa, is in substantial reiteration of his version in the complaint pertaining to the facts relatable to marriage, dowry demand of the Appellant, harassment, assault and intimidation to the deceased by him and eventual commission of suicide by her. The witness had introduced himself to be the uncle of the Appellant, the latter being the son of his cousin brother. He is the maternal uncle too of the deceased. He claimed to have reared the deceased after she had lost her mother. According to this witness, the Appellant about 3 or 4 months prior to the marriage had demanded Rs. 40,000/- in cash and also jewelleries by way of dowry, to which he had agreed to give Rs. 25,000/- in cash accompanied by jewelleries. The witness deposed that about twenty days before the celebration of the marriage, he gave cash of Rs. 25,000/- to the Appellant. He testified that after six months of the marriage, the Appellant started assaulting the deceased, coercing her to bring Rs. 50,000/- from him (witness) to purchase cows for his dairy. The witness stated that the Appellant thereafter repeated this conduct for about 10/12 times and also sent the deceased to fetch this amount from him. The witness has expressly stated on oath that these facts have been revealed to him by the deceased. The witness stated that this harassment and assaults did continue thereafter for about 1 to 1-$^{1/2}$ years till Ganga had committed suicide, the situation having become intolerable for her. The witness also deposed to have accompanied his parents to the matrimonial house of the deceased after receiving the information of her death. That he also on the same date lodged a complaint with the Hebbal Police Station was stated by him.

In cross-examination, the witness deposed to have sold away their land for a sum of Rs. 80,000/- out of which Rs. 40,000/- had been spent for making gold ornaments. That in order to meet the expenses of marriage the family had sold away standing trees for about Rs. 15,000/-, was stated as well. He, however, indicated that the deceased though had discontinued her studies at an early age and was a little sensitive by nature, had acquaintances in the neighbourhood. That she was a little upset for being unable to bear a child was also stated by this witness.

PW-3, Govindaiah, is by relation a distant-cousin of the accused. He too is the grandfather of the deceased. He reiterated on oath that the Appellant before the marriage had been demanded Rs. 40,000/- by way of dowry and that against the same, a sum of Rs. 25,000/- was paid. The witness stated further that in addition thereto, jewelleries had been given at the marriage. According to this witness, before the expiry of about one year from the date of marriage, the deceased had visited his

house and had told him that she was being harassed by her husband, who was demanding from her an additional amount of Rs. 50,000/- by way of dowry for developing his dairy business. The witness, in reply, expressed his financial incapability. He, however, stated that during the stay of the deceased with him for a period of about one week, the Appellant had come to the house and had created a pandemonium under the influence of liquor and had threatened to assault him and the deceased, reiterating his demand for Rs. 50,000/-. This happened, according to the witness, also in the presence of Gangappa, Govindappa and Seenappa. This witness further stated that eight days after the said incident, the Appellant came to his house and took the deceased with him whereafter within one week Ganga committed suicide. This witness deposed to have seen the dead body of the deceased in the house of the Appellant. He affirmed that PW-2 had lodged a complaint in connection with the incident. He opined as well that Ganga had committed suicide because of the intolerable harassment and ill-treatment meted out to her by the Appellant for failing to meet his illegal demand of additional dowry.PW-4, Govindappa, is the nephew of PW-3 Govindaiah. His evidence-in-chief is limited to the extent of his visit to the matrimonial home of the deceased after receiving the information of her death. This witness was declared hostile and was cross-examined in course of which he generally denied the statements made by him during the investigation inculpating the Appellant. PW-10, Yeshodha, is the aunt of the deceased, besides being the wife of Siddagangappa (PW-2). She reaffirmed the testimony of PWs-2 and 3 about the demand of a sum of Rs. 40,000/- by the Appellant and his parents as dowry before the marriage, together with jewellery. She stated as well that as finally settled, an amount of Rs. 25,000/- by cash and jewelleries handed over to the Appellant and his father about a week prior to the marriage. This witness stated that after four months after the marriage when Ganga visited her house, she had revealed that she was being subjected to harassment and assaults by the Appellant in connection with demand for an additional amount of Rs. 50,000/- in cash for the improvement of his dairy business. This witness deposed as well that about 7-8 months thereafter Ganga had visited them again and had reiterated her complaint of harassment, abuse and assault by the Appellant for the same reason. According to this witness, on the same day the Appellant visited their house late in the night and had taken Ganga from there. She stated that about two months prior to the incident, Ganga had again come to their house and had confided in her that the same cruel treatment had been continuing. This witness deposed that a little more than a month thereafter, the Appellant came to their house and created a furore in connection with his demand for Rs. 50,000/- and also threatened to kill Govindaiah (PW-3) if the amount was not paid. This witness stated that this happened also in the presence of Gangappa (PW-3), Govindappa (PW-4) and one Srinivas. According to this witness, Ganga met an unnatural death about a month thereafter. She stated as well that on their visit to the matrimonial house of the deceased they saw a ligature mark around her neck.

As adverted to hereinabove, the medical opinion in clear terms evinced that the deceased had died due to asphyxia as a result of hanging. The ligature marks were also seen on the front, sides and back of neck of the deceased. The material witnesses whose testimony has been synopsized above, i.e. PWs-2, 3, 4 and 10, in our estimate, do prove beyond reasonable doubt that the deceased had been subjected to continuous harassment, assaults and intimidation from a few months after the marriage, so much so that being unable to bear the unbearable cruelty, she did take the extreme step of eliminating herself to seek alleviation from such physical and mental torture. PWs-2, 3 and 10, in particular, are the relations of both sides and, therefore, in the absence of any overwhelming material on records to the contrary, there is no reason whatsoever to disbelieve their versions encompassing the progression of events from before the marriage till the unfortunate end of the deceased. Noticeably, the demand for dowry originated from before the marriage and against a 'claim' of Rs. 40,000/- and jewelleries, the family of the deceased could garner Rs. 25,000/- by way of cash. Jewelleries to the extent possible were also given. This demand for dowry having its roots from before the marriage, as the incidents

thereafter as narrated by PWs-2, 3 and 10, as being disclosed to them by the deceased and also being witnesses to some of those demonstrate, assumed virulent proportions culminating in the pathetic death of the deceased. The gravamen of the testimony of PWs-2, 3 and 10 bearing on the essential facts constituting the ingredients of the offences with which the Appellant had been charged has remained unshaken in their cross-examination. Minor and stray inconsistencies in their narration, in our opinion, does not destroy the substratum of their version which otherwise do wholly furnish the required materials to constitute the pre-requisites for the offences Under Sections 304B, 498A and Sections 3 and 4 of the Act. The view adopted by the learned trial court, in our opinion, having regard to the gamut of the evidence adduced by the prosecution, is not a possible one. On the other hand, we are of the view that the conclusion reached by the learned trial court is the only possible deduction in the attendant facts and circumstances. On a cumulative consideration of the relevant aspects, factual and legal, as addressed to hereinabove, we are, thus, of the unhesitant opinion that the prosecution had been able to prove the culpability of the Appellant vis-`-vis the charges beyond any reasonable doubt.

The evidence of the prosecution witnesses in this regard is evidently coherent, consistent and compact. The materials on record though indicate that the deceased had lost her mother at a young age and was denied the love and affection of her father who married for the second time and was also a little sensitive and self-centered, there is nothing supervening to suggest that she did suffer from any mental imbalance or eccentricity so as to probabilise any act of self-elimination without any compelling reason.

On the other hand, the evidence on record demonstrates in emphatic terms that she had been complaining of the Appellant's persistent and hurtful demand for dowry by way of an additional amount of Rs. 50,000/- and her pitiable condition, being subjected to continuous and ruthless harassment and ill-treatment resulting in severe physical and mental torture.

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5. Bhim Singh and Ors v. State of Uttarakhand (2015)4SCC281

Hon'ble Judges/Coram: M. Yusuf Eqbal and Pinaki Chandra Ghose, JJ.

Facts: This appeal, by special leave, has been filed against the judgment and order passed by the High Court of Uttarakhand at Nainital whereby the High Court while acquitting the two co-accused (Appellant Nos. 2 & 3 herein), upheld the conviction and sentence of Appellant Nos. 1 & 2 herein, as awarded by learned Special Judge (CBI)/Additional Sessions Judge, Nainital, and dismissed their appeal.

The learned Special Judge (CBI)/Additional Sessions Judge, Nainital, convicted Appellant Nos. 1 & 2 herein Under Section 304-B of I. P. C and sentenced them to imprisonment for life, and further convicted all the Appellants Under Section 498-A I. P. C and sentenced them to rigorous imprisonment for one year and a fine of Rs. 500/- to each of them. All the Appellants were also convicted Under Sections 3 & 4 of the Dowry Prohibition Act, 1961 and sentenced each of them to three months' simple imprisonment and fine.

The facts leading to this appeal are that one Bhim Singh S/o of Govind Singh, resident of Village Naliana in District Nainital got married to Prema Devi (deceased) on 4.5.1997. Appellants Nos. 2 & 3, namely Aan Singh and Nain Singh are brothers of Bhim Singh and Appellant No. 4, namely Janki Devi is the wife of Aan Singh (Appellant No. 2 herein). Prema Devi died unnatural death in her in-

laws' house on 26.9.1997. Soon after the death of Prema Devi, Pushpa Joshi, Village Pradhan of Jeolikot made a complaint telephonically to Sub-Divisional Magistrate about the unnatural death of Prema Devi. Upon receiving this information, the Magistrate along with Sub-Inspector Shiv Singh Gusain (PW-7) reached the village and took the dead body in their possession and an inquest report was prepared on the same day. Postmortem examination of the deceased was conducted on the same day at about 4.55 p.m. by Dr. D.K. Joshi (PW-5) and one Dr. H.C. Bhatt who prepared the Autopsy Report. Postmortem report reveals that there were 90% burn injuries on the body of the deceased. Since the cause of death was not ascertained by the medical officers, therefore, vicera was preserved for chemical examination. The Trial Court convicted Appellants as mentioned above.

An appeal was preferred by the Appellants to the High Court. The High Court allowed the appeal partly.

The High Court in the present matter convicted Appellant Nos. 1 & 2, on the basis of circumstantial evidence.

The issue is whether circumstantial evidence is sufficient to held accused guilty? Whether theory of last seen together is reliable in the present case?

Decision: The Supreme Court dimissed the apeeal and upheld the decision of High Court.

Reasoning:

Dr. D.K. Joshi examined the dead body and in external examination found 90% burn injuries on the body. The deceased had died 6-8 hours prior to examination. Since no cause of death was visible from external examination, therefore, viscera of the deceased was preserved for internal examination. Post-mortem report was prepared by Dr. H.C. Bhatt in which it was stated that he was of the opinion that the deceased was given some toxic substance before her death due to which she died and later on she was burnt. Because no external reason of death was found, the viscera was sent to the State Laboratory for chemical examination and it was found that toxic material was present in the viscera. The counsel for the State, thus, submitted that the accused tried to kill Smt. Prema Devi by giving poisonous substance after torturing her for dowry and when they became apprehensive whether she had died or not, they set her on fire to confirm her death. Thereafter, they informed the Gram Pradhan of the Village that Prema Devi had died due to burning so that the deceased is not able to give her dying declaration.

It was contended on behalf of the Appellant that there was no demand for dowry before and at the time marriage, by accused if at all they wanted dowry, they would demand it before marriage itself. None of them were in a position to demand and give dowry. This has been admitted by brother and father of deceased. But on her (deceased) visit to parental home she had stated that her husband and in laws are demanding dowry. But it is not necessary that the dowry should be demanded before or at the time of the marriage, it can be made after marriage during cohabitation

However, as held by this Court in the State of *Himachal Pradesh v. Nikku Ram and Ors.* (1995) 6 SCC 219, the demand for dowry can be made at any time, and not necessarily before marriage. The demand can be made on three occasions; before marriage, at the time of marriage and after marriage. The relevant extract of the said judgment is reproduced hereunder:

Dowry, dowry and dowry. This is the painful repetition which confronts, and at times haunts, many parents of a girl child in this holy land of ours where, in good old days the belief was: "Yatra Naryastu Pujyante ramente tetra dewatah" (where woman is worshipped, there is abode of God). We have mentioned about dowry thrice, because this demand is made on three occasions: (i) before marriage; (ii) at the time of marriage; and (iii) after the marriage. Greed being limitless, the demands become insatiable in many cases, followed by torture on the girl, leading to either suicide in some cases or murder in some.

It is the case of the defense that the deceased would have tried to commit suicide by consuming poison and when she was apprehensive whether she would die or not, she set fire to herself. Assuming, without conceding, that Smt. Prema had committed suicide, then Under Section 113A of the Indian evidence Act, onus is shifted on the accused to dislodge the presumption of having committed abetment of suicide by a married woman. Unlike as in Section 304-B where the court "shall presume" dowry death, when the prosecution has established the ingredients, Under Section 113A of the Evidence Act, discretion has been conferred upon the Court wherein it has been provided that the Court may presume abetment of suicide. Therefore the onus lies on the accused to rebut the presumption, and in case of Section 113-B of the Evidence Act relatable to Section 304B of Indian Penal Code, the onus to prove shifts exclusively and heavily on the accused.

In the present case, the guilt or innocence of the accused has to be adduced from the circumstantial evidence. The law regarding circumstantial evidence is more or less well settled. This Court in a plethora of judgments has held that when the conviction is based on circumstantial evidence solely, then there should not be any snap in the chain of circumstances. If there is a snap in the chain, the accused is entitled to benefit of doubt.

On circumstantial evidence, this Court has laid down the following principles in *Sharad Birdhichand Sardar v. State of Maharashtra* (1984) 4 SCC 116:

(1) The circumstances from which the conclusion of guilt is to be drawn must or should be and not merely "may be" fully established.

(2) The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say they should not be explainable on any other hypothesis except that the accused is guilty.

(3) The circumstances should be of conclusive nature and tendency.

(4) They should exclude every possible hypothesis except the one to be proved and,

(5) There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

Whenever there is a break in the chain of circumstances, the accused is entitled to the benefit of doubt; *State of Maharashtra v. Annappa Bandu Kavatage* (1979) 4 SCC 715.

Thus, in light of the above, there is no missing link in the circumstantial evidence put forth by the prosecution, and hence the accused are not entitled to benefit of doubt. The guilt of the accused

persons i.e. the Appellant Nos. 1 & 2 herein, Under Section 304-B Indian Penal Code has been successfully established.

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6. Amrutlal Liladharbhai Kotak and Ors v. State of Gujarat AIR2015SC1355

Hon'ble Judges/Coram: M. Yusuf Eqbal and Pinaki Chandra Ghose, JJ.

Facts: This criminal appeal, by special leave, is directed against the impugned common judgment of the High Court of Gujarat whereby the High Court dismissed Criminal Appeal filed by the Appellants and confirmed the order passed by the Trial Court. The High Court in the present matter upheld the sentence as awarded by the Trial Court by stating that the evidence led by the complainant (PW-1), the elder sister of the deceased (PW-8) and the grandfather of the deceased (PW-9) gets support from the evidence led by PW-7, who are the friends and relatives of the deceased.

The case of the Prosecution is that the marriage between Truptiben (the deceased) and the Appellant No. 3 herein took place on 01.05.1996. After the marriage, Truptiben was residing in a joint family with her in-laws Appellant Nos. 1 and 2 and her husband Appellant No. 3 at. Out of the said wedlock, a girl named Gopi was born. On 23.03.2000 at around 11:30 am while Kantilal Dhanjibhai Karia (father of deceased) received a telephonic message from Appellant No. 1, that his daughter is hanging by the fan and that he may immediately come to see her at Morbi. He (father of deceased) informed about the said telephonic message to his nearest relatives and thereafter, they all proceeded towards Morbi. Father of the deceased arrived at 15:00 Hrs on the same day. He felt something fishy behind the death of her daughter Truptiben, as the Appellants had demanded dowry several times in the past, which was further strengthened by the fact that none of the Appellants were present in the house at the relevant point of time. On the same day in the evening hours, a criminal complaint was filed by the father of the deceased against the Appellants. The body of the deceased was taken off the fan and sent for post-mortem examination. The investigation was carried out and the statements of several witnesses were recorded.

The Sessions Court after appreciating the evidences provided by the witnesses, convicted accused for the offences punishable Under Sections 498A, 304B & 306 read with Section 114 of I. P. C and sentenced accordingly.

Aggrieved by the aforesaid judgment the Appellants preferred an appeal before the High Court. The High Court upheld the ultimate conclusion and the resultant order of conviction recorded by the Trial Court. Hence the present appeal is filed before the Supreme Court.

The issue before the Supreme Court was whether impugned order rightly confirmed conviction of Accused for offences in question?

Decision: The Supreme Court dismissed the appeal.

Reasoning:

The Supreme Court conclude that going by the version provided by PW-1, PW-7, PW-8 and PW-9, there is a reasonable apprehension of the crime committed by the accused punishable under Section 498A, 304B and 306 of I. P. C.With regard to the position of law involving applicability of Sections

498A, 304B and 306 of the I. P. C in the case of *Balwant Singh and Ors. v. State of Himachal Pradesh* (2008) 15 SCC 497, it has been held that Section 304B and Section 498A of the Indian Penal Code are not mutually inclusive. If an accused is acquitted under one section, it does not mean that the accused cannot be convicted under another section.

In the present case, it has been established from the versions of PW-1, PW-7, PW-8 and PW-9 that there was a demand for dowry and the deceased was being mentally harassed for the same.

In the case of *Thanu Ram v. State of M.P.* (2010) 10 SCC 353, this Court has observed certain criteria with regard to establishment of guilt in the cases of dowry death. The first criterion being that the suicide must have been committed within seven years of marriage. The second criterion is that the husband or some relative of the husband had subjected the victim to cruelty, which led to the commission of suicide by the victim. This is when Section 113A of the Indian Evidence Act indicates that in such circumstances, the Court may presume, having regard to all the circumstances of the case, that such suicide has been abetted by her husband or by such relative of her husband. In the present case that we are dealing with, both the above mentioned criteria have been satisfied, since the deceased died within seven years of marriage and with the version of the witnesses, it has been further proved that there was cruelty meted out to the deceased immediately before her unfortunate death.

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7. Ashok v. State of Maharashtra (2015) 4 SCC 393

Hon'ble Judges/Coram: Pinaki Chandra Ghose and N.V. Ramana, JJ.

Facts: This criminal appeal arises from final order and judgment of the High Court of Bombay, Nagpur Bench whereby conviction and sentence of the Accused-Appellant was upheld. The Accused-Appellant was convicted by the Sessions Judge, Gadchiroli for offences Under Sections 302, 201 and 498A of I. P. C for the murder of his wife and two daughters. The facts of the case are that Ashok, the Appellant herein was the husband of Shubhangi, (deceased herein) and they had two daughters, Janhavi (5 1/2 years old) and Namrata (3 1/2 years old), both deceased. At the time of engagement of Accused with Deceased Shubhangi, he (Accused-Appellant) was pursuing D. Ed. Education and for completing the said course, Rs. 50,000/- was given along with a 5 gm gold ring and one 15 gm gold chain. In addition, Rs. 1 lakh was spent on the marriage arrangement. Thereafter, in 2004 Ashok finished D. Ed. and got a job of 'shikshan sevak' at Arer Navargaon. Till now Shubhangi was staying at her matrimonial home but after the Accused-Appellant got a job, they both started staying at a rented house in Arer Navargaon. Admittedly, they had cordial relations for 6 years of marriage but they got strained after 6 years. It is alleged that once they shifted to Arer Navargaon the parents of the Accused-Appellant used to visit them on festivals. On their visits, it is alleged, the father of the Accused-Appellant and the Accused-Appellant used to talk secretly and the Accused-Appellant would not sleep with Shubhangi. It is further alleged that the father of the Accused-Appellant used to taunt that his son could have got a better earning lady as his wife and also that Shubhangi had a squint in her one eye.

On the fateful day, i.e. 26 August 2008, as Accused-Appellant puts the story is that he took half day's leave from his school to visit to Wadsa, a nearby village, with his wife and 2 daughters to buy clothes and other things. On his way back, the fuel in his bike exhausted and, therefore, he dropped his wife and two daughters at the H.P. Gas station where there was a hotel also. He went to get the fuel and returned in 15-20 minutes. When he reached back, he found Shubhangi, Namrata and Janhavi missing

from the place where he had dropped them. He has stated that after looking around he thought they might have left for village so he headed towards the village but he could not find them. He lodged a missing report next day at 9.30 am and also informed the family of Shubhangi that she, along with both the daughters, was missing. The father and mother of Shubhangi visited the Accused-Appellant at the place of Haribhau, accused's friend, where the accused was at that time. But, allegedly the accused did not talk to the parents of Shubhangi properly and left in search of his wife and 2 daughters.

They could not find the missing persons for three days until 29th August, 2008 when a dead body was recovered from Sioni Ghat from the river Vainganga. The body was identified to be of Namrata and it was in a decomposed state, so the post mortem was conducted on the spot itself. It was revealed that the death was caused by throttling. Further it was found that death must have occurred within 4 hours of eating last meal. The last rituals were conducted at the site where the body was found. On the next day the body of Shubhangi was found in the same state as that of Namrata and the post mortem revealed same medical evidence.

The issue that arises in this case is whether the burden of proof shifts on the accused to explain the death of the deceased persons due to 'last seen together' rule?

Decision: The appeal is allowed and the judgment and order passed by the High Court as also by the Trial Court are set aside. The Appellant is directed to be released forthwith if not required in connection with any other case in terms of the signed reportable judgment.

Reasoning:

It may be noted that following lackings in the case of prosecution cannot be overlooked:

(1) The FIR was lodged after a delay of one month and no explanation has been given for such delay.

(2) There has been no previous incident of any physical cruelty committed by the accused against the any of the deceased.

(3) The motive as alleged by the prosecution, even if accepted does not explain how will the accused get the money which is in the bank account of Shailinibai by killing Shubhangi. Shubhangi was merely a nominee in that account and did not own the money. Her death would not have made accused a rightful claimant of that money. In any case, this motive is completely irrelevant for explaining the death of the daughters.

(4) The prosecution has not given its own story at all with respect to what things transpired on 26th August 2008.

(5) Theory of last seen can not be relied in the present case, because accused has explained his whereabouts when he left his wife and two daughters.

The "last seen together" theory has been elucidated by this Court in *Trimukh Marotiu Kirkan v. State of Maharashtra* (2006) 10 SCC 106, in the following words: Where an accused is alleged to have committed the murder of his wife and the prosecution succeeds in leading evidence to show that shortly before the commission of crime they were seen together or the offence takes place in the dwelling home where the husband also normally resided, it has been consistently held that if the

accused does not offer any explanation how the wife received injuries or offers an explanation which is found to be false, it is a strong circumstance which indicates that he is responsible for commission of the crime. Thus, the doctrine of last seen together shifts the burden of proof on the accused, requiring him to explain how the incident had occurred. Failure on the part of the accused to furnish any explanation in this regard, would give rise to a very strong presumption against him.

Keeping the above points in mind, we are of the opinion that in the present case the prosecution has failed to discharge its initial burden itself. Therefore, the question of burden of proof shifting to the accused to explain the happening of incidents does not arise. First and foremost, the delay of one month in filing FIR at the very face of it makes the entire case of the prosecution as concocted and an afterthought. There is no explanation as to why did the parents of Shubhangi not make any complaint or FIR immediately after the recovery of her dead body. It is surprising that nowhere in the case of the prosecution this delay has been explained.

The accused had put a very consistent story at all stages of the case starting from the missing report to the Section 313 statement without any inconsistency. He states that on 26th August 2008 while returning from Wadsa, he exhausted fuel in the bike so dropped his wife and two daughters at HP Gas Agency to go back to get fuel from the petrol pump. When he returned in 15-20 minutes, there was no sign of Shubhangi and two daughters. This, to us, sounds a plausible story and prosecution has done nothing to really counter this version. The Sessions Judge found that this story was unreliable as the accused had failed to put on record the bill for the fuel which he went to fill in the bike. However, we find this reasoning far from the reality as it is well known that not to many people would ask for receipts when refueling their vehicles in India and the accused may not have expected to do so.

The prosecution has not brought any clinching evidence in support of last seen together theory so as to shift the burden of proof on the Accused-Appellant. In light of this, the prosecution has evidently failed to prove the guilt of the Accused-Appellant beyond doubt.

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8. Bhavanbhai Bhayabhai Panella v State of Gujarat MANU/SC/0096/2015

Hon'ble Judges/Coram: T.S. Thakur and A.K. Goel, JJ.

Facts:

This appeal has been preferred against judgment of High Court of Gujarat at Ahmadabad which upheld the conviction under Sec 376(2) (f) and sentence Appellant /accused to imprisonment for life and also awarded compensation of Rs. 1,00,000/- (one Lakh) to the victim Under Section 357(3). It was directed that on failure of the accused to pay compensation, his property will be liable to be sold for recovery of the amount.

The factual matrix of the case is that on 19th September, 2004 at 1330 hrs., the Appellant committed rape on Prosecutrix aged eleven. He also threatened the Prosecutrix that he would kill her if she would disclose the facts to anyone. However, she informed her mother about the occurrence who in turn informed her husband on his return to the house in the night. In the next morning, the Prosecutrix was taken to the Government Hospital by her parents and First Information Report was lodged in the

Police Station by the mother of the victim. Accordingly trial was conducted and appellant/accused was convicted and sentenced as mentioned above.

The issue is whether life imprisonment in the present case is appropriate sentence or not?

Decision: The appeal is disposed of and conviction of the Appellant is upheld, but sentence of life imprisonment is reduced to 10 years Rigorous imprisonment as already undergone by the appellant/accused, whereas default sentence and compensation order remains as it was passed by the Trial Court.

Reasoning:

Our attention has been drawn to the custody certificate dated 27th July, 2012 according to which the Appellant had completed sentence of seven years, five months and ten days. Thereafter, a period of two and a half years has gone by. Thus, the Appellant has already undergone the sentence of about ten years. Having regard to the totality of circumstances, we are of the view that ends of justice will be met if the sentence awarded to the Appellant is reduced to RI for ten years. However, sentence of fine and compensation as also default sentence and direction for recovery of the amount payable as compensation are maintained.

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9. Shimbhu and Anr v. State of Haryana AIR2014 SC 739

Hon'ble Judges/Coram: P. Sathasivam, C.J.I., Ranjana Prakash Desai and Ranjan Gogoi, JJ.

Facts:

These appeals are directed against the final judgment and order of the High Court of Punjab and Haryana at Chandigarh whereby the High Court dismissed the appeals filed by the Appellants herein while affirming the conviction and sentence awarded by the Additional Sessions Judge. Being aggrieved of the above, the Appellants herein have preferred these appeals by way of special leave before this Court. Brief facts of the case are as:

On 28.12.1995, at about 5.00 a.m., when the prosecutrix (PW-3) came out of her house to attend the call of nature, Shimbhu (A-1) and Balu Ram (A-2)-the Appellants herein, met her and asked her to accompany them to their shop. When she tried to resist their attempt, they threatened her by pointing out a knife with dire consequences. They took her inside the shop of Balu Ram (A-2) and raped her, turn by turn. They kept her confined in the same shop for two days, and committed rape upon her repeatedly. It was only on 29.12.1995, she was allowed to leave the said place when the Appellants-accused learnt that her family members were on her look out. When she reached her house, she narrated the entire incident to her family members.

The Additional Sessions Judge, convicted and sentenced the Appellants to undergo rigorous imprisonment (RI) for ten years along with a fine of Rs. 5,000/- each, in default, to further undergo RI for six months for the offence punishable Under Section 376(2)(g) read with Section 34 of Indian Penal Code. The Appellants were also sentenced to undergo RI for three years along with a fine of Rs. 1,000/- each, in default, to further undergo RI for two months for the offence punishable Under Section 366 read with Section 34 of Indian Penal Code. They were further sentenced to undergo RI

for three months along with a fine of Rs. 200/- each, in default, to further undergo RI for fifteen days for the offence punishable Under Section 342 read with Section 34 of Indian Penal Code. They were also sentenced to undergo RI for one year along with a fine of Rs. 500/- each, in default, to further undergo RI for one month for the offence Under Section 506 read with Section 34 of Indian Penal Code.

The issue is whether the Appellants-accused have made out a case for imposition of a lesser sentence than ten years as envisaged under Sec 376 (2) (g) ?

Whether following three grounds, are adequet and special reason to reduce sentence than prescribed by the statute:

Firstly, on the ground that a compromise has been arrived at between the parties;

Secondly, that the occurrence of the incident dates back to 1995; and

Lastly, that the victim is happily married and blessed with children.

Decision: The Supreme Court rejected the request for reduction of sentence, consequently, the appeals fail and the same are dismissed.

Reasoning:

This Court, in a catena of cases, has categorically reiterated that none of the grounds above raised will suffice to be 'special and adequate reasons' even if put together to reduce sentence. For example in *Kamal Kishore v. State of H.P.* (2000) 4 SCC 502, a three-Judge Bench of this Court arrived at the conclusion that the fact that the occurrence took place 10 years ago and the accused or the victim might have settled in life is no special reason for reducing the statutory prescribed minimum sentence, stating:

The punishments prescribed by the Penal Code reflect the legislative recognition of the social needs, the gravity of the concerned offence, its impact on the society and what the legislature considers as a punishment suitable for the particular offence. It is necessary for the courts to imbibe that legislative wisdom and to respect it.

In *Baldev Singh and Ors. v. State of Punjab* MANU/SC/1445/2011 : (2011) 13 SCC 705, though courts below awarded a sentence of ten years, taking note of the facts that the occurrence was 14 years old, the Appellants therein had undergone about 31/2 years of imprisonment, the prosecuterix and the Appellants married (not to each other) and entered into a compromise, this Court, while considering peculiar circumstances, reduced the sentence to the period already undergone, but enhanced the fine from Rs. 1,000/- to Rs. 50,000/-. In the light of series of decisions, taking contrary view, we hold that the said decision in Baldev Singh (supra) cannot be cited as a precedent and it should be confined to that case.

Similarly, in *Mohd. Imran Khan v. State Government (NCT of Delhi)* MANU/SC/1224/2011 : (2011) 10 SCC 192, this Court, after pointing out that as the High Court itself has awarded the sentence lesser than the minimum prescribed for the offence recording special reasons, viz., that the prosecutrix therein had willingly accompanied the Appellants to Meerut and stayed with them in the hotel; she

was more than 15 years of age when she eloped with the Appellants and the Appellants were young boys held that there is no case for further reduction of sentence and dismissed the appeals filed by the Appellants-accused. Inasmuch as the prosecutrix herself had consented and stayed along with the Appellants-accused in the hotel, the High Court reduced the sentence to five years which was less than the minimum prescribed for the offence which in turn affirmed by this Court. This decision is also confined to the peculiar circumstances under the important aspect that the prosecutrix was a consenting party, hence, the same is also not applicable to the case on hand or any other case.

Thus, the law on the issue can be summarized to the effect that punishment should always be proportionate/ commensurate to the gravity of offence. Religion, race, caste, economic or social status of the accused or victim or the long pendency of the criminal trial or offer of the rapist to marry the victim or the victim is married and settled in life cannot be construed as special factors for reducing the sentence prescribed by the statute. The power under the proviso should not be used indiscriminately in a routine, casual and cavalier manner for the reason that an exception clause requires strict interpretation.

Further, a compromise entered into between the parties cannot be construed as a leading factor based on which lesser punishment can be awarded. Rape is a non-compoundable offence and it is an offence against the society and is not a matter to be left for the parties to compromise and settle.

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10. Baskaran and Anr v. State of Tamil Nadu (2014)5SCC765

Hon'ble Judges/Coram: T.S. Thakur and Gyan Sudha Misra, JJ.

Facts:

This appeal by special leave is directed against the judgment and order passed by the High Court of Madras affirming the conviction of the first Appellant under Section 376(2)(g), 302 and 201 I.P.C awarding sentence for life imprisonment along with Rs. 5,000/- fine, 10 years RI, along with Rs. 5,000/- fine and 3 years RI, with a fine of Rs. 2,000/- respectively. The Trial Court had awarded identical sentences to Appellant No. 2, who on appeal in the High Court, was acquitted of the offence of murder under Section 302 Indian Penal Code but his conviction and sentence under Section 376 I.P.C was maintained.

Brief Facts of the case are as that, the Appellants-A1 & A2 along with two others had forcibly taken the deceased girl to a secluded place on 21.10.1995 at about 7.00 p.m., then she was raped and in course of the same transaction, A1 had strangulated her to death. Further, with a view to screen the offence, all of them threw the dead body to a secluded place in an agricultural field. In the post-mortem report doctor had opined that the death is caused due to strangulation, injuries on the body, bleeding vaginal rupture. However, the vaginal smear didn't reveal any traces of semen. The initial investigation didn't reveal the names of the Appellants and even the witnesses examined didn't offer any clue in this regard.

After about 35 days, on 25.11.1995, the Appellant No. 1 approached PW10, the village Administrative Officer whereby he confessed that he along with Appellant No. 2 and two others murdered the deceased after raping her and offered to surrender. This confession was reduced into writing in presence of PW-11 who was there and who signed the same. In pursuance to the

confessional statement, the I.O. took him to the scene of crime where some earth sample was taken and then they went to A1's home, where a diary belonging to the deceased was recovered. The next day, on 26.11.1995, A-2 approached PW-13, the village Administrative Officer of another village and confessed about the crime, in the presence of PW-14, who had attested the written confession given to PW-13. The accused/Appellants were then, committed to trial and convicted on the basis of the extra-judicial confession. While A-1 had identified A-4, A-2 had identified A-3 and thus, they too were arrested. However, later the trial court had acquitted A-3 and A-4 and the State did not challenge the same.

The issue before the this court is whether the Appellants can be convicted solely on the basis of these two extra-judicial confessions, which was witnessed by PW-11 and PW-14 who have turned hostile with regard to some portions of the prosecution evidence.

Decision: We do not find any infirmity in the judgment and order of the High Court holding the Appellants guilty and sentencing them appropriately. Consequently, the appeal fails and is dismissed. The Appellants are on bail. Their bails bonds are cancelled and they be taken into custody forthwith for serving out remaining part of the sentence.

Reasoning: Having examined the instant case based on the aforesaid principle, we are not prepared to accept the plea that merely because one of the witnesses to the confessional statement did not support the confession in its entirety, 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.

It is no doubt true that this Court time and again has held that an extra-judicial confession can be relied upon only if the same is voluntary and true and made in a fit state of mind. The value of the evidence as to the confession like any other evidence depends upon the veracity of the witness to whom it has been made. The value of the evidence as to the confession depends on the reliability of the witness who gives the evidence. 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.However, on a scrutiny of the background and circumstance of the matter, we have taken note of the fact and find substance in the plea of the prosecution that the accused A-1 and A-2 committed rape on the victim one after the other and A-1 thought that if the victim is allowed to go alive, she may expose all of them and, therefore, A-1 throttled the neck of the deceased with his hands resulting in her death and on noticing this, A-2 questioned him as to why he did like that. Thus, even though A-2 had committed rape on the victim, his acquittal by High Court under Section 302 but conviction under Section 376 I. P. C was rightly sustained.

Session No 3: Sentencing in Trials of Offences against Children

1. Satish Kumar Jayanti Lal Dabgar v. State of Gujarat (2015)7SCC359

Hon'ble Judges/Coram: Dipak Misra and A.K. Sikri, JJ.

Facts:

This appeal arises out of the judgment dated 04.04.2011 passed by the High Court of Gujarat in Criminal Appeal No. 2158/2005, whereby the High Court has partly allowed the said appeal. The Appellant herein was put on trial and convicted for offences Under Sections 363, 366 as well as 376 of the Indian Penal Code (for short the 'Indian Penal Code') and was sentenced to undergo rigorous imprisonment for committing the aforesaid offences as under:

(a) For committing the offence punishable Under Section 363 Indian Penal Code, the trial court sentenced him to undergo imprisonment for a period of three years and also imposed a fine of Rs. 2,000/- with the clause that in default of payment of fine, the Appellant will have to undergo simple imprisonment for a period of one month.

(b) Qua the conviction recorded for the offence punishable Under Section 366 of the Indian Penal Code, sentenced imposed by the trial court was five years imprisonment with fine of Rs. 3,000/- and in default of payment of fine, sentenced to undergo simple imprisonment for a period of two months.

(c) For committing the offence punishable Under Section 376 of the Indian Penal Code, the Appellant was imposed rigorous imprisonment for a period of seven years and also fine of Rs. 45,000/- with the stipulation that in the event, Appellant defaults in paying the fine, he would have to undergo simple imprisonment for a period of one year.

The aforesaid amount of Rs. 45,000/-, if payable by the Appellant as fine, was ordered to be paid to the victim as a compensation. All the sentences were to run concurrently.

In the appeal preferred by the Appellant against the aforesaid conviction, the High Court has affirmed the conviction, as accorded by the trial court. However, at the same time, it has modified the sentence by reducing it to rigorous imprisonment for a period of 4 1/2 years instead of 7 years for the offence punishable Under Section 376 of the Indian Penal Code. With this solitary modification resulting into partial allowing of the appeal, rest of the judgment and sentence dated 15.09.2005 passed by the learned Additional Sessions Judge, Sabarkantha, 4th Fast Track Court, Modasa, Gujarat has been affirmed.

The issue is whether the consent of the prosecuterix (who is below 16 years of age) can be a mitigating factor for awarding less punishment?

Decision: The appeal is dismissed. The Appellant was released on bail during the pendency of the present appeal. He shall, accordingly, be taken into custody to serve the remaining sentence.

Reasoning:

Consent of the girls below 18 years of age is immaterial for deciding the conviction and the sentence thereof.Further merely because the Appellant has now married hardly becomes a mitigating

circumstance. Likewise, the Appellant cannot plead that Prosecutrix is also married and having a child and, therefore, Appellant should be leniently treated. It is not a case where the Appellant has married the Prosecutrix. Notwithstanding the same, as noted above, the High Court has already reduced the sentence from seven years rigorous imprisonment to 4 1/2 years Under Section 376 of the Indian Penal Code. Therefore, in any case, the Appellant is not entitled to any further mercy.

The learned Amicus Curiae, therefore, drew our attention to para 12 of the impugned judgment wherein it is noted that the Appellant was newly married (which means just before April, 2011 when the judgment of the High Court was delivered). It was also pleaded that he was a poor man and the only bread earner in his family. Another extenuating circumstance which was sought to be projected was that even though the prosecutrix was below 16 years of age at the time of incident, the entire episode was the result of love affair between the Appellant and the prosecutrix and every act between them was consensual. It was also pointed out that even the prosecutrix was married and had one child and, therefore, was happily settled in her matrimonial home. On the basis of these circumstances, the plea was made that the Appellant should be accorded sympathetic treatment by reducing the sentence imposed upon him.

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2. Darga Ram v. State of Rajasthan AIR2015SC1016

Hon'ble Judges/Coram: T.S. Thakur and R. Banumathi, JJ.

Facts:

The Appellant was tried and convicted for offences punishable Under Sections 376 and 302 Indian Penal Code. For the offence of rape punishable Under Section 376, he was sentenced to undergo imprisonment for a period of 10 years besides a fine of Rs. 1000/- and default sentence of one month with rigorous imprisonment. Similarly, for the offence of murder punishable Under Section 302 Indian Penal Code, he was sentenced to undergo life imprisonment besides a fine of Rs. 3,000/- and default sentence of three months' rigorous imprisonment. Both the sentences were directed to run concurrently. Criminal Appeal filed by him was heard and dismissed by a Division Bench of the High Court of Judicature for Rajasthan at Jodhpur. The present appeal assails the impugned judgment and order.

The issue is whether sentence confirmed by the High Court needs to be intervened?

Decision: Appeal is partly allowed to the extent that while the conviction of the Appellant for offences Under Section 302 and 376 of Indian Penal Code is affirmed the sentence awarded to him shall stand set aside with a direction that the Appellant shall be set free from prison unless required in connection with any other case.

Reasoning:

Appellant is a deaf and dumb. He was never been to school. Therefore there is no conclusive proof of his age. Radiological Opinion is that the age of Darga Ram @ Gunga S/o Heera is in between 30 years to 36 years and the average age of Darga Ram @ Gunga S/o Heera is about 33 years on the date of examination. Therefore there are chances that he was a juvenile at the time of commission of offence which took place in 1998 and the radiological opinion is obtained in 2014. In the totality of

the circumstances, we have persuaded ourselves to go by the age estimate given by the Medical Board and to declare the Appellant to be a juvenile as on the date of the occurrence no matter the offence committed by him is heinous and but for the protection available to him under the Act. The fact that the Appellant has been in jail for nearly 14 years is the only cold comfort for us to let out of jail.

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3. State of Rajasthan v. Sri Chand MANU/SC/0589/2015

Hon'ble Judges/Coram: Pinaki Chandra Ghose and U.U. Lalit, JJ.

Facts:

This appeal, by special leave, has been filed by the State of Rajasthan against the judgment passed by the High Court of Rajasthan, Jaipur Bench, Jaipur, whereby the High Court rejected the appeal of the State filed against the acquittal of the Respondent. The facts of this case, as per the prosecution story, are that on 1.08.2002, Gujarmal son of Sukkan Ram Lali, resident of Baseth, P.S. Kathumar, District Laxmangarh (Rajasthan), submitted a written report at Police Station Kathumar stating therein that on 31.7.2002, at around 10 A.M., his daughter the prosecutrix, aged 12 years, had gone to the jungle to graze buffaloes. Sri Chand son of Madan Lal Saini, whose house is in the jungle, approached his daughter, the prosecutrix and told her that his sister was calling her. By luring her in this way, Sri Chand took his daughter the prosecutrix to his house. No one was there in the house and Sri Chand took his daughter the prosecutrix inside the room, closed the door from inside, forcibly undressed her and made her to lie on the ground and started raping her forcibly. The prosecutrix cried upon which Sri Chand put some cloth in her mouth. Hearing her cries, Bihari Saini, who was passing nearby, reached there and he witnessed the whole incident. Saroj wife of Prahlad also reached at the site. Out of fear, accused Sri Chand fled away from the place of incident.

Decision: Appeal is allowed and the accused/respondent is hereby sentenced to rigorous imprisonment for two years. The Respondent is directed to surrender within a period of two weeks to serve out the sentence, failing which the Additional District and Sessions Judge, Laxmangarh, shall take necessary steps to take him into custody to serve out the sentence.

Reasoning:

In the present case the accused is not a minor, rather he has committed an offence against a minor girl who is helpless. The offence is heinous in nature and there is no reason for granting benefit of probation in this case.

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4. Kalu Khan v. State of Rajasthan MANU/SC/0440/2015

Hon'ble Judges/Coram: H.L. Dattu, C.J.I., S.J. Mukhopadhaya and Arun Mishra, JJ.

Facts:

These appeals are directed against the judgment and order passed by the High Court of Judicature for Rajasthan at Jodhpur in D.B. Criminal Murder Reference No. 02 of 2013 and D.B. Criminal Jail Appeal No. 293 of 2013, dated 09.04.2014. By the impugned judgment and order, the High Court has

confirmed the judgment of conviction and order of sentence of death passed by the learned Special Judge, Scheduled Caste/Scheduled Tribes (Prevention of Atrocities) Act Cases, Sriganganagar in Original Sessions Case No. 53 of 2012, dated 07.03.2013, whereby the learned Special Judge has convicted the Appellant-accused for of fence Under Sections 363, 364, 376(2)(f), 302 and 201 of the Indian Penal Code, 1860 (for short "the Indian Penal Code") and awarded death sentence. It is relevant to notice that since the co-accused, Jumman Khan was a juvenile at the time of commission of the offence, his case was separated and referred to the Juvenile Justice Board for further proceedings.

The issue is whether it is a rarest of rare case which need to be sentenced with capital punishment?

Decision:

In the result, the appeals are partly allowed and the sentence of death awarded to the Appellant-accused is commuted to imprisonment for life. The judgment and order passed by the High Court is modified to the aforesaid extent.

Reasoning:

Mere brutality of the murder or the number of persons killed or the manner in which the body is disposed of has not always persuaded this Court to impose death penalty. Similarly, at times, in the peculiar factual matrix, this Court has not thought it fit to award death penalty in cases, which rested on circumstantial evidence or solely on approver's evidence. Where murder, though brutal, is committed driven by extreme emotional disturbance and it does not have enormous proportion, the option of life imprisonment has been exercised in certain cases. Extreme poverty and social status has also been taken into account amongst other circumstances for not awarding death sentence. In few cases, time spent by the accused in death cell has been taken into consideration along with other circumstances, to commute death sentence into life imprisonment. Where the accused had no criminal antecedents; where the State had not led any evidence to show that the accused is beyond reformation and rehabilitation or that he would revert to similar crimes in future, this Court has leaned in favour of life imprisonment.

Undoubtedly, the aggravating circumstances reflected through the nature of the crime and young age of the victim make the crime socially abhorrent and demand harsh punishment. However, there exist the circumstances such as there being no criminal antecedents of the Appellant-accused and the entire case having been rested on circumstantial evidence including the extra judicial confession of a co-accused. These factors impregnate the balance of circumstances and introduce uncertainty in the "culpability calculus" and thus, persuade us that death penalty is not an inescapable conclusion in the instant case. We are inclined to conclude that in the present scenario an alternate to the death penalty, that is, imprisonment for life would be appropriate punishment in the present circumstances.

We have critically appreciated the entire evidence in its minutest detail and are of the considered opinion that the present case does not warrant award of the extreme sentence of death to the Appellant-accused and the sentence of life imprisonment would be adequate and meet the ends of justice. We are of the opinion that the four main objectives which the State intends to achieve namely deterrence, prevention, retribution and reformation can be achieved by sentencing the Appellant-accused for life.

5. Parhlad and Ors v. State of Haryana MANU/SC/0826/2015

Hon'ble Judges/Coram: Dipak Misra and Prafulla C. Pant, JJ.

Facts:

Present appeal is filed against the judgment of High Court which affirmed the conviction and sentence of ten years' rigorous imprisonment of the appellants under section 376 of I. P. C passed by the trial court. The Prosecutrix has deposed that she was about 14 years of age at the time of the offence. The father of the Prosecutrix testified in a categorical manner about the age of the Prosecutrix. The Principal has proved the school leaving certificate and nothing has been elicited to create on iota of doubt in his testimony. On the said premises, the conclusion arrived at is that the Prosecutrix was below 16 years of age. The Prosecutrix accompanied Appellant No.1, her uncle, to the house of Appellant No. 2, the maternal uncle of Appellant No.1. There, she was sexually assaulted first by the Appellant No. 1 and thereafter by the Appellant No. 2. The trial court accepted the prosecution's case that the Prosecutrix was under 16 years of age and the defence of consent by the Appellants was rejected. The Appellants were convicted and sentenced as mentioned above.

The issue is whether the finding as regards the age of the Prosecutrix is based on the proper appreciation of evidence on record or it is so perverse that it deserves to be dislodged? Whether the opinion of the High Court relating to consent of prosecuterix withstands scrutiny? Whether the sentence of the Appellants deserves to be reduced

Decision: Appeal is dismissed.

Reasoning:

On a perusal of the findings returned by the learned trial Judge as well as by the High Court, it is noticed that the learned trial Judge has relied upon the testimony of the Prosecutrix, her father, and the school leaving certificate, which has been brought on record and tendered in evidence; and the High Court, on re-appreciation of the testimony of the Prosecutrix and her father coupled with the testimony of PW-1, the Head Master of the concerned school has found that the version of the prosecution is truthful. As is perceptible, the Prosecutrix has deposed that she was about 14 years of age at the time she went with her uncle and made a prey of the uncontrolled debased conduct of the Appellants. The father of the Prosecutrix has testified in a categorical manner about the factum of age of the Prosecutrix. The Principal, PW-1, who has proved the school leaving certificate has stood embedded in his testimony and not paved the path of tergiversation despite the roving cross-examination. Nothing has been elicited to create on iota of doubt in his testimony. On the said premises, as we find, the conclusion has been arrived at that the prosecuterix was below 16 years of age.

There is no justification or warrant for reducing the sentence in the instant case. The Appellants took advantage of their social relationship with the Prosecutrix. She had innocently trusted Appellant No.1 and there was no reason for her to harbour any kind of doubt. The design of Appellant No.1 and manipulation of Appellant No.2 is manifest. Therefore, regard being had to the gravity of the offence, reduction of sentence indicating any imaginary special reason would be an anathema to the very concept of rule of law

6. Akhtar v. State of U.P. MANU/UP/2336/2014

Hon'ble Judges/Coram: Amar Saran and Vijay Lakshmi, JJ.

Facts:

This appeal arises from a judgment of the Additional Sessions Judge whereby the appellant has been awarded a sentence of death under section 302 I.P.C. together with a fine of ` 25,000/. The appellant has also been sentenced to imprisonment for life under section 376 I.P.C. and a fine of ` 25,000/, and under section 201 I.P.C., appellant has been sentenced to 7 years RI and a fine of ` 7000/. A death reference has also been forwarded to this Court by the Sessions Judge for confirming the sentence of death awarded to the appellant.

The issue is whether it would be appropriate to confirm the sentence of death awarded to the appellant or whether a sentence of life imprisonment would be more appropriate in the circumstances?

Decision: The appeal is partly allowed on these considerations we are of the view that the judgment of the trial judge convicting the appellant as above be upheld. However the death sentence awarded to the appellant under section 302 I.P.C. is commuted to a sentence of imprisonment for life, which is to run for the remainder of the appellant's natural life, subject to a bona fide exercise of the clemency powers of the President or Governor or the powers of remission of the State under the appropriate statutory provisions. The remaining sentences awarded by the Trial Court are upheld.

Reasoning:

In the present case also, we find that when the appellant committed the offence he was a young person aged about 28 years only. There is no evidence to show that he had committed the offences of kidnapping, rape or murder on any earlier occasion. There is nothing on evidence to suggest that he is likely to repeat similar crimes in future. On the other hand, given a chance he may reform over a period of years. Hence, following the judgment of the three-Judge Bench in Rameshbhai Chandubhai Rathod (2) v. State of Gujarat MANU/SC/0075/2011 we convert the death sentence awarded to the appellant to imprisonment for life and direct that the life sentence of the appellant will extend to his full life subject to any remission or commutation at the instance of the Government for good and sufficient reasons."

Imposition of death penalty in a case of this nature, in our opinion, was, thus, improper. Even otherwise, it cannot be said to be a rarest of rare cases. The manner in which the deceased was raped may be brutal but it could have been a momentary lapse on the part of the appellant, seeing a lonely girl at a secluded place. He had no pre-meditation for commission of the offence. The offence may look heinous, but under no circumstances, can it be said to be a rarest of rare cases."

In the aforesaid background we are of the opinion that this is not the rarest of rare cases, where the special reasons exist for only awarding the death penalty and where the other option of awarding a sentence of imprisonment for life is unquestionably foreclosed.

7. Duryodhan Rout v. State of Orissa AIR 2014 SC 3345

Hon'ble Judges/Coram: S.J. Mukhopadhaya and Dipak Misra, JJ.

Facts:

These appeals are directed against the common judgment dated of High Court of Orissa at Cuttack. By the impugned judgment, the High Court upheld the conviction but altered the death sentence in to imprisonment for life and remaining sentences were upheld as it is for the offence Under Section 376, 302 and 201 Indian Penal Code. The appellant accused had committed rape and murder of a minor girl aged about 10 years. The Trial Court convicted the Appellant on the basis of the chain of circumstantial evidence available against the accused. Thus, the accused was last seen with the deceased. There is nothing to indicate that within one hour, there was any scope for anybody else, other than the accused to commit rape and murder of the deceased. The chain of circumstances of the case thereby leads to the hypothesis that the accused and the accused alone was the author of the crime, and therefore, the Trial Court rightly convicted the accused Under Sections 376(f)/302/201 Indian Penal Code. It was further ordered by the trial court to run substantive sentence consecutively.

The issue is whether high court has rightly converted death sentence to life imprisonment or not? Whether High Court was right to hold that the substantive part of the sentences run consecutively? Whether life imprisonment means imprisonment for the remainder of natural life of the convict?

Decision: The Supreme Court allowed the Appeal partly.

Reasoning:

Taking into consideration the facts and circumstances of the case, the age of the Appellant, his family background and the fact that the Appellant had no criminal antecedent, the capital sentence for the offence Under Section 302 Indian Penal Code has been commuted to life imprisonment; and rest of sentence remain unaltered. Further court observed that High Court was not justified to uphold the order of the Trial court to run the sentence consecutively. It is clear that a sentence of imprisonment for life means a sentence for entire life of the convict unless the appropriate Government chooses to exercise its discretion to remit either the whole or a part of the sentence under the provisions of the Code of Criminal Procedure.

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8. Anil Arikswamy Joseph v. State of Maharashtra (2014)4SCC69

Hon'ble Judges/Coram: K.S. Panicker Radhakrishnan and Vikramajit Sen, JJ.

Facts:

These appeals have been preferred against judgment of the High Court, which confirmed the death sentence, imposed by the Principal District and Sessions Judge, convicted the Appellant for the offence punishable Under Section 302 Indian Penal Code and sentenced him to death and also sentenced to pay a fine of Rs. 10,000/- and in default to suffer rigorous imprisonment for one year and for the offence punishable Under Section 377 Indian Penal Code, he was sentenced to suffer rigorous imprisonment for 10 years and to pay a fine of Rs. 1,000/- and in default to suffer rigorous imprisonment for a period of three months. The Appellant was also convicted for the offence

punishable Under Section 201 Indian Penal Code and was sentenced to suffer rigorous imprisonment for 3 years and to pay a fine of Rs. 1,000/- and in default to suffer rigorous imprisonment for a period of three months. Substantive sentences, it was ordered, would run concurrently. Since the accused was sentenced to death, reference was sent to the High Court for confirmation of death sentence.

The issue is whether it is a rarest of the rare case to award death sentence?

Decision: The appeal is allowed and the death sentence is remitted in to life imprisonment which will include incarceration of a further period of thirty years, without remission, in addition to the sentence already undergone, will be an adequate punishment.

Reasoning:

The "rarest of the rare case" comes when a convict would be a menace and threat to the harmonious and peaceful coexistence of the society. Where an accused does not act on any spur of the moment provocation and he indulged himself in a deliberately planned crime and meticulously executed it, the death sentence may be the most appropriate punishment for such a ghastly crime, but there are no reasons as to the accused is beyond reformation and menace to the peaceful existence to the society and hence death sentences is not warranted in this case. Therefore death sentence is commuted to life imprisonment as stated above.

Legislative policy is discernible from Section 235(2) read with Section 354(3) of the Code of Criminal Procedure, that when culpability assumes the proportions of depravity, the Court has to give special reasons within the meaning of Section 354(3) for imposition of death sentence. Legislative policy is that when special reasons do exist, as in the instant case, the Court has to discharge its constitutional obligations and honor the legislative policy by awarding appropriate sentence that is the will of the people.

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9. Sunder @ Sundararajan v. State by Inspector of AIR2013SC777

Hon'ble Judges/Coram: P. Sathasivam and J.S. Khehar, JJ.

Facts:

The present appeal is filed against the judgment of High Court whereby death sentence awrded to the appellant/acuused by the Trial court was affirmed. Since in the facts and circumstances of this case, it has been duly established, that Suresh had been kidnapped by the accused-Appellant; the accused-Appellant has not been able to produce any material on the record of this case to show the release of Suresh from his custody. Section 106 of the Indian Evidence Act, 1872 places the onus on him. In the absence of any such material produced by the accused-Appellant, it has to be accepted, that the custody of Suresh had remained with the accused-Appellant, till he was murdered. The motive/reason for the accused-Appellant, for taking the extreme step was, that ransom as demanded by him, had not been paid. We are therefore, satisfied, that in the facts and circumstances of the present case, there is sufficient evidence on the record of this case, on the basis whereof even the factum of murder of Suresh at the hands of the accused-Appellant stands established.

The issue is whether it is a rarest of rare case which requires death sentence to be inflicted upon the appellant/accused?

Decision: Appeal Dismissed. In view of the above, we find no justification whatsoever, in interfering with the impugned order of the High Court, either on merits or on the quantum of punishment.

Ratio Decidendi:

"Court shall award punishment to accused person after considering nature of offence, and extent of brutality with which offence is committed."

Reasoning:

There are no mitigating circumtnaces which will warrant to commute death sentence to life imprisonment. There are only aggravating circumstances against the accused-appellant are as follows:

(i) The accused-appellant has been found guilty of the offence under Section 364A of the Indian Penal Code.

A perusal of Section 364A, I.P.C., leaves no room for any doubt, that the offence of kidnapping for ransom accompanied by a threat to cause death contemplates punishment with death. Therefore, even without an accused actually having committed the murder of the individual kidnapped for ransom, the provision contemplates the death penalty. Insofar as the present case is concerned, there is no doubt, that the accused-appellant has been found to have kidnapped Suresh for ransom, and has also actually committed his murder. In the instant situation therefore, the guilt of the accused-appellant (under Section 364A of the Indian Penal Code) must be considered to be of the gravest nature, justifying the harshest punishment prescribed for the offence.

(ii) The accused-appellant has also been found guilty of the offence of murder under Section 302 of the Indian Penal Code. Section 302 of the Indian Penal Code also contemplates the punishment of death for the offence of murder. It is, therefore, apparent, that the accused-appellant is guilty of two heinous offences, which independently of one another, provide for the death penalty.

(iii) The accused caused the murder of child of 7 years. The facts and circumstances of the case do not depict any previous enmity between the parties. There is no grave and sudden provocation, which had compelled the accused to take the life of an innocent child. The murder of a child, in such circumstances makes this a case of extreme culpability.

(iv) Kidnapping of a child was committed with the motive of carrying home a ransom. On account of the non-payment of ransom, a minor child's murder was committed. This fact demonstrates that the accused had no value for human life. The instant circumstance demonstrates extreme mental perversion not worthy of human condonation.

(v) The manner in which the child was murdered, and the approach and method adopted by the accused, disclose the traits of outrageous criminality in the behavior of the accused. The child was first strangulated to death, the dead body of the child was then tied in a gunny bag, and finally the gunny bag was thrown into a water tank. All this was done, in a well thought out and planned manner. This approach of the accused reveals a brutal mindset of the highest order.

(vi) All the aforesaid aggravating circumstances are liable to be considered in the background of the fact, that the child was known to the accused-appellant. In the examination of the accused under Section 313 of the Code of Criminal Procedure, the accused acknowledged, that he used to see the child whenever the child was taken by his mother to her native village. Additionally, it is acknowledged in the pleadings, that the accused had developed an acquaintance with the child, when his mother used to visit her native place alongwith her son. Murder was therefore, committed, not of a stranger, but of a child with whom the accused was acquainted. This conduct of the accused-appellant, places the facts of this case in the abnormal and heinous category.

(vii) The choice of kidnapping the particular child for ransom, was well planned and consciously motivated. The parents of the deceased had four children-three daughters and one son. Kidnapping the only male child was to induce maximum fear in the mind of his parents. Purposefully killing the sole male child, has grave repercussions for the parents of the deceased. Agony for parents for the loss of their only male child who would have carried further the family lineage, and is expected to see them through their old age, is unfathomable. Extreme misery caused to the aggrieved party, certainly adds to the aggravating circumstances.

"The rarest of the rare case" comes when a convict would be a menace and threat to the harmonious and peaceful co-existence of the society. The crime may be heinous or brutal but may not be in the category of "the rarest of the rare case". There must be no reason to believe that the accused cannot be reformed or rehabilitated and that he is likely to continue criminal acts of violence as would constitute a continuing threat to the society. The accused may be a menace to the society and would continue to be so, threatening its peaceful and harmonious co-existence. The manner in which the crime is committed must be such that it may result in intense and extreme indignation of the community and shock the collective conscience of the society. Where an accused does not act on any spur-of-the-moment provocation and indulges himself in a deliberately planned crime and meticulously executes it, the death sentence may be the most appropriate punishment for such a ghastly crime. The death sentence may be warranted where the victims are innocent children and helpless women. Thus, in case the crime is committed in a most cruel and inhuman manner which is an extremely brutal, grotesque, diabolical, revolting and dastardly manner, where his act affects the entire moral fiber of the society, e.g. crime committed for power or political ambition or indulging in organized criminal activities, death sentence should be awarded.

Thus, it is evident that for awarding the death sentence, there must be existence of aggravating circumstances and the consequential absence of mitigating circumstances. As to whether death sentence should be awarded, would depend upon the factual scenario of the case in hand.

Thus, it is imperative for the Court to examine each case on its own facts, in light of the enunciated principles. It is only upon application of these principles to the facts of a given case that the Court can arrive at a final conclusion whether the case in hand is one of the 'rarest of rare' cases and imposition of death penalty alone shall serve the ends of justice. Further, the Court would also keep in mind that if such a punishment alone would serve the purpose of the judgment, in its being sufficiently punitive and purposefully preventive.

While determining the questions relatable to sentencing policy, the Court has to follow certain principles and those principles are the loadstar besides the above considerations in imposition or otherwise of the death sentence.

(1) The Court has to apply the test to determine, if it was the 'rarest of rare' case for imposition of a death sentence.

(2) In the opinion of the Court, imposition of any other punishment, i.e., life imprisonment would be completely inadequate and would not meet the ends of justice.

(3) Life imprisonment is the rule and death sentence is an exception.

(4) The option to impose sentence of imprisonment for life cannot be cautiously exercised having regard to the nature and circumstances of the crime and all relevant considerations.

(5) The method (planned or otherwise) and the manner (extent of brutality and inhumanity, etc.) in which the crime was committed and the circumstances leading to commission of such heinous crime.

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10. Shankar Kisanrao Khade v. State of Maharashtra (2013)5SCC546

Hon'ble Judges/Coram: K.S. Panicker Radhakrishnan and Madan B. Lokur, JJ.

Facts:

The Additional Sessions Court in Sessions Case No. 165/2006 convicted the first accused and sentenced him to death under Section 302 Indian Penal Code, subject to confirmation by the High Court and was also awarded imprisonment for life and to pay a fine of Rs. 1,000/- in default to suffer rigorous imprisonment (for short RI) for six months for offences under Section 376 Indian Penal Code, further seven years RI and to pay a fine of Rs. 500/- in default to suffer RI for three months under Section 366-A Indian Penal Code and five years RI and to pay a fine of Rs. 500/- in default to suffer RI for one month for offences punishable under Section 363 Indian Penal Code, read with Section 34 Indian Penal Code. The second accused-his wife, was convicted for the offences punishable under Section 363A read with Section 34 Indian Penal Code and sentenced to suffer RI for five years and to pay a fine of Rs. 500/- in default and to suffer RI for one month. The Accused No. 2 had already suffered the punishment, hence did not file any appeal against the order of the sessions judge. The accused preferred Criminal Appeal No. 512 of 2007 before the High Court and the Court heard the appeal along with Confirmation Case No. 1 of 2007. The High Court dismissed the appeal and the reference made by the Sessions Court was accepted and the death sentence was confirmed. Appellant has preferred these two appeals against those orders.

The issue is whether the case can be classified as of a "rarest of rare" category justifying the severest punishment of death?

Decision: These Criminal appeals stand dismissed and the death sentence awarded to the accused is converted to that of rigorous imprisonment for life and that all the sentences awarded will run consecutively.

Ratio Decidendi:

“Death penalty and its execution must not become matter of uncertainty nor must converting death sentence into imprisonment for life become matter of chance.”

Reasoning:

Facts clearly establish that the girl was last seen with the accused. PW8 evidence discloses that the girl and the accused were seen together at a point of time in proximity with the time and date of the commission of the offence. Last seen theory was successfully established by the prosecution beyond any reasonable doubt. I am of the view that the extreme sentence of Death penalty is not warranted since one of the factors which influenced the High Court to award death sentence was the previous track record of the accused. I find it difficult to endorse this view of the High Court. In my view, the mere pendency of criminal cases as such cannot be an aggravating factor to be taken note of while granting appropriate sentence.

Considering the entire facts and circumstances of the case, I am inclined to convert death sentence awarded to the accused to rigorous imprisonment for life and that all the sentences awarded will run consecutively.

Strictly speaking, therefore, this Court is not required to record reasons for commuting the death sentence to one of life imprisonment - it is only required to record reasons for either confirming the death sentence or awarding it. Treating the case on the touchstone of the guidelines laid down in *Bachan Singh ,and Machhi Singh* and other decisions and balancing the aggravating and mitigating circumstances emerging from the evidence on record, we are not persuaded to accept that the case can be appropriately called one of the "rarest of rare cases" deserving death penalty. We find it difficult to hold that the Appellant is such a dangerous person that to spare his life will endanger the community. We are also not satisfied that the circumstances of the crime are such that there is no alternative but to impose death sentence even after according maximum weightage to the mitigating circumstances in favour of the offender. It is our considered view that the case is one in which a humanist approach should be taken in the matter of awarding punishment.

Session No 4 Sentencing in Trials of Offences against State

1. Adambhai Sulemanbhai Ajmeri and Ors v. State of Gujarat (2014 7 SCC 716

Hon'ble Judges/Coram: A.K. Patnaik and V. Gopala Gowda, JJ.

Facts:

These appeals are filed by the convicted accused-Appellants as they are aggrieved by the conviction and sentences awarded to them by the Special Court (POTA), and confirmed by the High Court of Gujarat for the offences punishable under the provisions of the Indian Penal Code, 1860 (hereinafter 'Indian Penal Code'), the Arms Act, 1959, the Explosive Substances Act, 1908 and the Prevention of Terrorism Act, 2002 (hereinafter 'POTA') as per list in para 2 below, for the attack on the Akshardham temple in Gandhinagar between the afternoon of 24.09.2002 and early morning of 25.09.2002, wherein 33 people were killed and more than 85 people were injured.The following list outlines the charges against each of the accused and the conviction and sentences meted out to them by the Special Court (POTA), Ahmedabad, and upheld by the High Court of Gujarat. Accused No. 1 is not in appeal before us. The Appellant Nos. 1-5 before us will hereinafter be referred to as per their position as accused i.e. A-2 to A-6. Appellant No. 4, Abdullamiya Yasinmiya Kadri (A-5) has already undergone 7 years out of the 10 years of sentence awarded by the learned Judge, Special Court (POTA) and by order dated 03.12.2010, this Court directed him "to be released to the satisfaction of the trial court." The following list outlines the charges, conviction and sentences awarded to each of the accused-Appellants.

All the accused persons had been charged with offences under the following sections by the learned Judge, Special Court (POTA):

1. Section 120B of the Indian Penal Code.

2. Section 120B of the Indian Penal Code read with Sections 121, 123, 124A, 153A, 302 and 307 of the Indian Penal Code.

3. Section 120B of the Indian Penal Code read with Sections 25(1AA), 27 and 29 of the Arms Act.

4. Section 120B of the Indian Penal Code read with Sections 3, 4 and 6 of the Explosive Substances Act.

5. Section 120B of the Indian Penal Code read with Sections 3(1)(a) and (b), 3(3), 4, 20 and 21(2)(b) of the POTA.

6. Additionally, A-2 had been charged with offence Under Section 452 of the Indian Penal Code (for entering Akshardham illegally). Aggrieved by the said impugned judgment and order of the High Court of Gujarat, all the accused persons except A-1 have appealed before this Court challenging the correctness of their conviction and sentences imposed upon them, urging various legal and factual grounds in support of the questions of law raised by them.

The issue is whether judgment of High Court needs any intervention?

Decision:

We allow the appeals accordingly by setting aside the judgment and order of Special Court (POTA) in POTA case No. 16 of 2003 dated 01.07.2006 and the impugned common judgment and orders dated 01.06.2010 of the High Court of Gujarat at Ahmedabad in Criminal Confirmation Case No. 2 of 2006 along with Criminal Appeal Nos. 1675 of 2006 and 1328 of 2006. Accordingly, we acquit all the Appellants in the present appeals, of all the charges framed against them. The Appellants who are in custody shall be set at liberty forthwith, if they are not required in any other criminal case. We also set aside the conviction and sentence awarded to A-1, though he has already undergone the sentence served on him. All the applications filed in these appeals are accordingly disposed of.

Reasoning:

On the basis of the issues we have already answered above based on the facts and evidence on record and on the basis of the legal principles laid down by this Court, we are convinced that accused persons are innocent with respect to the charges leveled against them. All the accused had been falsely implicated in the case by the investigating agencies. Therefore, in the given facts and circumstances on record and based on the legal principles laid down by this Court, we are of the opinion that enough time was not given to the accused persons to record their confessional statements, particularly in the present case since they were making confessions after 11 months of the incident. Hence, we hold that the prosecution has failed to prove beyond reasonable doubt, the guilt against the accused persons, for the offence of criminal conspiracy Under Section 120B of the Indian Penal Code. We, therefore answer this point in favour of the Appellants. Before parting with the judgment, 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. Therefore, the confessional statements of the accused persons and the accomplices do not complement each other to form a chain of events leading to the offence. Rather, the depositions of the prosecution witnesses were contradictory and disrupt the chain of events and turn it into a confusing story with many discrepancies, defeating the roles of each of the accused persons which have been allegedly performed by them. Also, none of the events of the alleged criminal conspiracy was supported by independent evidence that inspires confidence in our minds to uphold the conviction and sentences meted out to the accused persons. The courts below have not examined the evidence with 'more than ordinary care'. Firstly, the Special Court (POTA) accepted the justification made by the prosecution in sending the accused persons to police custody after being produced before the CJM on the ground that there was no complaint made by them. Secondly, the courts below held that the fact that A-1 to A-5 did not know A-6, does not disprove the theory of criminal conspiracy, rather it displays the extreme caution with which the conspiracy was hatched. We are unable to bring ourselves to agree with this reasoning of the courts below, as in the instant case, not only did A-1 to A-5 not know A-6 and vice versa, but also A-2, A-4 and A-6 had narrated different versions of the same story, each of which contradicted the other and was actually fatal to the case of the prosecution. The courts below mechanically and without applying their mind, discarded this contention of the learned Counsel on behalf of the accused persons. Thirdly, the two Urdu letters purported to have been recovered from the pockets of the trousers of the *fidayeens* (Ex. 658), did not have even a drop of blood, mud or perforation by the bullets, whereas on physical examination of the trousers by us, which are marked as mudammal objects, we found that the clothes on the pockets of

the *fidayeens* were perforated with bullets and smeared with dried blood even after 12 years of the incident.

The Special Court (POTA) however, did not find it imperative to examine why the letters recovered from the pockets of the trousers of the *fidayeens* were spotless. It admitted the letters as evidence merely on the basis of the confessional statement of A-4 who had, in his statement recorded that he had written the letters and had also kept the pen to prove that the letters were written with the same pen. The Special Court (POTA) also admitted the letters as evidence on the ground that signatures of Brigadier Raj Sitapati as per the statement of PW-91 Major Lamba, were present on those letters. The High Court admitted the letters as evidence on the ground that *"truth is stranger than fiction"* by overlooking not only the most impossible fact that the letters marked by the police were spotless, but also ignoring the evidence of PW-105 who in his deposition recorded that there were no signatures of Brigadier Sitapati or anyone else on the letters when they were handed over to PW-126.

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2. Hussein Ghadially v. State of Gujarat (2014) 8 SCC 425

Hon'ble Judges/Coram: T.S. Thakur and C. Nagappan, JJ.

Facts:

The appeals arise out of two separate judgments delivered by the Designated Court at Surat both dated 4th October, 2008 whereby the Designated Court has while acquitting some of the accused persons convicted the rest and sentenced them to imprisonment for different periods ranging between 10 to 20 years. In Criminal (TADA) case No. 41 of 1995 disposed of with Criminal (TADA) case No. 1 of 2000 arising out of C.R. No. 70 of 1993 relevant to Criminal Appeals No. 92 of 2009 and 658 of 2009, the Designated Court has convicted the Appellants in those appeals while Respondents in Criminal Appeal No. 305 of 2009 filed by the State of Gujarat against the very same judgment have been acquitted. In Criminal Appeals No. 432-33 of 2009 the State has sought enhancement of the sentence awarded to those convicted by the Trial Court. In Criminal (TADA) case No. 59 of 1995 and 2 of 2000 arising out of C.R. No. 32 of 1993 the Designated Court has similarly convicted some of the accused persons who are (Appellants before us in Criminal Appeals No. 110 of 2009 and 659 of 2009). The State has also assailed in the appeals filed by it the judgment of the Trial Court and sought enhancement of the sentence awarded to those convicted by it in Criminal Appeals No. 303-304 of 2009.

The issue is whether mere recovery of weapon in the present case is sufficient to convict and sentence the accused?

Decision:

The appeal is allowed in Criminal Appeals No. 92 of 2009, 110 of 2009 and 658-659 of 2009 and set aside the orders of conviction passed against the Appellants who shall be released from custody forthwith unless required in any other case. Criminal Appeals No. 303-304 of 2009, 305 of 2009 and 432-433 of 2009 filed by the State of Gujarat shall, however, stand dismissed.

Reasoning:

There may be evidence regarding recovery of some of the weapons the same would not by itself be sufficient to justify the conviction of the Appellants. Even otherwise the recovery of the weapons is also not satisfactorily proved by cogent and reliable evidence. Such being the position, we have no manner of doubt left that the conviction of the Appellants cannot be sustained.

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3. Periyasami S/o. Duraisami Novanagar v. State represented through the Inspector of Police, 'Q' Branch CID, Tiruchirappalli, Tamil Nadu

Hon'ble Judges/Coram: P. Sathasivam, C.J.I., Ranjana Prakash Desai and Ranjan Gogoi, JJ.

Facts:

The present appeals filed Under Section 19 of the Terrorist And Disruptive Activities (Prevention) Act, 1987 ("the TADA") are directed against the judgment and order dated 27/06/2012 passed by the Principal Sessions Judge and Designated Judge under the TADA, for Tiruchirapalli The Appellant in Criminal Appeal No. 787 of 2013 is Senthilkumar @ Kumar ('A1-Senthilkumar' for convenience). The Appellant in Criminal Appeal No. 1272 of 2012 is Periyasami ('A2-Periyasami' for convenience).

The issue is what is the evidentiary value of a confession recorded Under Section 15 of the TADA? Whether conviction can be based upon without independent witnesses?

Decision:

In the result, Criminal Appeal No. 1272 of 2012 is allowed and Criminal Appeal No. 787 of 2013 is dismissed.

Reasoning:

It is common knowledge that when the terrorists unleash a way of terror, no independent witnesses are ready to come forward and depose against them. Prosecution case cannot be rejected on this ground. In any case, the evidence on record is cogent and reliable and, therefore, non-examination of independent witnesses does not have any adverse impact on the prosecution case. We may also note that the evidence of defence witnesses does not inspire confidence and has rightly not been taken into consideration by the trial court. PW-14 wife of PW-15 turned hostile. Some other formal witnesses also turned hostile. This, however, has not affected the core of prosecution case which is established by reliable evidence. We shall now deal with the evidence which, in our opinion, bears out the prosecution case.

The confessional statement of A1-Senthilkumar reveals that he had accompanied other accused to the house of PW-15 that he had actively participated in the activities of Karalan, Lenin and Rajaram @ Madhavan and they had joined him in manufacturing explosive substances. His confession further reveals that he wrote slogans on papers and he was party to preparing, carrying and planting of bomb and causing of the blast. It must also be stated here that A1-Senthilkumar retracted his confessional statement. We shall advert to that a little later. It is clear, therefore, that a confessional statement recorded Under Section 15 of the TADA, if found to be voluntarily made and is truthful and properly recorded, can form the basis of conviction.

We must now come to the retraction. It is argued however that A1-Senthilkumar has retracted his confession and, hence, it has no evidentiary value. It cannot be relied upon. It is not possible to accept this submission. Retraction does not always dilute or reduce or wipe out the evidentiary value of a confessional statement.

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4. Deny Bora v. State of Assam MANU/SC/0766/2014

Hon'ble Judges/Coram: Dipak Misra and Abhay Manohar Sapre, JJ.

Facts:

The present appeal is preferred Under Section 19 of the Terrorist and Disruptive Activities (Prevention) Act, 1987 ("TADA" for short) assailing the judgment passed by the Designated Court, Guwahati in TADA Sessions Case No. 47 of 2001, whereby the Designated Court has acquitted the Appellant under TADA on the foundation that there is no material to implicate him under the provisions of TADA and found that there is adequate material to convict him Under Section 302 of the Indian Penal Code, 1860 ("Indian Penal Code" for short) and accordingly recorded the conviction and sentenced him to undergo rigorous imprisonment for life with fine of Rs. 50,000/-, in default, to suffer further rigorous imprisonment for five years.

The prosecution case, as unfolded, is that on 2.3.1991 about 6.30 p.m., the deceased, Dr. Swapan Sathi Barman, a medical practitioner, while attending to the patients in his clinic, was shot by two unidentified youths from the point blank range as a consequence of which he breathed his last. An FIR was lodged by one Kumud Bora on the following day i.e. 3.3.1991 at Jamuguri police station under Sonitpur district and on the basis of the said FIR Station Case No. 20/91 Under Section 302/34 Indian Penal Code read with Sections 3/4 of TADA was registered which set the criminal law in motion.

After the examination of the witnesses cited on behalf of the prosecution was over, statement of the accused Under Section 313 Code of Criminal Procedure was recorded in which he pleaded not guilty and took the stand of false implication. The defence chose not to adduce any evidence. The Designated Court did not find any material to show complicity of the accused in any of the offences in respect of which charges had been framed under the TADA and accordingly opined that he was not guilty of the same. However, as has been stated earlier, the Designated Court found that the prosecution had brought home the charge Under Section 302

The issue is whether the prosecution has been able to establish the involvement of the Appellant in the crime in question?

Decision: The appeal is allowed and set aside the judgment of conviction and sentence thereof. If the detention of the accused-appellant is not required in connection with any other case, he be set at liberty forthwith.

Reasoning:

As is manifest, neither the wife nor the daughter of the deceased has been examined. Submission of Mr. Goswami is that they are natural witnesses and no explanation has been given for their non-

examination and hence, adverse inference against the prosecution deserves to be drawn. Trial Judge was not justified in placing reliance on evidence of prosecution witness who had come forward for recording his statement almost after two years and eight months, therefore, conviction recorded by Designated Court on his testimony alone without any corroboration was totally unsustainable and liable to be set aside.

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5. Ganesh Gogoi v. State of Assam AIR 2009 SC 2955

Hon'ble Judges/Coram: Dalveer Bhandari and A.K. Ganguly, JJ.

Facts:

This appeal has been filed under Section 19(1) of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (hereinafter referred to as the `TADA (P) Act') impugning the judgment dated 11.7.2007 passed by the learned Designated Court, Assam, Guwahati in Sessions Case No. 68 of 2001 whereby the appellant has been convicted by the learned Judge of the Designated Court under Section 3(2)(i) TADA(P) Act and was sentenced to undergo imprisonment for life and to pay a fine of Rs. 2000/- in default further imprisonment for six months.

The issue is whether Conviction and sentence under Section 3 (2) (i) of the Terrorist and Disruptive Activities (Prevention) Act, 1987 is sustainable?

Decision:

The appeal is allowed. Therefore, the judgment and order of conviction is totally unsustainable in law and is set aside. The appellant be set at liberty forthwith if he is not wanted in connection with any other case.

Ratio Decidendi: *"Accused cannot be charged for an offence which is not in existence on the day of commission of offence but is brought into the statute at a later date."*

Reasoning:

This Court is, therefore, of the clear opinion that in the facts of the case no charge against the accused under the said Act could be framed, consequently he cannot be convicted under the provisions of the said Act. In any way in the instant case as discussed above, there is no evidence to connect the appellant with the alleged incident. In the instant case the Designated Court has failed in its duty both in the matter of application of mind to the materials on record at the stage of framing of charge and also at the time of convicting the appellant. It does not appear that any witness has deposed that the appellant is a member of ULFA. Therefore, it is a very unfair question. The Designated Court has allegedly convicted the appellant under Section 3(2)(i) but the ingredients of the Section 3(2)(i) were not put to him. Therefore, there has not been a fair examination under Section 313 of the Cr.P.C. at all. The provisions of Section 313 are for the benefit of the accused and are there to give the accused an opportunity to explain the "circumstances appearing in the evidence against him".

6. State of Maharashtra v. Fazal Rehman Abdul MANU/SC/0267/2013

Hon'ble Judges/Coram: P. Sathasivam and B.S. Chauhan, JJ.

Facts:

These are 19 criminal appeal preferred against the impugned judgment and order dated 2.8.2007, passed by a Special Judge of the Designated Court under the Terrorist and Disruptive Activities (Prevention) Act, 1987 (hereinafter referred to as the 'TADA') in the Bombay Blast Case No. 1/93, acquitting the Respondent of all the charges.

Bombay bomb blast took place on 12.3.1993 in which 257 persons lost their lives and 713 were injured. In addition thereto, there had been loss of property worth several crores. The Bombay police investigated the matter at initial stage but subsequently it was entrusted to the Central Bureau of Investigation (hereinafter referred to as 'CBI') and on conclusion of the investigation, a chargesheet was filed against a large number of accused persons. Out of the accused persons against whom chargesheet was filed, 40 accused could not be put to trial as they have been absconding. Thus, the Designated Court under TADA framed charges against 138 accused persons. During the trial, 11 accused died and 2 accused turned hostile. Further the Designated Court discharged 2 accused during trial and the remaining persons including Respondent (A-76) stood charged.

The Respondents had been charged for general conspiracy which is framed against all the accused persons for the offences punishable under Section 3(3) TADA and Section 120-B of Indian Penal Code, 1860 (hereinafter referred to as the 'Indian Penal Code') read with Sections 3(2)(i)(ii), 3(3), (4), 5 and 6 TADA and read with Sections 302, 307, 326, 324, 427, 435, 436, 201 and 212 Indian Penal Code and offences under Sections 3 and 7 read with Sections 25(I-A), (1-B)(a) of the Arms Act, 1959, Sections 9-B(1)(a)(b)(c) of the Explosives Act, 1884, Sections 3, 4(a)(b), 5 and 6 of the Explosive Substances Act, 1908 and Section 4 of the Prevention of Damage to Public Property Act, 1984.

In addition, the Respondent had been charged for persuading his brother-in-law Firoz Amani Malik (A-39) to undergo weapons' training in Pakistan and keeping in his possession 4 hand grenades brought to him by Firoz Amani Malik (A-39) and for handing over the same to Mohd. Jabir (A-93-dead), showing that the same had been smuggled into India for committing terrorist activities.

The Designated Court after conclusion of the trial acquitted 19 Respondent of all the charges, hence this appeal.

The issues in first appeal is whether, there was evidence to prove guilt of Accused under Sections 3(3) , 3(2)(i)(ii) , 3(3) , (4), and of Terrorist and Disruptive Activities (Prevention) Act, 1987 ('TADA') and Sections 302 , 307 , 326 , 324 , 427 , 435 , 436 , 201 and 212 of Indian Penal Code, 1860 , Sections 3 and 7 read with Sections 25(I-A), (1-B)(a) of Arms Act, 1959, Sections 9-B(1)(a)(b)(c) of Explosives Act, 1884, Sections , 4(a)(b) , and of Explosive Substances Act, 1908 and Section of Prevention of Damage to Public Property Act, 1984?

Decision: Appeal dismissed.

Reasoning:

Appellate Court should not ordinarily set aside a judgment of acquittal in a case where two views were possible, though view of Appellate Court may be more probable one. Interference in a routine manner where other view was possible should be avoided, unless there were good reasons for interference. Designated Court after appreciating entire evidence came to conclusion that there was nothing on record to show that Respondent though facilitated sending A-39 to Dubai, had any knowledge of purpose of going to Dubai or Pakistan for simple reason that Firoz A-39 himself disclosed that he was told in Dubai that he would go to Pakistan and purpose for going there would be explained to him later on. Confessional statement of A-39 did not reveal involvement of Respondent in persuading A-39 to undergo weapons' training in Pakistan. Thus, there was no reason to interfere with cogent reasons given by Special Judge.

The issue in second appeal is whether, Respondents were rightly acquitted from charges under Section 3(3) of Terrorist and Disruptive Activities (Prevention) Act, 1987 ('TADA') and Section 120B Indian Penal Code, 1860?

Decision: Appeal dismissed.

Reasoning:

Designated Court after appreciating entire evidence had drawn a conclusion that Respondents may be under impression that they were being sent there for training of arms so that it could be used in self defence and they came to know only when they were in Dubai that they were being sent for training to Pakistan. However, training could not be finalized/ arranged and they came back to Bombay. Therefore, Designated Court had drawn inference that as they did not have knowledge that they were going to Pakistan for training in handling of arms they could not be held guilty - None of Respondents was aware of intention of conspirators to send Respondents to Pakistan for training to deal with arms and ammunition rather they had been taken away to Dubai on false pretext and had been misguided. Thus, there was no reason to interfere with order of Designated Court.

The issue in third appeal is whether, Accused was correctly acquitted from all charges under TADA and Arms Act?

Decision: Appeal dismissed

Reasoning:

If evidence of all witnesses was read conjointly, it became evident that none of witnesses had named either of Respondents. Other persons of police team who had been named stood convicted. Respondents had been acquitted on ground that in absence of Test Identification Parade or their identification by any of witnesses/accused in Court, it was not safe to make a guess work that they or either of them could also be member(s) of said police team which intercepted contraband. There was nothing on record on basis of which it could be assumed that Respondents were members of said team. Statements made by Sarpanchas that none of Respondents had visited their village on patrolling could not be a proof that Respondents were members of team, which intercepted said trucks. Designated Court dealt with issue elaborately and came to conclusion that there was no material to connect Respondents with aforesaid incident and it was not safe to presume that Respondents were also members of police team which intercepted said trucks carrying contraband. Therefore, there was no cogent reason to interfere with impugned judgment.

The issue in forth appeal is whether, confessional statement recorded by Respondents were correctly rejected?

Decision: Appeal dismissed.

Reasoning:

Section 15 TADA and Rule 15 of TADA Rules, was mandatory and thus, it was necessary before making of confessional statement that Accused must be warned that confessional statement if made would be used against him and further that he was not bound to make same. First part of confessional statements of co-accused were very cryptic. Further, there was no explanation or warning therein as required by law. Therefore, such confessions were liable to be discarded. From facts and circumstances of case it was observed that Designated Court rightly rejected confessional statement made by Respondent and co-accused as first part of these statements had not been recorded in consonance with requirement of statutory provisions. Hence, there was no reason to in interfered in impugned order

The issue in fifth appeal is whether, there were sufficient evidences to acquit Accused form charge under Section 3(3) of TADA?

Decision: Appeal dismissed.

Reasoning:

Designated Court had acquitted Respondent (A-38) of charges only on ground that truck was owned by Hasan Adhikari and prosecution did not consider it proper to make Hasan Adhikari as an accused or as a witness to find out as to whether the Respondent (A-38) had been a regular driver with him and as to whether on that particular date he was on duty. No person had identified him as he was driving said vehicle on said date. Confessional statement of A-62 was not corroborated by any other witness/accused. Thus, no cogent reason was found to interfere with order passed by Designated Court.

The issue in sixth appeal is whether, confessional statement of Respondent was rightly discarded?

Decision: Appeal dismissed

Reasoning:

Confession of Respondent and other co-accused had been discarded by Designated Court for reason that it had not been recorded strictly in accordance with provisions of Section 15 TADA and Rule 15 of TADA Rules, 1987. Confessional statement of these Accused had been recorded in two parts and there had been some intervening period for re-consideration. While recording first part of confession, officer recording statement did not inform accused that he was not bound to make confession. Further, even in second part of confession, Respondent had not been warned that he was not bound to make confession. Certificate issued by Officer regarding confessional statement mentioned belief of recording officer that statement was signed of his own will. As there was no admissible evidence on record connecting Respondent (A-80) to crime, he had rightly been acquitted by Court below. Thus, there is no reason to interference.

The issue in seventh appeal is whether, there were sufficient evidences to convict Accused under Section 3(3) of TADA?

Decision: Appeal dismissed.

Reasoning:

Only allegation against Respondent had been that she had accompanied her husband (AA) while he carried arms, ammunition and explosives. Further, there was nothing on record to show that she had any knowledge of such arms and purpose for which same had been brought. Further, sister-in-law of Respondent was neither made accused nor a witness. Her husband was still absconding. In such a fact-situation, findings recorded by Designated Court did not warrant any interference.

The issue in eighth appeal is whether, charges levied against Respondents under Section 3(3) TADA were proved by prosecution?

Decision: Appeal Dismissed

Reasoning:

Confession of co-accused could not be accepted without there being any independent corroboration, though corroboration was required only on material points and not on each and every point. Confessional statement of Accused could not be said to be cogent enough for establishing involvement of Respondent (A-105) in commission of acts amounting to a criminal offence required to be strictly proved. Further, there was no evidence on record to show that Respondent had been involved in crime in any manner. If his sons had indulged in offence, his mere presence in his house, where contraband had been hidden, would not make Respondent responsible. Thus, there was no cogent reason to interfere with impugned judgment and order.

The issue in ninth appeal is whether, charges under Section 3(3) TADA levied against Accused were proved?

Decision: Appeal dismissed

Reasoning:

Prosecution failed to fix identity of Accused who had gone to Pakistan for training. Thus, Respondent had rightly been given benefit of doubt. Thus, judgment and order of acquittal did not deserve interference.

The issue in tenth appeal is whether, there was sufficient evidence to prove guilt of Accused under Section 3(3) TADA?

Decision: Appeal dismissed.

Reasoning:

Designated Court held that there was no express evidence of A-27 having seen nature of goods transported and evidence having indicated that he could not be said to be a person present at Wangni tower when exchange of material from vehicles to another vehicle was effected for concealing same

in cavity. Person from Bombay being only present along with other Accused, his liability would be restricted for commission of offences under Customs Act. Thus, he would be required to be held guilty only for commission of offence under Section 111 r/w Section 135(b) of Customs Act and would be required to be held not guilty for commission of other offences including that of conspiracy in view of his acts being not of a nature for coming to the conclusion of the same being for furthering object of conspiracy of or involvement of A-27 in same. There was no evidence on record to show that Respondent had any knowledge about nature of articles smuggled in India. Thus, there was no cogent reason to interfere with well-reasoned judgment of Designated Court.

The issue in eleventh appeal is whether, there were sufficient evidences to prove guilt of Accused under Section 3(3) of TADA, Section 111 read with Section 135 of the Customs Act, 1962?

Decision: Appeal dismissed.

Reasoning:

Relevant material and confession of A-42 and A-62 revealed involvement of A-60 in relevant landing operation still close look at same and so also other evidence did not reveal any material indicating that A-60 was aware of nature of material which were smuggled during said operation. Same was obvious as hardly there was any material revealing that A-60 was present when packets of goods were opened on coast. Similarly, evidence was contrary regarding presence of A-60 when goods were exchanged. Thus, it would be extremely difficult to hold A-60 guilty for offence under Section 3(3) of TADA. Further, there was no evidence on record to show that Respondent had any knowledge about nature of articles smuggled in India. Therefore, no interference was warranted.

The issue in twelfth appeal is that the Designated Court convicted respondent under TADA and acquitted of charge of conspiracy therefore the question is whether, Accused was rightly acquitted from charge of conspiracy?

Decision: Appeal allowed.

Reasoning:

Special Judge recorded finding that Respondent did not do anything to further object of conspiracy. However, landing was not of silver and gold, but of arms, ammunition and explosives. Respondent was fully aware of nature of smuggled articles and also purpose for which contraband goods had been smuggled into India. Even after having such knowledge, his close association with AA confirmed and he participated and facilitated transportation of said articles. Facts and circumstances of case made it clear that they were mutually inconsistent and could not be in consonance with each other. Thus, Designated Court was not justified in acquitting Respondent (A-17) of charge of conspiracy.

The issue in thirteenth appeal is that the Designated Court convicted Respondent under TADA and acquitted of charge of conspiracy therefore the question is whether, Accused was rightly acquitted from charge of conspiracy?

Decision: Appeal allowed.

Reasoning:

From confessional statement made by Accused it could be ascertained that A-24 was aware of arms and ammunition being landed. Involvement and participation of A-24 was throughout main conspiracy. Order of Designated Court acquitting him on charge of larger was is perverse, in view of evidence on record. Therefore, conspiracy stood proved. Judgment to that extent was set aside.

The issue in fourteenth appeal is whether, there were evidence to prove charges under Section 3(3) of TADA and Section 201 of Indian Penal Code, 1860against Accused?

Decision: Appeal dismissed.

Reasoning:

Designated Court held that considering all material/evidence available against A-55, it was proved that same had not transcended beyond acts committed by him in facilitating Dighi landing and/or transportation of goods smuggled. Same failed to disclose any material showing his nexus with conspiracy for which he was charged with or conspiracy for which his father A-14 held to be guilty. Further, evidence on record disclosed his involvement and association with AA in landing and transportation. However, that was because his father A-14 was landing agent. Therefore, no interference could be made in order of Designated Court.

The issue in fifteenth appeal is Designated Court convicted Respondent under TADA and Arms Act and acquitted him of charge of conspiracy. Therefore the question is whether, Respondent was liable to be convicted for charge of conspiracy?

Decision: Appeal dismissed

Reasoning

A-41 had given 20 hand grenades to one Ayub resident of Oshiwara. However, he had also disclosed that after his arrest, said contraband had been produced before police by his father through Haji Ismail. Therefore, conclusion reached by Designated Court that there was nothing on record to establish that Ayub of Oshiwara could be Ayub (A-72), did not require interference. Hence, Respondent (A-72) was entitled to benefit of doubt, so far as charge of conspiracy was concerned.

The issue in sixteenth appeal is Designated Court convicted Respondent under TADA and Arms Act and acquitted him of charge of conspiracy. Therefore the question is whether, Respondent was liable to be convicted for charge of conspiracy?

Decision: Appeal dismissed

Reasoning:

Respondent had participated in landing at Shekhadi when contraband was smuggled into India. However, as evidence on record as well as findings recorded by Designated Court remain to effect that he had not been aware of articles smuggled, he could not be held liable for punishment for conspiracy. Therefore, no interfered could be made in order of Designated Court.

The issue in seventeenth appeal is that the Designated Court convicted Respondent under TADA and acquitted him of general charge of conspiracy. Therefore the question is whether, charges levied against Respondents were proved?

Decision: Appeal dismissed.

Reasoning:

Evidence against Respondent (A-58) was disclosed in confessional statements of A-64, A-109, A-114, A-126, A-127, A-128 and A-130. Said confessional statements revealed that Respondent (A-58) had participated in landing at Shekhadi. He was present at Wangni Tower at time of shifting contraband and had also participated in second landing at Shekhadi. He had also attended meeting in a partially constructed building in Khar and agreed to go out of India for receiving arms' training in Pakistan. He went to Dubai, but could not go to Pakistan and stayed in Dubai and returned to India. While in Dubai, he had taken an oath of secrecy that he would not disclose anything about the conspiracy to anyone. Aforesaid evidence also stood corroborated by evidence of PW-2 and PW-207. In view of fact that Respondent had already served sentence of 10 years and paid fine.

The issue in eighteenth appeal is that the Designated Court convicted Respondent under TADA, but acquitted of some charges including the larger conspiracy. The issue is whether, Respondent was rightly acquitted of charge of conspiracy?

Decision: Appeal allowed.

Reasoning:

The Special Judge recorded finding that Respondent did not do anything to further object of conspiracy. However, he was involved in sending PW-1 to Dubai and further to Pakistan for getting initiated in training of weapons. Respondent received co-accused at airport and attended 7 conspiratorial meetings held in Dubai. Respondent who travelled to Dubai had a fictitious passport for a particular purpose. He further went to Pakistan and undertook training in handling arms, ammunition and explosives. He met AA in Dubai, who told him that they would teach a lesson to Indian Government by exploding bombs etc. However, Designated Court did not convict him on charge of conspiracy. Such a conclusion was not worth acceptance and said finding being perverse, was liable to be set aside.

The issue in nineteenth appeal is that the Designated Court convicted Respondent of charges under TADA, but had been acquitted of charge of conspiracy therefore the question is that whether, Respondent were rightly acquitted of charges of conspiracy?

Decision: Appeal allowed.

Reasoning:

Respondent (A-94) had gone to Pakistan and took training in handling arms, ammunition and explosives and also attended conspiratorial meeting at Dubai and took oath in name of Quran not to divulge any information regarding the conspiracy. Thus, it was abundantly clear that Respondent was aware of purpose of training in Pakistan and he undertook training there without any protest. Thus, Special Judge committed an error in not convicting Respondent for larger conspiracy.

Ratio Decidendi: Order of conviction shall be passed only when there is sufficient evidence to prove guilt of Accused.

Supreme Court has dealt with 19 appeals filed by the State against the order of acquittal on certain charges and particularly, the charge of conspiracy. Out of the said 19 appeals, we have dismissed 15 appeals, however, allowed 4 appeals bearing Criminal Appeal No. 391/2011 (Sharif Abdul Gafoor Parkar @ Dadabhai (A-17), Criminal Appeal No. 1027 of 2012 (Manoj Kumar Bhanwarlal Gupta (A-24), Criminal Appeal No. 395 of 2011 (Farooq Iliyas Motorwala (A-75) and Criminal Appeal No. 397 of 2011 (Mohd. Rafiq Usman Shaikh (A-94). The Respondents in these appeals are awarded life imprisonment and they are directed to surrender before the learned Designated Court within a period of four weeks to serve out the remaining sentence, failing which the Designated Court will secure their custody and send them to jail to serve out the sentence.

Session No 5 Sentencing in Economic Offences (Money Laundering)

1. Abdul Karim Telgi and Sohail Khan v. Union of India, through C B I MANU/MP/0174/2014

Hon'ble Judges/Coram: S.K. Seth, J.

Facts:

Appellants are aggrieved by the judgment handed down by the Special Judge, C.B.I., Indore holding them guilty of the offences and sentences passed against them as under :-

Sl. No	Name of Accused	Offence	Sentence	Fine amount	Default sentence
1	Abdul Karim Telgi	120B of I P C	10 Yrs RI	5 Lakhs	2 Yrs RI
		255 of I P C	10 Yrs RI	5 Lakhs	2 Yrs RI
		258/120B of I P C	07Yrs RI	5 Lakhs	1 Yrs RI
		259/120B of I P C	07Yrs RI	5 Lakhs	1 Yrs RI
		420/120B of I P C	07Yrs RI	5 Lakhs	1 Yrs RI
		69 of Indian Stamp Act/ 120B of I P C	6 Months RI	500/-	1 Month RI
2	Shabbir Ahmed Sheikh	120B of I P C	10 Yrs RI	5 Lakhs	2 Yrs RI
		255 of I P C	10 Yrs RI	5 Lakhs	2 Yrs RI
		258/120B of I P C	07Yrs RI	5 Lakhs	1 Yrs RI
		259/120B of I P C	07Yrs RI	5 Lakhs	1 Yrs RI
		420/120B of I P C	07Yrs RI	5 Lakhs	1 Yrs RI
		69 of Indian Stamp	6 Months RI	500/-	1 Month RI

		Act/ 120B of I P C			
3	Sohail Khan	120B of I P C	10 Yrs RI	5 Lakhs	2 Yrs RI
		255 of I P C	10 Yrs RI	5 Lakhs	2 Yrs RI
		258/120B of I P C	07Yrs RI	5 Lakhs	1 Yrs RI
		259/120B of I P C	07Yrs RI	5 Lakhs	1 Yrs RI
		420/ of I P C	07Yrs RI	5 Lakhs	1 Yrs RI
		69 of Indian Stamp Act	6 Months RI	500/-	1 Month RI

Appeals involve common question of facts and law, therefore, this judgment shall govern the disposal of all connected appeals as mentioned above.

There was a huge scam of counterfeiting and sale of government stamp papers and criminal cases were registered in different parts of the country. Under orders of the Supreme Court, all such cases were transferred to the C.B.I. for investigation and prosecution of the offenders.

The C.B.I. after investigation filed the charge-sheets in two cases at Indore which were after committal sent up for trial by the Special Judge, C.B.I. at Indore that is how these appeals arise out of the two judgments delivered by the Special Judge, C.B.I. Indore in S.T. No. 108/2005 and 109/2005. For the sake of convenience we may notice the facts from S.T. No. 109/2005. Facts which set the tone of investigation may be briefly noticed. A criminal case was registered at P.S. Tukoganj, Indore on the basis of FIR lodged by Branch Manager, Bank of India, Simrol Branch, Indore. It was stated that the Bank used to purchase Special Adhesive Stamps from the Treasury. In June, 2002, the then Branch Manager was contacted by employees of M/s. Malwa Enterprises, 418, City Centre, M.G. Road, Indore and they further informed that Sohail Khan, Abdul Gafur Mujahid, Karim and Ashfaq were the owners of the firm. They further stated that their firm could supply stamps and stamp papers directly to the branch itself and the firm had licence to sell such stamps in the name of Jagjeevan Yadav. The Branch Manager was shown Xerox copy of licence of Jagjeevan Yadav. On being convinced complainant purchased 260 special adhesive stamps of Rs. 50/- denomination each and also purchased 4 non-judicial stamp papers of 1,000/- denomination each and one non-judicial stamp of 5,000/- denomination. On having learnt that fake stamps were being sold in Indore, he tried to contact M/s. Malwa Enterprises, but no one was available. The stamps so purchased were shown to the District Registrar who upon examination found the stamps to be fake. Since these facts reveal that Malwa Enterprises was engaged in sale of fake stamps through its various employees, a complaint was lodged by the Branch Manager, as stated above. This followed a thorough investigation and the investigation revealed the following facts.

During the year 2000, accused Abdul Karim Telgi entered into criminal conspiracy with Abdul Gafur Mujahid, Sohail Khan, Shabbir Ahmed Sheikh, Jagjeevan Yadav, Mansoor and accused Ashfaq Mulla with object to counterfeit Government stamps and sale thereof. In order to sell the stamps, Abdul Karim Telgi did various acts and omissions. It was revealed that in pursuance of said criminal conspiracy, M/s. Malwa Enterprises was opened by accused Abdul Gafur Mujahid at Indore for supply of fake stamps in and around Indore. Accused Abdul Gafur Mujahid arranged for the office premises at 418, City Centre, M.G. Road, Indore on a lease. For the same purpose, he also took another chamber viz. 307 in Trade Centre, Indore. Abdul Gafur Mujahid also took up one residential premises No. G-1, Regency Spring Building, 28, Chandralok Colony, Indore on rent. These premises were used for residence of accused Sohail Khan and his associates. Accused Sohail Khan also took premises No. 567/6, Giriraj Apartments, Indore on rent for running another office of M/s. Malwa Enterprises, Indore.

On 28.1.2000 and 11.2.2000, Abdul Gafur Mujahid published advertisements in Hindi Daily Newspaper Dainik Bhaskar seeking to employ local persons in different capacities in Malwa Enterprises.

Abdul Gafur Mujahid had applied for 4 telephone connections, as a result of which, telephone Nos. 240885 and 264016 were allotted to M/s. Malwa Enterprises at 418, City Centre, Indore and telephone Nos. 265738 and 265739 were allotted to the Malwa Enterprises at 307, Trade Centre, Indore. Abdul Gafur Mujahid used to stay in Hotel Chandralok near Sarwate Bus Stand, Indore during his visits to Indore.

Now, coming back to the advertisement, as mentioned above, accused Abdul Gafur Mujahid and Shabbir Ahmed Sheikh had taken interviews of local persons who had applied in response to the advertisement. After conducting interviews, they recruited boys and girls who were imparted training for doing the work of Marketing Executives and Telephone Operators in Malwa Enterprises.

Accused Sohail Khan who was earlier working in Delhi on pay-roll of Abdul Karim Telgi was sent to Indore and he was appointed as In-charge of M/s. Malwa Enterprises, Indore for sale of fake stamps. Accused Sohail

The issue is whether sentence of various terms of imprisonment with fine and default sentence imposed upon accused persons by the Trial Court is justified or not?

Decision: The Appeal is dismissed.

Reasoning:

From a close scrutiny of material available on record, we find no merit and substance in this appeal. Considering the making out of a consummate crime and resultant loss caused to the public revenue by sale of fake, counterfeit stamp papers, adhesive stamps, non-judicial stamp papers, Appellants have caused substantial loss to the Government and corresponding gain to themselves by their 'white collar' crime. It was an economic crime which has cascading effect. In our considered opinion, this is one of those exceptional cases where the law should come down with heavy hands to deal such kind of persons who are a menace to the Society. In our considered opinion, the facts of this case are quite distinguishable from the facts of the case reported in (2013) 1 SCC. 570. Hence, in our opinion, no interference is called for with the sentence of fine or the default stipulation imposed by the trial Court. There are no mitigating circumstances so as to interfere with the sentence of fine impose by the trial

Court. Consequently, these appeal fail and are hereby dismissed. Judgment of the trial Court against appellants is hereby affirmed. The determination of right measure of punishment is often a point of great difficulty and no hard and fast rule can be laid down. It being a matter of discretion which is guided by various considerations, the Court has always to bear in mind the necessity of proportion or ratio between the offence and penalty. In imposing a fine, it is necessary to have regard to pecuniary circumstances of the accused persons as to the character and making out the offence where substantial measurement of punishment is inflicted; excessive amount should not accompany it except in exceptional cases.

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2. Pareena Swarup v. Union of India MANU/SC/8086/2008

Hon'ble Judges/Coram: K.G. Balakrishnan, C.J., L.S. Panta and P. Sathasivam, JJ.

Ms. Pareena Swarup, member of the Bar, has filed this writ petition under Article 32 of the Constitution of India by way of Public Interest Litigation seeking to declare various sections of the Prevention of Money Laundering Act, 2002 such as Section 6 which deals with adjudicating authorities, composition, powers etc., Section 25 which deals with the establishment of Appellate Tribunal, Section 27 which deals with composition etc. of the Appellate Tribunal, Section 28 which deals with qualifications for appointment of Chairperson and Members of the Appellate Tribunal, Section 32 which deals with resignation and removal, Section 40 which deals with members etc. as ultra vires of Articles 14, 19(1)(g), 21, 50, 323B of the Constitution of India. It is also pleaded that these provisions are in breach of scheme of the Constitutional provisions and power of judiciary.

Brief facts in a nutshell are: The Prevention of Money Laundering Act, 2002 (hereinafter referred to as "the Act") was introduced for providing punishment for offence of Money Laundering. The Act also provides measures of prevention of money laundering. The object sought to be achieved is by provisional attachment of the proceeds of crime, which are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceedings relating to confiscation of such proceeds under the Act. The Act also casts obligations on banking companies, financial institutions and intermediaries to maintain record of the transactions and to furnish information of such transactions within the prescribed time. In exercise of powers conferred by Clause (s) of Sub-section (2) of Section 73 read with Section 30 of the Prevention of Money- Laundering Act, 2002 (15 of 2003), the Central Government framed rules regulating the appointment and conditions of service of persons appointed as Chairperson and Members of the Appellate Tribunal. These rules are the Prevention of Money-Laundering (Appointment and Conditions of Service of Chairperson and Members of Appellate Tribunal) Rules, 2007. The Central Government has also framed rules called the Prevention of Money Laundering (Appointment and Conditions of Service of Chairperson and Members of Adjudicating Authorities) Rules, 2007.

It is highlighted that the provisions of the Act are so provided that there may not be independent judiciary to decide the cases under the Act but the Members and the Chairperson are to be selected by the Selection Committee headed by the Revenue Secretary. It is further pointed out that the Constitutional guarantee of a free and independent judiciary, and the constitutional scheme of separation of powers can be easily and seriously undermined, if the legislatures were to divest the regular Courts of their jurisdiction in all matters, entrust the same to the newly created Tribunals. According to the petitioner, the statutory provisions of the Act and the Rules, more particularly, relating to constitution of Adjudicating Authority and Appellate Tribunal are violative of basic

constitutional guarantee of free and independent judiciary, therefore, beyond the legislative competence of the Parliament. The freedom from control and potential domination of the executive are necessary pre- conditions for the independence. With these and various other grounds, the petitioner has filed this public interest litigation seeking to issue a writ of certiorari for quashing the abovesaid provisions which are inconsistent with the separation of power and interference with the judicial functioning of the Tribunal as ultra vires of the Constitution of India.

The respondent-Union of India has filed counter affidavit repudiating the claim of the petitioner. The Department highlighted that the impugned Act has not ousted the jurisdiction of any courts and sufficient safeguards are provided in the appointment of officers of the Adjudicating Authorities, Members and Chairperson of the Appellate Tribunal.

We have carefully verified the provisions of the Act and the Rules, particularly, relating to constitution and selection of Adjudicating Authorities, Members and Chairperson of the Appellate Tribunal. Considering the stand taken by the petitioner with reference to those provisions, we requested Mr. K.K. Venugopal, learned senior counsel, to assist the Court. Pursuant to the suggestion made by the Court, Mr. K.K. Venugopal and Mr. Gopal Subramaniam, learned Additional Solicitor General, discussed the above issues and by consensus submitted certain proposals.

The petitioner has highlighted the following defects in the Adjudicating Authority Rules, 2007 and the Appellate Tribunal Rules, 2007:

Rule 3(3) of Adjudicating Authority Rules, 2007 does not explicitly specify the qualifications of member from the field of finance or accountancy.

Rule 4 of Appellate Tribunal Rules, 2007 which provided for Method of Appointment of Chairperson do not give adequate control to Judiciary.

Rule 6(1) of Appellate Tribunal Rules, 2007 which defines the Selection Committee for recommending appointment of Members of the Tribunal, would undermine the constitutional scheme of separation of powers between judiciary and executives.

Rule 32(2) of PMLA which provides for removal of Chairperson/Members of Tribunal under PMLA does not provide adequate safety to the tenure of the Chairperson/Members of the Tribunal.

Rule 6(2) of Appellate Tribunal Rules is vague to the extent that it provides for recommending names after "inviting applications thereof by advertisement or on the recommendations of the appropriate authorities."

Section 28(1) of PMLA, which allows a person who "is qualified to be a judge of the High Court" to be the Chairperson of the Tribunal, should be either deleted or the Rules may be amended to provide that the Chief Justice of India shall nominate a person for appointment as Chairperson of Appellate Tribunal under PMLA "who is or has been a Judge of the Supreme Court or a High Court" failing which a person who "is qualified to be a judge of the High Court."

The qualifications for Legal Member of the Adjudicating Authority should exclude "those who are qualified to be a District Judge" and only serving or retired District Judges should be appointed. The Chairperson of the Adjudicating Authority should be the Legal member.

As regards the above defects in the rules, as observed earlier, on the request of this Court, Mr. K.K. Venugopal, learned senior counsel, Mr. Gopal Subramaniam, learned ASG as well as Ms. Pareena Swarup who has filed this PIL suggested certain amendments in the line of the constitutional provisions as interpreted by this Court in various decisions.

It is necessary that the Court may draw a line which the executive may not cross in their misguided desire to take over bit by bit and judicial functions and powers of the State exercised by the duly constituted Courts. While creating new avenue of judicial forums, it is the duty of the Government to see that they are not in breach of basic constitutional scheme of separation of powers and independence of the judicial function. We agree with the apprehension of the petitioner that the provisions of Prevention of the Money Laundering Act are so provided that there may not be independent judiciary to decide the cases under the Act but the Members and the Chairperson to be selected by the Selection Committee headed by Revenue Secretary. It is to be noted that this Court in the case of L. Chandra Kumar v. Union of India and Ors. MANU/SC/0261/1997 : [1997]228ITR725(SC) has laid down that power of judicial review over legislative action vested in the High Courts under Article 226 as well as in this Court under Article 32 of the Constitution is an integral and essential feature of the Constitution constituting part of the its structure. The Constitution guarantees free and independent judiciary and the constitutional scheme of separation of powers can be easily and seriously undermined, if the legislatures were to divest the regular courts of their jurisdiction in all matters, entrust the same to the newly created Tribunals which are not entitled to protection similar to the constitutional protection afforded to the regular Courts. The independence and impartiality which are to be secured not only for the Court but also for Tribunals and their members, though they do not belong to the `Judicial Service' are entrusted with judicial powers. The safeguards which ensure independence and impartiality are not for promoting personal prestige of the functionary but for preserving and protecting the rights of the citizens and other persons who are subject to the jurisdiction of the Tribunal and for ensuring that such Tribunal will be able to command the confidence of the public. Freedom from control and potential domination of the executive are necessary pre-conditions for the independence and impartiality of judges. To make it clear that a judiciary free from control by the Executive and Legislature is essential if there is a right to have claims decided by Judges who are free from potential domination by other branches of Government. With this background, let us consider the defects pointed out by the petitioner and amended/proposed provisions of the Act and the Rules.

Mr. Gopal Subramaniam has informed this Court that the suggested actions have been completed by amending the Rules. Even other wise, according to him, the proposed suggestions formulated by Mr. K.K. Venugopal would be incorporated on disposal of the above writ petition. For convenience, let us refer the doubts raised by the petitioner and amended/proposed provisions as well as the remarks of the department in complying with the same.

Inasmuch as the amended/proposed provisions, as mentioned in para 9, are in tune with the scheme of the Constitution as well as the principles laid down by this Court, we approve the same and direct the respondent-Union of India to implement the above provisions, if not so far amended as suggested, as expeditiously as possible but not later than six months from the date of receipt of copy of this judgment. The writ petition is disposed of accordingly. No costs. This Court records its appreciation for the valuable assistance rendered by Mr. K.K. Venugopal, learned senior counsel and Mr. Gopal Subramaniam, learned Addl. Solicitor General.

Session No 6 Sentencing of Woman Offender

1. Monju Roy and Ors v. State of West Bengal MANU/SC/0466/2015

Hon'ble Judges/Coram: T.S. Thakur and A.K. Goel, JJ.

Facts:

The present appeal is filed against the Judgment of the High Court of Rajasthan, whereby the judgment of the trial court convicting appellants Under Sections 498A, 306 and 304B of the Indian Penal Code and sentenced to undergo Rigorous Imprisonment ("RI") for 10 years and to pay fine of Rs. 5000/-. in default, to undergo further imprisonment for two years. They also stand sentenced to suffer RI for three years and to pay fine of Rs. 1000/- and in default to suffer further imprisonment for three months Under Sections 498A and 306 Indian Penal Code was affirmed.

The deceased Shanti Roy was married to Sekhar Roy on 20th February, 1994. According to the prosecution, Sekhar Roy, his mother, two sisters and brother raised a demand of Rs. 5000/- and since the said demand was not fulfilled, Shanti Roy was harassed. On 31st July, 1995, she committed suicide by pouring kerosene and setting herself on fire. She was pregnant carrying eight months' old foetus. Chittaranjan Saha (PW 1), brother of the deceased lodged First Information Report. After conducting investigation, Appellants Monju Roy, Anju Roy, sisters of Sekhar Roy, Tulshi Roy, brother of Sekhar Roy, Sumitra Roy, mother of Sekhar Roy and Sekhar Roy, husband of the deceased were sent up for trial. Sumitra Roy died on 27th August, 2001 during pendency of the trial.

The issue is whether there was any possibility of exaggeration in prosecution version in implicating all Appellants as family members

Decision: The is allowed and set aside the conviction and sentence of the Appellants Under Section 304B Indian Penal Code without interfering with conviction and sentence under other heads. Since the Appellants are said to have already undergone the sentence awarded for other charges which may be verified, they may be released from custody forthwith unless required in any other case.

Reasoning:

While we do not find any ground to interfere with the view taken by the courts below that the deceased was subjected to harassment on account of non-fulfillment of dowry demand, we do find merit in the submission that possibility of naming all the family members by way of exaggeration is not ruled out.

In the facts and circumstances of the present case, even if it is accepted that the Appellants were involved in raising the demand for dowry there is material that the Appellants harassed the victim resulting in her death. Normally, it is the husband or parents of the husband who may be benefited by the dowry and may be in a position to harass and not all other relatives, though no hard and fast rule can be laid down in that regard. It is also true that till such an unfortunate event takes place, the family members may not disclose the demand of dowry being a private matter and under the hope that the relationship of the couple may improve. However, having regard to the nature of their relationships, there being possibility of the Appellants' having been named by way of exaggeration, we are of the

view that the Appellants deserve to be given benefit of doubt in that regard in the facts of the present case.

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2. Kuldeep Kaur v.State of Uttarakhand (2014)10 SCC 584

Hon'ble Judges/Coram:M. Yuasuf Eqbal and Pinaki Chandra Ghose, JJ.

Facts:

This appeal by special leave arises out of judgment of the High Court of Uttarakhand whereby Division Bench of the High Court dismissed the appeal preferred by the Appellant and affirmed the decision of the trial court convicting her Under Section 306 of the I P C to undergo three years rigorous imprisonment with fine of Rs. 5000/-

The prosecution case in a nutshell is that on 6.6.2001 the complainant of the case viz. Captain Jagtar Singh (PW1) lodged a report Ex.A-1 at P.S. Sitarganj, wherein it has been stated that marriage of his daughter Jagpreet Kaur was solemnized with Upkar Singh son of Harpal Singh on 1.3.2001. The complainant gave the articles in the marriage according to his capacity, but in-laws of his daughter used to demand car etc. and used to taunt and harass his daughter. It was further complained that Jagpreet Kaur told the informant that her in-laws harassed her on account of non-fulfillment of demand of dowry and in the intervening night of $5^{th}/6^{th}$ of June, 2001, she was compelled to commit suicide. On the basis of this complaint, case was registered against the accused persons Under Section 304-B, Indian Penal Code and the police took into custody a small bottle, cover of which was slightly torned, on which "Cypermethrin High Emulsifable Concentrate (Vet) Ectomin 100 E.C." was written. Diary Ex.A-2 written by the deceased was also seized. Dead body was sent for postmortem, where no apparent injury except ligature mark on the neck was found. According to the concerned Doctor, cause of death of the deceased was due to asphyxia as a result of ante mortem hanging.

The issue is whether Trial Court erred in convicting Appellant for offence in question whereas it acquitted all other co-accused by giving them benefit of doubt?

Decision: This appeal is allowed and the judgment of conviction of the Appellant Under Section 306 Indian Penal Code is set aside.

Reasoning:

Appellant is an old lady aged about 86 years. It is further submitted that the Appellant has undergone heart surgery and is also suffering from various old age ailments and practically confined to bed. Prosecution witness himself stated that only God knows why her daughter committed suicide without any reason. This witness has stated that it is true to say that neither the accused persons abetted his daughter to commit suicide nor they harassed her.

We have given our anxious consideration in the matter and analysed the evidence of the prosecution witnesses. In our considered opinion, the evidence adduced as against the Appellant does not establish the case Under Section 306 of the Code. On the basis of evidence of the prosecution witnesses, conviction of the Appellant only cannot be sustained. Having regard to the fact of the case and the evidence of the prosecution witnesses, the trial court acquitted all the accused persons except the present Appellant and the said judgment was affirmed by the High Court. We do not find any strong

reason to agree with the judgment of conviction passed by the trial court and affirmed by the High Court as against the Appellant.

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3. Sonali Mukherjee v. Union of India (2010) 15 SCC 25

Hon'ble Judges/Coram: B.N. Agrawal, V.S. Sirpurkar and H.L. Dattu, JJ.

Facts:

The Criminal Appeal No. 673 of 2001, filed by one Sonali Mukherjee, original accused No. 1 (hereinafter called "A-1" for short), who stood convicted by the Second Additional Sessions Judge, Pondicherry and Madras High Court and Criminal Appeal Nos. 835-836 of 2002 filed by one Dr. Battacharya, the father of one Biswajit (deceased), challenging the acquittal of one Assadid Poddar (respondent No. 2 in Criminal Appeal Nos. 835-836 of 2002), original accused No. 2 (hereinafter called "A-2" for short) by the Madras High Court, as also modification of the conviction of Sonali Mukherjee (A-1) from Section 302 of the Indian Penal Code (hereinafter referred to as "IPC" for short) to Section 304 Part (I) IPC and imposing lesser sentence.

The Second Additional Sessions Judge then ultimately tried the Sessions Case No. 34 of 1986. In all, five witnesses were examined on behalf of the prosecution, while four witnesses were examined as Court witnesses. Number of documents were got proved like Exhibit P-1 to P-24. The defence also led some evidence and on the basis of all the evidence, the two accused came to be convicted by the Sessions Judge for an offence punishable under Section 302 read with Section 34 IPC and were sentenced to undergo the life imprisonment. A fine of Rs. 100/- was also imposed upon, in default of which, they were to undergo imprisonment of one more month.

The appeal was filed before the Madras High Court, wherein Assadid Poddar (A-2) came to be acquitted, while the conviction in case of Sonali Mukherjee (A-1) was modified to one under Section 304(I) IPC and the sentence of life imprisonment under Section 302 IPC was set aside and lesser sentence of nine years' rigorous imprisonment under Section 304 Part (I) IPC was awarded. While Sonali Mukherjee (A-1) has challenged her conviction in Criminal Appeal No. 673 of 2001, the original complainant Dr. Battacharya, by filing two separate appeals, has challenged the verdict of the High Court, converting the conviction of Sonali Mukherjee (A-1) from the offence under Section 302 to Section 304 Part (I), as also the total acquittal of Assadid Poddar (A-2). All these appeals are now before us for consideration.

The issue is whether the judgment of High Court sentencing A 1 to nine yrs imprisonment need any intervention?

Decision: The appeal filed by Sonali Mukherjee (A-1) is allowed. The judgment of the High Court as well as the Trial Court are set aside and Sonali Mukherjee (A-1) is directed to be acquitted. We also dismiss the appeal, challenging the acquittal of (A-2). The High Court is correct in acquitting Assadid Poddar (A-2) and we confirm the judgment of the High Court. In the result, The bail bonds of both the accused, if any, shall stand discharged.

Reasoning:

The evidence of these two witnesses and more particularly, the Doctor, who conducted the post mortem examination, puts us on guard. A death by poisoning could be in three ways. Firstly, by accidental ingestion; secondly, by suicidal ingestion; and thirdly, by homicidal ingestion. The evidence of Dr. Sahay (PW-4) very clearly suggests that the Doctor was not himself certain as to whether the death by poisoning was homicidal. In his evidence, he specifically admitted that it was very difficult to differentiate between suicidal poisoning and homicidal poisoning. We must note that the Doctor has not given any specific reason to support his deduction that the death might have been homicidal. On the other hand, his evidence in the Court was riddled with contradictions, which contradictions were got proved through the police officer, who recorded his statement. They are very substantial contradictions. It was suggested firstly that this Doctor was himself a mental patient. We of course, cannot say as to whether at the time when he conducted the post mortem, he continued to be a mental patient of Paranoid Schizophrenia, but he himself admitted that he was asked by the Medical Board to take the treatment for mental disease. Secondly, he appears to be extremely fickle minded. His evidence does not create any confidence. He came as an expert witness and he had no explanation as to why he had expressed that it could be a suicidal poisoning. We do not give much importance to the suggestion by the defence that here was a witness, who was asked by Dr. Baruva to take interest in the matter. It will be too far-fetched to hold that it was because of the intervention of Dr. Baruva that the witness took the so-called interest in the post mortem. Further upon a basic fact as to whether the poisoning was suicidal or homicidal, much better evidence was expected from the prosecution. The witness PW-4 had said nothing in support of his deduction that it was a homicidal poisoning.

We have seen the original post mortem report and we do find the words "may be homicidal" to be inserted later on. We do not see any reason why there had to be the insertion. The witness has not explained also. This puts us on guard. His damaging statements made, which we have quoted above, were got proved, wherein he had made some suspicious and casual statements like though he had mentioned it as homicidal poisoning, he did not mean that it was a murder. We have deliberately quoted the proved contradictions, in which he had suggested that in the absence of any such remark regarding the poisoning being homicidal, the case could have been thrown in the dustbin. As per his proved contradiction, the witness knew that Dr. Baruva was a student of Dr. Battacharya (PW-1) and he had asked him to take interest in the case. His further remark was extremely diabolical that the words "may be homicidal" could mean may not be homicidal also. All this contradictory version does not inspire any confidence. However, the fact of the matter is that the death had taken place.

The prosecution has further led the evidence regarding the phial which was lying in the room where Biswajit died. In that we have the evidence of two witnesses, namely, Ramalingam (CW-1) and S. Shanmugasundaram (CW-3). Initially it was Ramalingam (CW-1) who was the Investigating Officer. In his evidence, S. Shanmugasundaram (CW-3) who took over the investigation has revealed that the said Gardenal tablets were purchased at Calcutta at Lot No. 185. It has also come in his evidence that the said particular lot number was sold only at Calcutta. He collected this information from one A.K. Dutta, the Sales Development Officer in charge of May & Baker Company. From this, the prosecution probably suggested that the tablets which were sold only in Calcutta, must have been procured by the accused. We fail to see as to how such an inference could be possible on the basis of this evidence. The tablets could have been bought even by the deceased or by anybody else. Unless it was specifically proved that the tablets were available only at that place exclusively, no inference can be drawn that it was Sonali Mukherjee (A-1) or Assadid Poddar (A-2), who procured the tablets. They

were ordinary sleeping pills, the overdose of which would have been fatal. The pills, however, were not poison. Therefore, the procurement of the sleeping pills, in our opinion, would lead nowhere. Therefore, the circumstance that the Gardenal tablets were purchased from Calcutta, does not help the prosecution.

On this backdrop, when we examine the prosecution case, it is shrouded in confusion. It is not the case of the prosecution that the tablets were accidentally taken. On the other hand, the prosecution specifically contends or at least seems to contend that the tablets were not taken by Biswajit accidentally. Now there remain only two possibilities, one, that the tablets having been swallowed by Biswajit himself; and second, the accused persons putting the tablets into the mouth of Biswajit surreptitiously or under some pretext or forcibly. The exact number of tablets swallowed by Biswajit has not been established by the prosecution. But the number had to be substantial otherwise Biswajit would not have died because of the swallowing of those tablets. Of course, it has come in the evidence of the doctors that alcohol might have aggravated the effect of barbiturate and the barbiturate was soluble in alcohol. It is nobody's case and, more particularly, that of Subbash Dass (PW-5) that there was any drinking activity after the accused persons and the deceased came back from Madras. There does not appear to be any evidence on record suggesting the availability of the alcohol in that room at the relevant time and that the deceased was so inebriated that he had lost all his control and could be made to do anything including swallowing of the tablets.

On the other hand, the evidence of Subbash Dass (PW-5) suggests that Biswajit was crying and he was conscious in the sense that he was not immobilized at that time. In this behalf when we examine the evidence of Subbash Dass (PW-5), it comes out that Sonali Mukherjee (A-1) was alone with Biswajit in the room after they returned from Madras, for quite some time. The witness then suggests that he forced open the door of the room and all the time Assadid Poddar (A-2) was constantly with him. The witness further suggested that after he forced open the door, he found Biswajit lying on the bed and thereafter he got up to go to the toilet. When Subbash Dass (PW-5) tried to help staggering Biswajit, Biswajit refused that help and went into the bathroom. S. Shanmugasundaram (CW-3) further confirms that he saw from over the wall that Biswajit was crying leaning against the wall. Therefore, it is not as if Biswajit was immobilized so that the Sonali Mukherjee (A-1) or as the case may be Sonali Mukherjee (A-1) and Assadid Poddar (A-2) would be able to put some tablets into his mouth and make him swallow the same. The only two other possibilities of the introduction of the tablets to Biswajit could be the forcible opening of his mouth by the accused and putting the tablets into his mouth and compel him to swallow the same or, secondly, Biswajit himself taking the tablets. It must be noted here that when we see the medical evidence and more particularly, the injuries described by Dr. Sahay, there is no injury on the face of Biswajit. The injuries were on the other parts of the body and they were extremely insignificant injuries. At least the injuries nowhere suggest that his mouth was forced open and then the tablets were put into his mouth compelling him to swallow the same. That does not appear in the tenor of evidence of Subbash Dass (PW-5). For that matter, if we accept the evidence of Subbash Dass (PW-5) on the aspect as to what exactly happened on that night in that room, then there would be no other view possible excepting to exonerate Assadid Poddar (A-2) at least insofar as the introduction of the tablets to Biswajit is concerned. The witness very clearly says that all the time till the door was closed, Assadid Poddar (A-2) was outside and it was only Sonali Mukherjee (A-1), who was with Biswajit. In our view, it must be impossible for a lady like Sonali Mukherjee (A-1) to force open the mouth of Biswajit and put the tablets into his mouth and make him swallow the same. That indeed does not appear to be a possibility nor is that established by the evidence of Subbash Dass (PW-5). If Biswajit himself swallowed the tablets, may be on account of the bickering with Sonali Mukherjee (A-1) or may be due to the wordily fights going

on between Sonali Mukherjee (A-1) and him, it cannot then be homicidal poisoning. It cannot be forgotten that it has come in the evidence of Subbash Dass (PW-5) that he had seen Biswajit leaning against the wall and weeping and contradiction was proved on the part of Subbash Dass (PW-5) by the evidence of Inspector Ramalingam (CW-1) (whom he called "Subhash Bhattacharya" for some inexplicable reason) whereby PW-5 had stated before the Inspector to the following effect:

I did not tell the police Inspector Ramalingam of Muthialpet, Cirol that when I scaled the wall which separates the latrine from the bathroom, I found that Biswajit was slanting on the wall, holding a plastic mug in one hand and a plastic container in the other hand.

The witness Ramalingam in his evidence admitted in the following words. Subhash Bhattacharya told me that he climbed over the wall and peeped through the opening to see inside the latrine and saw Biswajit slanting on the wall of the latrine holding a plastic mug in one hand and a small plastic container in his other hand.

This is a very material piece of evidence as Subhash Dass had refused in his evidence that he had stated so in his statement. This creates a great doubt as to how Biswajit swallowed the Gardenal tablets, whether he swallowed the same on his own which would amount to his attempt to commit suicide or whether the tablets were forcibly or surreptitiously or accidentally put in his mouth by Sonali Mukherjee (A-1) and Assadid Poddar (A-2) or anyone of them. There can be no dispute that on the examination of the Viscera of Biswajit, alcohol mixed with barbiturate was found. Therefore, he must have consumed the alcohol. We do not have anything on record to support fully that it was Sonali Mukherjee (A-1), who gave the alcohol to Biswajit or, for that matter, any alcohol was available at all there in that room. On a very substantial issue, therefore, a reasonable doubt is created about the administration of the sleeping pills to Biswajit. Did he swallow the same on account of the inebriation on his part or was he persuaded to swallow the same on account of his having lost his power to reason on account of the alcohol or were the sleeping tablets forced into his mouth? Unfortunately, the evidence of Subbash Dass (PW-5) falls short to prove any of these circumstances and the whole story then remains shrouded in mystery.

This suggests that even at that time, which was much after the couple entered the room for the first time, that Biswajit was not only alive but he was in a position even to refuse anybody's help to go to the bathroom. If we read this evidence in the light of the contradiction which was proved by Ramalingam (CW-1) then it at least creates a doubt that Biswajit who carried a plastic container and mug to the bathroom might have or could have swallowed the tablets inside the toilet room.

The impugned judgment turns more or the less on the inferences, the basic inference being that there was an illegal intimacy between Sonali Mukherjee (A-1) and Assidid Poddar (A-2), for which there is very little or no evidence. Once that basis is shaken or is held not to be established, the further case of the prosecution must fail.

We also cannot agree with the High Court that the death of Biswajit was homicide. We have already pointed out as to how the tablets could not have been administered by a single lady or how could there not be the accidental administration of the tablets leaving the only possibility of suicide. All the circumstances should have been addressed to by High Court, as well as, the Trial Court which is absent in both the judgments and conviction stood solely on the basis of evidence of Subbash Dass (PW-5), whom we have found an extremely unreliable witness. He was always under the thumb of Dr. Battacharya (PW-1), as well as, his friend Sarogi, with whom the witness admittedly lived and served for some time.

The High Court has also not given sufficient attention to the fact that Sonali Mukherjee (A-1) also tried to commit suicide and was convicted for the offence punishable under Section 309 IPC alongwith offence punishable under Section 324 IPC for having caused simple injuries to Biswajit. True it is that such conviction would not come in the way of the accused being tried for the offence under Section 302 IPC, but this circumstance had to be examined, as it was a very crucial circumstance in the whole story. The whole prosecution story is shrouded with mystery and is suspicious and, therefore, the benefit of doubt must go to the accused persons. The High court has also not explained as to how the offence could come within the parameters of Section 304 Part I IPC. The view taken by the High Court that the offence could amount to one under Section 304 Part I IPC, is in our opinion, erroneous.

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4. Jagriti Devi v. State of H.P AIR2009SC2869

Hon'ble Judges/Coram: Mukundakam Sharma and B.S. Chauhan, JJ.

Facts:

This appeal is directed against the judgment and of Himachal Pradesh High Court affirming the judgment Sessions Judge, Shimla convicting the accused-appellant herein under Section 302 of the Indian Penal Code, 1860 (for short "the IPC") and sentencing her to undergo imprisonment for life and to pay a fine of Rs. 2,000/-, and in default of payment of fine to also undergo Simple Imprisonment for a further period of one year.

The accused-appellant Jagriti Devi is the legally wedded wife of one Mohinder Singh who was a resident of village Atgaon. Out of the aforesaid wedlock, the accused-appellant gave birth to five children, four daughters and one son. The husband of the accused-appellant, however, married for a second time and brought the second wife- Shanti Devi home who was the deceased in the present case.

The deceased-Shanti Devi slept outside the house in veranda on the night intervening 01.06.1996 and 02.06.1996. When the said deceased was sleeping in the veranda on 02.06.1996 at about 6 a.m., the accused-appellant assaulted her with a `Khukri'. A number of blows appeared to have been given on her head and one blow on her neck. The deceased-Shanti Devi, however, survived for about few hours of the infliction of the injuries, and thereafter she died. The accused-appellant immediately after committing the crime fled away with the weapon of offence after washing her hands at the water tap in front of her house.

The accused-appellant pleaded not guilty to the charge of Section 302 IPC and claimed to be tried. The Trial Court, after going through the evidence on record found the accused-appellant guilty of the offence alleged against her and convicted her for the offence of murder punishable under Section 302 of the Indian Penal Code and sentenced to undergo imprisonment for life and to pay a fine of Rs. 2,000/- and in default of payment of fine, directed her to undergo further simple imprisonment for a period of one year.

Being aggrieved by the aforesaid judgment and order of conviction and sentence, the accused-appellant filed an appeal before the High Court of Himachal Pradesh which entertained it and by a detailed judgment upheld the order of conviction and sentence by affirming the same. The accused-

appellant being aggrieved by the aforesaid concurring judgments of conviction and sentence filed the present appeal

The issue is whether the death of Shanti Devi (deceased) is culpable homicide amounting to murder or not?

Decision: The appeal is allowed, the accused-appellant is guilty for offence under Section 304 Part II IPC. Her conviction under Section 302 IPC is, therefore, set aside. The accused-appellant has already undergone about seven years of imprisonment. We therefore, alter the sentence to the period already undergone by the accused-appellant. So far as the punishment of fine is concerned, the same stands set aside. The accused-appellant is already on bail. The bail bonds shall stand cancelled.

Reasoning:

PW-16 is the daughter of the accused-appellant. She had stated in her deposition that on the fateful day when her mother asked the deceased to go to the fields to fetch grass, the deceased not only refused to oblige the accused-appellant but also retorted saying as the milk is required for her own children, it was her job to arrange fodder. PW-16 had also stated that hearing the aforesaid reply by the deceased, the accused-appellant lost her tamper and slapped the deceased on her face and in retaliation, the deceased also slapped the accused-appellant. After that, the deceased took out the `Khukri' which she had kept under the pillow and tried to attack the accused-appellant. At that time, the accused-appellant grappled with the deceased to snatch the `Khukri' from the deceased and when they were grappling at the scene of occurrence, she (PW-16) ran to call her uncle to intervene but by the time she returned, the deceased was lying with the bleeding injuries on the floor of veranda while the accused-appellant was missing.

Accused-appellant while giving the aforesaid blows by the `Khukri' neither had the intention nor the knowledge that the same would cause bodily injury to the deceased which will result into death.

On appreciation of the entire evidence on record, we are satisfied that there was an altercation preceding the incident of murder in which accused-appellant was insulted by the deceased and by doing so the deceased provoked the accused-appellant and the accused- appellant snatched away the `Khukri' from the hands of the deceased due to which the accused-appellant also received the injuries.

We are unable to agree with the views taken by the trial court as also by the High Court. It is quite clear from the record that there was an altercation preceding the incident of murder in which the accused-appellant was insulted by the deceased and by doing so the deceased provoked the accused-appellant. The deceased also took out the `Khukri' which was under the pillow with the intention of assaulting the accused-appellant and the accused-appellant in order to save herself grappled with the deceased and during that process she also received injuries. The prosecution has failed to give any explanation with regard to those injuries received by the accused-appellant. Further, it is also established in evidence that the `Khukri' used in the commission of offence was kept by the deceased under her pillow while she was sleeping in the veranda outside the house. Clearly, there was no intention on the part of the accused-appellant to kill the deceased. That being the position, we are of the considered view that the present case cannot be said to be a case under Section 302 IPC but it is a case falling under Section 304 Part II IPC. It is trite law that Section 304 Part II comes into play when the death is caused by doing an act with knowledge that it is likely to cause death but there is no intention on the part of the accused either to cause death or to cause such bodily injury as is likely to cause death.

5. Smt. Sandhya Jadhav v. State of Maharashtra (2006) 4 SCC 653

Hon'ble Judges/Coram: Dr. Arijit Pasayat and S.H. Kapadia, JJ.

Facts:

In the present appeal the Appellant challenged the judgment rendered by a Division Bench of the Bombay High Court Nagpur Bench disposing of two appeals; one filed by the appellant and the other by two co-accused person. Challenge was to the conviction recorded and sentence imposed by the 6th Additional Sessions Judge, Nagpur. Appellant was convicted for offence punishable under Section 302 of the Indian Penal Code, 1860 and was sentenced to suffer imprisonment for life and to pay a fine of Rs. 1,000/- with default stipulation. Appellant was also convicted for offence punishable under Section 325 read with Section 34 IPC along with the other co-accused Kawadu and Arun and all of them were sentenced to suffer RI for 5 years and to pay a fine of Rs. 300/- with default stipulation. Co-accused persons were convicted for commission of offence punishable under Section 323 read with Section 34 IPC and sentenced to suffer RI of one year and to pay a fine of Rs. 200/- with default stipulation. Appeal filed by the appellant was dismissed. The facts in brief are as that the Appellant and co-accused persons were residing as tenants in the house of Govindrao Ghoradkar (PW-2). On 6th June, 1990 at about 8.00 a.m. Govindrao Ghoradkar (PW-2) went to the accused persons for demanding house rent. The accused persons in collusion with one another and in furtherance of their common intention assaulted Govindrao Ghoradkar (PW-2) and when his nephew Anand Ghoradkar (hereinafter referred to as the 'deceased') intervened in the matter to separate them, appellant Sandhya delivered a knife blow on the back of the deceased Anand and committed his murder. On the complaint lodged by Govindrao Ghoradkar (PW-2) and Gajanan Ghoradkar, brother of deceased, police registered two separate reports, i.e. (Exh.22) and report (Exh.20) respectively. Investigation was conducted and the accused persons were charge-sheeted for having committed offences punishable Under Section 302 read with Section 34 of IPC and Under Section 324 read with Section 34 of IPC and so far as accused nos. 2 and 3 are concerned, they were also charged for having committed offence punishable Under Section 323 read with Section 34 of IPC.

The issue is whether it is a case of culpable homicide amounting to murder or not?

Decision: Appeal is allowed. The conviction is to be altered to Section 304 Part II IPC instead of Section 302 IPC as done by the Trial Court and affirmed by the High Court. Custodial sentence of 7 years would meet the ends of justice.

Reasoning:

The Fourth Exception of Section 300, IPC covers acts done in a sudden fight. The said exception deals with a case of prosecution not covered by the first exception, after which its place would have been more appropriate. The exception is founded upon the same principle, for in both there is absence of premeditation. But, while in the case of Exception 1 there is total deprivation of self-control, in case of Exception 4, there is only that heat of passion which clouds men's sober reasons and urges them to deeds which they would not otherwise do. There is provocation in Exception 4 as in Exception 1; but the injury done is not the direct consequence of that provocation. In fact Exception 4 deals with cases in which notwithstanding that a blow may have been struck, or some provocation given in the origin of the dispute or in whatever way the quarrel may have originated, yet the subsequent conduct of both parties puts them in respect of guilt upon equal footing. A 'sudden fight' implies mutual provocation and blows on each side. The homicide committed is then clearly not

traceable to unilateral provocation, nor in such cases could the whole blame be placed on one side. For if it were so, the Exception more appropriately applicable would be Exception 1. There is no previous deliberation or determination to fight. A fight suddenly takes place, for which both parties are more or less to be blamed. It may be that one of them starts it, but if the other had not aggravated it by his own conduct it would not have taken the serious turn it did. There is then mutual provocation and aggravation, and it is difficult to apportion the share of blame which attaches to each fighter. The help of Exception 4 can be invoked if death is caused (a) without premeditation, (b) in a sudden fight; (c) without the offender's having taken undue advantage or acted in a cruel or unusual manner; and (d) the fight must have been with the person killed. To bring a case within Exception 4 all the ingredients mentioned in it must be found. It is to be noted that the 'fight' occurring in Exception 4 to Section 300, IPC is not defined in the IPC. It takes two to make a fight. Heat of passion requires that there must be no time for the passions to cool down and in this case, the parties have worked themselves into a fury on account of the verbal altercation in the beginning. A fight is a combat between two and more persons whether with or without weapons. It is not possible to enunciate any general rule as to what shall be deemed to be a sudden quarrel. It is a question of fact and whether a quarrel is sudden or not must necessarily depend upon the proved facts of each case. For the application of Exception 4, it is not sufficient to show that there was a sudden quarrel and there was no premeditation. It must further be shown that the offender has not taken undue advantage or acted in cruel or unusual manner. The expression 'undue advantage' as used in the provision means 'unfair advantage'.

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6. Vidhya Devi and Anr v. State of Haryana AIR 2004 SC 1757

Hon'ble Judges/Coram: Doraiswamy Raju and S.B. Sinha, JJ.

Facts:

The above appeal has been filed against the decision dated 26.11.1996 of a learned Single Judge of the Punjab and Haryana High Court in Criminal Appeal No.180-SB of 1995, whereunder the conviction of the appellants under Section 304-B, IPC, and the sentence of seven years R.I. each, in addition to the payment of fine of Rs. 1,000/- each, came to be affirmed. The case of the prosecution was that the marriage of the deceased Satyawati took place with A-5, Kuldeep, about six years prior to the date of occurrence; that they started living at Rohtak, i.e., at the house of her husband, who himself was living in joint family with his father A-4, Puran Mal, and others; that all the accused started harassing and torturing the deceased for want of more dowry and the manner of torture included even physical beating. About 1-14 years after the marriage, the deceased gave birth to a male child and though her parental side brought certain gifts, the accused were not satisfied both with reference to their quality and quantity and on that also they tortured the deceased Satyawati. On 27.7.1993, about four months before the death of Satyawati, a demand was made for a sum of Rs. 20,000/- as further dowry and for not complying with the demand, the deceased was not only tortured by physical beating but was said to have been locked in a room for four days from where she managed to escape and reached the house of her sister Krishna, in the same place. Thereupon, the sisters called their mother Misri Devi and a written complaint in Ex. P O was said to have been lodged with the Police through the Deputy Commissioner and on the said complaint, the husband and father-in-law of the deceased were arrested and taken to the Police Station. Both of them were said to have apologized to the complainant party and then a compromise was said to have been effected and reduced into writing as Ex.PO/1, which was also attested by the Police Officer in Ex.PO/2 and thereafter the deceased was brought back to the house of her-in-laws. About four months thereafter on 16.11.1933

at about 10.30 A.M. when the husband Kuldeep and father-in-law Puran Mal were away, the A-1, her mother-in-law by name Vidhya Devi, caught hold of the deceased by her hands on her back and Mina Devi, the daughter of Vidhya Devi, sprinkled Kerosene on the deceased and then A-2, the son of A-1 and A-4 by name Harish Kumar, set her ablaze. After she caught fire, her hands were said to have been freed on which she was said to have jumped into a water tank and raised alarm which attracted a front door neighbour by name Kalawati, who was said to be the eye witness for the occurrence including the catching hold of hands by Vidhya Devi, sprinkling of kerosene by Mina Devi and setting her ablaze by Harish. Thereupon, those three accused were said to have pulled her out from the water tank and put her on a cot stating that no treatment will be given and she would, in the normal course, die of the burns. At that stage, the neighbour Kalawati was said to have approached the sister of Satyawati, by name Krishna, in the Office of Deputy Commissioner, where Krishna was said to be working and she brought her mother Misri Devi from Jind and then Misri Devi was said to have taken the injured to the Medical College and Hospital, Rohtak

The learned Trial Judge by his Judgment convicted the appellants for offence punishable under Section 304-B, IPC, on the view that there was direct and substantial evidence against them though in respect of the other offences these accused and the remaining three accused in respect of all offences were found not guilty. The challenge made to the veracity and validity of the dying declaration recorded by the Investigating Officer was also repelled by the learned Trial Judge.

Aggrieved, the appellants pursued the matter on appeal and as noticed above, the High Court affirmed the conviction and sentence recorded by the learned Trial Judge. Further aggrieved by the Judgment of the High Court the appellant made appeal to this court.

The issue is whether there is any merit in the case which needs to intervene in the judgment given by courts blow.

Decision: The appeal fails and shall stand dismissed.

Reasoning:

There is no merit in the case because the fact of cruelty to the deceased was proved beyond reasonable doubt and the death of the victim occurred in the consequences of it.

In our view, the acquittal of the other accused, except the appellants, on the ground of absence of any direct and substantial evidence against them cannot be relied upon as basis for a claim to project the case for acquittal of the appellants against whom and as to the role played by them there were ample materials as noticed, analysed and ultimately found the appellants guilty. So far as the challenge made to the dying declaration recorded, though no doubt by the Police Officer concerned, the evidence of PW-3, Dr. Krishan Kumar, who not only opined that the deceased was in a fit state of mind to make the statement but present when the statement was recorded and that the said statement was signed by the deceased Satyawati in token of its correctness adds credibility to the same and consequently involvement of the accused-appellants and the respective role played by them in having the deceased killed, remains firmly established by concrete and sufficient material and the findings in this regard concurrently arrived at by both the courts below are not shown to suffer from any infirmity whatsoever to call for our interference. The dying declaration recorded by the Police Office in the fact situation of this case is credible and trustworthy and corroborated by several other evidences. It is pertinent to note that the Police officer had contact the judicial magistrate but said magistrate denied to come to record the dying declaration because case was not reported by the police officer.

Session No 7: Sentencing for Youth Offender

1. Deepak v. State of Haryana (2015)4SCC 762

Hon'ble Judges/Coram: F.M. Ibrahim Kalifulla and Abhay Manohar Sapre, JJ.

Facts:

This criminal appeal is filed by the accused against the final order/judgment dated 15.03.2010 passed by the High Court of Punjab and Haryana at Chandigarh in Criminal Appeal No. 2109-SB of 2009 which arises out of judgment/order dated 18.08.2009/20.08.2009 passed by the Additional Sessions Judge, Panipat in Misc. Sessions case No. 31 of 2007. By impugned judgment/order, the High Court upheld the conviction and sentence of the Appellant awarded by the Sessions Court for the offence punishable Under Section 376 of the Indian Penal Code, 1860 (hereinafter referred to as "Indian Penal Code") and sentenced him to undergo rigorous imprisonment for 7 years and a fine of Rs. 5000/- and in default of payment of fine to undergo rigorous imprisonment for another six months.

The issue is whether to award appropriate sentence age of the appellant/offender can be a relevant factor in view of the fact and circumstances of the present case?

Decision: There is no merit in this appeal, which fails and is accordingly dismissed. Since the Appellant is on bail by the order passed by this Court on 06.01.2012, his bail bonds stand cancelled and he is directed to surrender forthwith to serve out the remaining period of his sentence.

Reasoning:

We find no merit in this submission for the simple reason that the Appellant has been awarded minimum mandatory sentence of 7 years. In other words, once the offence Under Section 376 Indian Penal Code is proved then the minimum sentence is 7 years, which may extend to imprisonment for life and the fine. Therefore, the Appellant should feel fortunate that he was awarded only 7 years' sentence else it could have been even more. In the instant case, our careful analysis of the statement of the prosecutrix has created an impression on our minds that she is a reliable and truthful witness and her testimony suffers no infirmity or blemish whatsoever. That apart, as observed supra, even the medical evidence supports the commission of sexual violence on her and we need not elaborate on this issue any more in the light of concurrent finding of the courts below having been recorded against the Appellant holding in clear terms that sign of commission of rape on her by the Appellant stood proved by medical evidence beyond reasonable doubt. Indeed, even the Appellant had not disputed the factum of commission of sexual intercourse by him on the prosecutrix because as taken note of, the Appellant's only defence was that since the prosecutrix had consented to the commission of the sexual act, no offence of rape was made out against him. This argument we have already rejected.

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2. Birju v. State of M.P AIR 2014 SC 1504

Hon'ble Judges/Coram: K.S. Panicker Radhakrishnan and Vikramajit Sen, JJ.

Facts:

We are, in this case, concerned with the killing of a child aged one year who was in the arms of PW1, the grand-father, for which the accused was awarded death sentence by the trial court, which was affirmed by the High Court and these appeals have been preferred by the accused against the judgment of conviction and sentence awarded to him for the offences under Section 302 of the Indian Penal Code, read with Section 27 of the Arms Act, 1959.

The prosecution case, in short, is as follows: PW1, the complainant was standing at the grocery shop of Kamal Bansal (PW2) on 13.12.2009 at about 8.15 PM for purchasing some goods. He was holding his grandson, Arman, aged one year in his arms. PW4, Jagdish, was also standing in front of the said shop. The accused-Birju, resident of the same locality, known as Rustam Ka Bagicha, came out there on a motorcycle. After parking the motorcycle, he went to Babulal and questioned him as to why he was standing there. Babulal replied that he had come to purchase some kirana. While so, the accused-Appellant demanded Rs. 100/- for consuming liquor. Babulal expressed his inability to give the money, on which, the accused abused him in the name of his mother and took out a country made pistol from his pocket and shot, which hit on the right temporal area of infant-Arman. Persons of the locality, which included Rakhi, daughter of the complainant, her aunt-in-law Sharda Bai and few other inhabitants of the area, reached the spot after hearing the sound. Son-in-law of the complainant, Jeevan, took Arman to the hospital and PW1 immediately reached the police station and lodged the first information report.

Trial court found the accused guilty and held that the case of the accused falls under "rarest of rare" category and awarded capital punishment, which was affirmed by the High Court. The accused was also convicted under Section 27 of the Arms Act and was sentenced to rigorous imprisonment for three years and a fine of Rs. 1000/-, which was also affirmed by the High Court.

The issue is whether it is a rarest of rare case to award death sentence in view that the accused is having a criminal record and his age is 45 yrs as on the date of the appeal?

Decision:

The appeal is allowed and death sentence is commuted with life imprisonment with 20 years of rigorous imprisonment, without remission, to the Appellant, over the period which he has already undergone, would be an adequate sentence and will render substantial justice.

Reasoning:

PWs. 1 to 4 and 7 fully and completely supported the case of the prosecution. PW1, the grand-father of the child, PWs 2, 3, 4 and 7 have depicted an eye-to-eye picture of what transpired on the fateful day. Their version is consistent and highly reliable. Eye witnesses' version is fully corroborated with post-mortem and FSL reports.

Motive for committing the murder was evidently for getting the money to consume liquor for which, unfortunately, a child of one year became the casualty. The country made pistol used for committing the offence was subsequently recovered. PW10, who conducted the post-mortem on the dead body of the child, noticed various injuries and reiterated that the bullet had pierced through the meningeal membranes and both the lobes of the brain. PW10

The prosecution has successfully proved the cause of death and the use of the firearm by the accused and we fully concur with the findings of the trial court, affirmed by the High Court that offences under Section 302 Indian Penal Code and Section 27 of the Arms Act, 1959, have been made out.

The Appellant is having criminal antecedent, which is clear from the statement of investigating officer (PW-12) Mohan Singh in paragraph 12, wherein he has deposed that the Appellant is a notified bully in the concerned police station and as many as 24 criminal cases were registered against him by the police, out of which three cases of murder and two were attempt to commit murder.

We have no doubt in our mind that the accused had the full knowledge, if he fires the shot on the temporal area, that is between the forehead and the ear, it would result in death of the child of one year who was in the arms of PW1. Appellant, of course, demanded Rs. 100/- from PW1, which he refused and then he took out the pistol and fired at the right temporal area of the child, as retaliation of not meeting his demand and there is nothing to show that, at the time of the incident, he was under the influence of liquor. Consequently, while affirming the conviction, we are not prepared to say that it is a rarest of rare case, warranting capital punishment.

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3. Lalit Kumar Yadav v State of U. P MANU/SC/0368/2014

Hon'ble Judges/Coram: A.K. Patnaik, S.J. Mukhopadhaya and R.K. Agrawal, JJ.

Facts:

This appeal is directed against the impugned common judgment dated 11th August, 2006 passed by the High Court of Judicature at Allahabad, Lucknow Bench in Capital Sentence Reference No. 1 of 2005 with Criminal Appeal No. 252 of 2005 from Jail and Criminal Appeal No. 384 of 2005. By the impugned common judgment the High Court while dismissed the appeal preferred by the Appellant, answered the reference affirming the death sentence imposed by the Trial Court for the offence committed Under Section302 Indian Penal Code for having committed murder of Km. 'x' (victim: original name not disclosed). The High Court also affirmed the conviction and sentence passed against the Appellant Under Section 376 read with Section 511 of Indian Penal Code for having made an attempt to commit rape on Km. 'x' aged about 18 years and sentenced him to undergo five years rigorous imprisonment thereunder.

The issue is whether it is a fit case to award the death sentence keeping in view the young age of the appellant/accused.

Decision:

The appeal is partly allowed only with regard to the quantum of sentence. We are commuting the death sentence of appellant/accused to that of life imprisonment but affirm the rest part of the conviction and sentence.

Reasoning:

In the present case, the circumstantial evidence comes to only one conclusion that Appellant attempted to commit rape and because of resistance he committed the murder of the deceased. The

Appellant was aged about 21 years at the time of offence. Initially when the matter for confirmation of death sentence was heard by the two learned Judges of the High Court there was a divided opinion, one Judge confirmed the death sentence while the other acquitted the Appellant. It is the other Bench which affirmed the death sentence. It is not the case of the Prosecution that the Appellant cannot be reformed. In fact the possibility of his reformation cannot be ruled out. There is no criminal antecedent of the Appellant. The Court has to consider different parameters as laid down in **Bachan Singh** (supra) followed by **Machhi Singh** (supra) and balance the mitigating circumstances against the need for imposition of capital punishment. While we apply the various principles to the facts of the present case, we are of the opinion that considering the age of the accused, the possibility of reforming him cannot be ruled out. He cannot be termed as social menace. Further, the case does not fall under the "rarest of rare" category. We, therefore, are unable to uphold the death sentence. In the present case, on the question of quantum of sentence the argument raised on behalf of the Appellant is that the accused was young at the time of commission of offence i.e. 21 years of age, that he had no intention to kill the deceased and there is no past criminal antecedent.

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4. Santosh Kumar Singh v. State of M. P. AIR2014SC2745

Hon'ble Judges/Coram: H.L. Dattu, S.J. Mukhopadhaya and M. Yusuf Eqbal, JJ.

Facts:

These appeals are directed against the common impugned judgment dated 24th March, 2011 passed by the High Court of Madhya Pradesh, by which High Court upheld the judgment of conviction and sentence of death for the offences Under Section 302, 307, 394, 397 and 450 Indian Penal Code, as follows:

The issue is whether it is a rarest of rare case to award death sentence? Whether age can be the mitigating factor to commute the death sentence?

Decision: Appeals are partly allowed. We commute the death sentence of Appellant to life imprisonment. The conviction and rest part of the sentence are affirmed.

Reasoning:

In the present case the Appellant is an educated person, he was about 26 years old at the time of committing the offence. The accused was a tutor in the family of the deceased-Noorjahan. He was in acquaintance with the deceased as well as Zeenat Parveen (PW-3) and Razia Khatoon (PW-4). There is nothing specific to suggest the motive for committing the crime except the articles and cash taken away by the accused. It is not the case of the prosecution that the Appellant cannot be reformed or that the accused is a social menace. Apart from the incident in question there is no criminal antecedent of the Appellant. It is true that the accused has committed a heinous crime, but it cannot be held with certainty that this case falls in the "rarest of the rare category". On appreciation of evidence on record and keeping in mind the facts and circumstances of the case, we are of the view that sentence of death penalty would be extensive and unduly harsh.

5. Amit v. State of Uttar Pradesh AIR 2012 SC 1433

Hon'ble Judges/Coram: A.K. Patnaik and Swatanter Kumar, JJ.

Facts:

This is an appeal by way of special leave under Article 136 of the Constitution of India against the judgment of the Allahabad High Court confirming the conviction of the Appellant under Sections 364, 376, 377, 302 and 201 of the Indian Penal Code as well as the sentences of imprisonments and death awarded by the learned Additional Sessions Judge. The appellant accused has committed rape and murder of minor girl of 3 years.

The issue is whether it is a rarest of rare case to award death sentence? Whether the age of the accused is mitigating factor to commute death sentence to life imprisonment?

Decision:

While sustaining the conviction of the Appellant for the different offences as well as the sentences of imprisonment awarded by the trial court for the offences, we allow the appeal in part and convert the sentence of death to life imprisonment for the offence under Section 302 Indian Penal Code and further direct that the life imprisonment means till the end of natural life of accused, subject to any remission or commutation at the instance of the Government for good and sufficient reasons.

Reasoning:

In the present case also, we find that when the Appellant committed the offence he was a young person aged about 28 years only. There is no evidence to show that he had committed the offences of kidnapping, rape or murder on any earlier occasion. There is nothing on evidence to suggest that he is likely to repeat similar crimes in future. On the other hand, given a chance he may reform over a period of years. Hence, following the judgment of the three-Judge Bench in *Rameshbhai Chandubhai Rathod (2)* v. *State of Gujarat (2011) 2 SCC 764* we convert the death sentence awarded to the Appellant to imprisonment for life and direct that the life sentence of the Appellant will extend to his full life subject to any remission or commutation at the instance of the Government for good and sufficient reasons.

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6. Rajendra Pralhadrao Wasnik v. The State of Maharashtra AIR 2012 SC 1377

Hon'ble Judges/Coram: A.K. Patnaik and Swatanter Kumar, JJ.

Facts:

The present appeals are directed against the judgment of High Court of Bombay, Nagpur Bench affirming the conviction of the accused under Sections 376(2)(f), 377 and 302 of the Indian Penal Code and the sentence of death awarded to the accused-Appellant herein vide judgment of the First Additional Sessions Judge.

The issue is whether it is a rarest of rare cases where awarding death sentence is justified? Whether age of the accused in the fact and circumstance of this case is mitigating factor on which death sentence can be commuted to life imprisonment?

Decision: The appeals are dismissed. We find no justifiable reason to interfere with the judgment of conviction and order of death sentence under the impugned judgment

Reasoning:

The chain of events is complete with regard to the commission of crime and undoubtedly points towards the accused. Now, we have to examine whether the prosecution has provided these facts as required in law. All the factors have been proved by the prosecution both by documentary as well as oral evidence. The accused admitted the documents i.e. the sketch map, Ex. 64, spot panchnama, Ex. 10, inquest panchnama, Ex. 11, seizure panchnamas Exihibits 12, 13 and 14 in respect of the seizure of clothes of the accused and in respect of blood sample, public hair sample, semen sample of the accused, arrest panchnama, Ex. 16, postmortem report Ex. 17 and letters Ex. 19 to 27. Once these crucial pieces of documentary evidence have been admitted by the accused and other factual links in the story of the prosecution have been duly proved by the witnesses by circumstantial or direct evidence, there is no occasion for this Court to doubt that the prosecution has not been able to prove its case beyond reasonable doubt. Age of the accused is a mitigating factor but not always. As in this case also age factor was not taken in to consideration.

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7. Sebastian @ Chevithiyan v. State of Kerala (2010)1 SCC 58

Hon'ble Judges/Coram: H.S. Bedi and J.M. Panchal, JJ.

Facts:

These appeals challenge the conviction of the appellant under Sections 302, 364, 369, 376(f), 392 and 449 of the Indian Penal Code and the award of the death sentence for the offence punishable under Section 302 of the I.P.C. and to various terms of imprisonment for the other offences. The Trial Court observed that the appellant had trespassed into the complainant's house and taken the child away and had raped and then killed her.

The issue is whether it is a rarest of rare case to call for death sentence?

Decision: We accordingly dismiss the appeals but modify the sentence of death to one for the rest of his life.

Reasoning:

It is pointed out that the case rested on circumstantial evidence and the death penalty should not ordinarily be awarded in such a case. It has further been emphasised that the appellant was **a young man 24** years of age at the time of the incident. We are of the opinion that in the background of these facts, that the death penalty ought to be converted to imprisonment for life.

8. Rameshbhai Chandubhai Rathod v. The State of Gujarat AIR 2011 SC 803

Hon'ble Judges/Coram: H.S. Bedi, P. Sathasivam and C.K. Prasad, JJ.

Facts:

The trial court on a minute appreciation of the evidence which was exclusively circumstantial in nature, held that the case against the Appellant had been proved beyond doubt, and accordingly convicted him and sentenced him to death for the commission of the offence punishable under Section 302 and to various terms of imprisonment for the other offences. The matter was, thereafter, referred to the High Court and the accused also filed an appeal challenging his conviction. The High Court confirmed the reference and dismissed the appeal. The High Court also found that the case against the accused fell within the category of the rarest of the rare cases. It is a case of case of rape and murder of a young child by a young man.

The issue is whether it is a rarest of rare case to award death sentence? Whether age can be a relevant and mitigating factor to commute death sentence in to life imprisonment?

Decision: The appeal is partly allowed for the foregoing reasons and taking into account all the aggravating and mitigating circumstances, we confirm the conviction, however, commute the death sentence into that of life imprisonment. Here we would like to note that the punishment of life sentence in this case must extend to their full life, subject to any remission by the Government for good reasons.

Reasoning:

There was some uncertainty with the nature of the circumstantial evidence and that the mitigating circumstance particularly the young age of the Appellant and the possibility that he could be rehabilitated and would not commit any offence late on, could not be ruled out.

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9. Santosh Kumar Singh v. State thr. CBI (2010) 9 SCC 747

Hon'ble Judges/Coram: H.S. Bedi and C.K. Prasad, JJ.

Facts:

The present appeal is filed against the Judgment of the High Court whereby the death sentence was awarded to the appellant/accused for the offence under section 302 and 376 of the Indian penal code. The trial court had acquitted the appellant/ accused for the above charges stating that there is no conclusive proof against the accused. However the DNA test clearly proves that it was the accused who committed rape on the young girl and thereafter killed her. It is also pertinent to note that the accused was stalking the victim for about two years and he was admonished by the Police also. This fact was also admitted by the accused. father of the accused had interfered in the investigation indirectly because he was in high position in police Department.

The issue is whether it is a rarest of rare case to award death sentence? Whether age of the accused is a mitigating factor to commute the death sentence?

Decision: The ends of justice would be met if the sentence awarded to him is commuted from death to life imprisonment under Section 302 of the Indian Penal Code; the other part of the sentence being retained as it is. With this modification in the sentence, the appeal is dismissed.

Ratio Decidendi:
"Once the guilt of accused and the circumstantial evidences are proved beyond reasonable doubt he has to be convicted for the offence committed."

Reasoning:

The circumstantial evidence is completes and the DNA report clearly proves that it was the accused who committed rape on the victim and thereafter murder. On the contrary, there is nothing to suggest that he would not be capable of reform. There are extremely aggravating circumstances as well. The appellant was a young man of 24 at the time of the incident and, after acquittal, had got married and was the father of a girl child. Undoubtedly, also the appellant would have had time for reflection over the events of the last fifteen years, and to ponder over the predicament that he now faces, the reality that his father died a year after his conviction and the prospect of a dismal future for his young family.

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10. Shivu and Anr v. R.G. High Court of Karnataka and Anr (2007) 4 SCC 713

Facts:

Challenge in this appeal is to the judgment rendered by a Division Bench of the Karnataka High Court accepting the reference made under Section 366 of the Code of Criminal Procedure, 1973 and confirming death sentence awarded to the appellants in respect of offences punishable under Section 302 read with Section 34 of the Indian Penal Code, and sentence of 10 years and fine of Rs. 25,000/- with default stipulation for the offence punishable under Section 376 read with Section 34 IPC awarded by the learned District and Sessions Judge, Chamarajanagara.

Background facts which led to the trial of the accused persons are essentially as Both the accused are residents of the same village where Shivamma (18 yrs of age hereinafter referred to as the 'deceased'). The accused-aged about 20 and 22 years respectively were sexually obsessed youngsters. Few months prior to the incident, relating to the present appeal they attempted to commit rape on Lakkamma [daughter of Puttegowda (PW.7)], but were unsuccessful. For that act, they were admonished. Later, they attempted to commit rape on PW.10 (daughter of PW.1). PW.10 was also successful in escaping from their clutches. Though in both the incidents, the aggrieved persons wanted to lodge police complaints, against the accused, at the instance of village elders and family members of these accused, instead of lodging criminal cases, only Panchayat of village elders was called on each occasion and the accused were directed to mend their ways. But this warning had no effect on them. Emboldened by escape from punishment in those two incidents, they committed rape on the deceased a young girl of hardly 18 years and to avoid detection, committed heinous and brutal act of her murder.

Decision:

The appeal is dismissed. We have no hesitation in holding that the case at hand falls in rarest of rare category and death sentence awarded by the trial Court and confirmed by the High Court was appropriate.

Ratio Decidendi: *"Rape and murder—Rarest of rare— Where case rests squarely on circumstantial evidence inference of guilt can be justified only when all incriminating facts and circumstances found incompatible with innocence of accused or guilt of any other person "*

Reasoning: The chain of circumstantial evidence is complete and trustworthy to hold the appellant/accused guilty of the offence charged. Age is one of the mitigating factor but not always to commute the death sentence but in the fact and circumstances of the present case it is not considered as such.

Session No 8: Sentencing in cheque Bouncing Cases

1. A.C. Narayanan and Ors v. State of Maharashtra and Ors AIR 2015 SC 1198

Hon'ble Judges/Coram: S.J. Mukhopadhaya and S.A. Bobde, JJ.

Facts:

The accused-Appellant, A.C. Narayanan challenged the common order dated 29th November, 2000 passed by the Additional Chief Metropolitan Magistrate, 9th Court, Bandra, Mumbai (hereinafter referred to as the, Trial Court) by filing applications Under Section 482 of the Code of Criminal Procedure, 1973 before the High Court. By the said common order the applications preferred by the Appellant-A.C. Narayanan for discharge/recalling process against him was rejected by the Trial Court. The High Court by impugned judgment dated 12th August, 2005, dismissed the applications preferred by the Appellant and upheld the order passed by the Trial Court. The Appellant is the Vice-Chairman and Managing Director of the Company M/s. Harvest Financials Ltd. (hereinafter referred to as the "Company") having its registered office at Bombay. Under a scheme of investment, the Appellant collected various amounts from various persons in the form of loans and in consideration thereof issued post-dated cheques either in his personal capacity or as the signatory of the Company which got dishonoured.

Respondent No. 2-Mrs. Doreen Shaikh is the power of attorney holder of six complainants, namely Mr. Yunus A. Cementwalla, Smt. Fay Pinto, Mr. Mary Knoll Drego, Smt. Evelyn Drego, Mr. Shaikh Anwar Karim Bux and Smt. Gwen Piedade. On 16th December, 1997, Respondent No. 2 on behalf of the six complainants filed Complaint Case Nos. 292/S/1998, 293/S/1998, 297/S/1998, 298/S/1998, 299/S/1998 and 300/S/1998 respectively against the Appellant herein Under Sections 138 and 142 of the Negotiable Instruments Act, 1881 (hereinafter referred to as the, N.I. Act) before the Trial Court. The said Respondent No. 2 verified the complaint in each of those cases as Power of Attorney Holder of the complainants. The Additional Chief Metropolitan Magistrate vide order dated 04th April, 1998 issued process against the Appellant Under Section 204 of the Code of Criminal Procedure for the offences punishable Under Sections 138 and 142 of the N.I. Act.

The Appellant, being aggrieved moved an application for discharge/recall of process in each of the complaints. The Trial Court vide common order dated 29th November, 2000 dismissed the applications filed by the Appellant. The Appellant being aggrieved preferred applications being Criminal Application Nos. 797, 798, 799, 801, 802 and 803 of 2002 before the High Court for calling for the records of the case pending in the Trial Court. By impugned order dated 12th August, 2005 the said applications were dismissed by the High Court.

The issue is whether impugned order rightly convicted Appellant from offence in question?

Decision: The impugned judgment passed by the High Court of Judicature at Bombay and the order passed by the Additional Chief Metropolitan Magistrate, 9th Court, Bandra, Mumbai are set aside and the proceedings in question against the Appellant are quashed.

Reasoning:

In this case Magistrate had taken cognizance of the complaint without prima facie establishing the fact as to whether the Power of Attorney existed in first place and whether it was in order. It is not in

dispute that the complaint against the Appellant was not preferred by the payee or the holder in due course and the statement on oath of the person who filed the complaint has also not stated that he filed the complaint having been instructed by the payee or holder in due course of the cheque. Since the complaint was not filed abiding with the provisions of the Act, it was not open to the Magistrate to take cognizance.

From the bare perusal of the said complaint, it can be seen that except mentioning in the cause title there is no mention of, or a reference to the Power of Attorney in the body of the said complaint nor was it exhibited as part of the said complaint. Further, in the list of evidence there is just a mere mention of the words at serial No. 6 viz. "Power of Attorney", however there is no date or any other particulars of the Power of Attorney mentioned in the complaint. Even in the verification statement made by the Respondent No. 2, there is not even a whisper that she is filing the complaint as the Power of Attorney holder of the complainant. Even the order of issue of process dated 20th February, 1998 does not mention that the Magistrate had perused any Power of Attorney for issuing process.

The Appellant has stated that his Advocate conducted search and inspection of the papers and proceedings of the criminal complaint and found that no Power of Attorney was found to be a part of that record. This has not been disputed by the Respondents. In that view of the matter and in light of decision of the larger Bench, as referred above, we hold that the Magistrate wrongly took cognizance in the matter and the Court below erred in putting the onus on the Appellant rather than the complainant. The aforesaid fact has also been overlooked by the High Court while passing the impugned judgment dated 12th August, 2005.

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2. Kirshna Texport and Capital Markets Ltd v. Ila A. Agrawal and Ors AIR2015SC2091

Hon'ble Judges/Coram:Pinaki Chandra Ghose and U.U. Lalit, JJ.

Facts:

This appeal by Special Leave is directed against the order dated 6.5.2008 passed by the High Court of Judicature at Bombay rejecting Criminal Application No. 2174 of 2007 preferred by the Appellant for leave to appeal. On 14.09.1996 a notice Under Section 138 of the 'Negotiable Instruments Act, 1881'(hereinafter referred to as "the Act") was issued on behalf of the Appellant to M/S Indo French Bio Tech Enterprises Ltd. ('the Company' for short). The notice stated that a cheque bearing No. 364776 dated 8.9.1996 drawn by the Company on Dena Bank, New Marine Lines, Mumbai in favour of the Appellant was returned on 10.9.1996 with endorsement "funds insufficient". The notice therefore called upon the addressee to make the payment of the cheque amount within 15 days of the receipt of such notice. No reply was sent to the aforesaid notice dated 14.9.1996.

The Appellant thereafter filed Complaint before the Additional Chief Metropolitan Magistrate, 5th Court at Dadar, Mumbai against the Company, Mr. K.J. Bodiwala, the Chairman and Managing Director of the Company and 11 other directors including Respondents 1 and 2. In so far as the directors are concerned, it was averred that they were in-charge of the business of the Company and its day to day affairs. During the pendency of said complaint case, the process issued against Accused Nos. 3 to 5, 7, 9 to 13 was recalled and due to the death of Mr. Bodiwala the proceedings as against him also abated, which left the Company and the present Respondents 1 and 2 namely Ms. Ila A.

Agrawal and Mr. Prafulla Ranadive, Accused Nos. 6 and 8 respectively in the array of accused. It was submitted by the Appellant that separate notices to the directors were additionally issued but at the stage of evidence it turned out that such individual notices to the directors were with respect to dishonour of a different cheque. The facts as found therefore were that no individual notices were given to the directors. The Metropolitan Magistrate by his judgment and order dated 30.4.2007 convicted the Company but acquitted Respondents 1 and 2 of the offence punishable Under Section 138 of the Act.

The Appellant being aggrieved filed Criminal Application No. 2174 of 2007 in the High Court seeking leave to prefer appeal against the judgment acquitting Respondents 1 and 2. It was submitted that it was not necessary to serve individual notice upon the directors and it was sufficient if the notice was served on the Company.

The issue is whether notice Under Section 138 of the Act is it mandatorily required to be sent to the directors of a Company before a complaint could be filed against such directors along with the Company.

Decision: The Appeal is allowed and the order passed by the High Court is set aside.

Reasoning:

Section 141 states that if the person committing an offence Under Section 138 is a Company, every director of such Company who was in charge of and responsible to that Company for conduct of its business shall also be deemed to be guilty. The reason for creating vicarious liability is plainly that a juristic entity i.e. a Company would be run by living persons who are in charge of its affairs and who guide the actions of that Company and that if such juristic entity is guilty, those who were so responsible for its affairs and who guided actions of such juristic entity must be held responsible and ought to be proceeded against. Section 141 again does not lay down any requirement that in such eventuality the directors must individually be issued separate notices Under Section 138. The persons who are in charge of the affairs of the Company and running its affairs must naturally be aware of the notice of demand Under Section 138 of the Act issued to such Company. *It is precisely for this reason that no notice is additionally contemplated to be given to such directors.* The opportunity to the 'drawer' Company is considered good enough for those who are in charge of the affairs of such Company. If it is their case that the offence was committed without their knowledge or that they had exercised due diligence to prevent such commission, it would be a matter of defence to be considered at the appropriate stage in the trial and certainly not at the stage of notice Under Section 138.

If the requirement that such individual notices to the directors must additionally be given is read into the concerned provisions, it will not only be against the plain meaning and construction of the provision but will make the remedy Under Section 138 wholly cumbersome. In a given case the ordinary lapse or negligence on part of the Company could easily be rectified and amends could be made upon receipt of a notice Under Section 138 by the Company. It would be unnecessary at that point to issue notices to all the directors, whose names the payee may not even be aware of at that stage. Under Second proviso to Section 138, the notice of demand has to be made within 30 days of the dishonour of cheque and the third proviso gives 15 days time to the drawer to make the payment of the amount and escape the penal consequences. Under Clause (a) of Section 142, the complaint must be filed within one month of the date on which the cause of action arises under the third proviso to Section 138. Thus a complaint can be filed within the aggregate period of seventy five days from the dishonour, by which time a complainant can gather requisite information as regards names and

other details as to who were in charge of and how they were responsible for the affairs of the Company. But if we accept the logic that has weighed with the High Court in the present case, such period gets reduced to 30 days only. Furthermore, unlike proviso to Clause (b) of Section 142 of the Act, such period is non-extendable. The summary remedy created for the benefit of a drawee of a dishonoured cheque will thus be rendered completely cumbersome and capable of getting frustrated.

In our view, Section 138 of the Act does not admit of any necessity or scope for reading into it the requirement that the directors of the Company in question must also be issued individual notices Under Section 138 of the Act. Such directors who are in charge of affairs of the Company and responsible for the affairs of the Company would be aware of the receipt of notice by the Company Under Section 138. Therefore neither on literal construction nor on the touch stone of purposive construction such requirement could or ought to be read into Section 138 of the Act. Consequently this appeal must succeed. The order passed by the High Court is set aside. Since the matter was at the stage of considering application for leave to appeal and the merits of the matter were not considered by the High Court, we remit the matter to the High Court for fresh consideration which may be decided as early as possible.

Concluding so, we must record that the decision of the Division Bench of the Madras High Court in B. Raman and Ors v Shasun Chemicals and Drugs Ltd. MANU/TN/9538/2006 was incorrect and it stands overruled.

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3. T. Vasanthakumar v. Vijayakumari MANU/SC/0498/2015

Hon'ble Judges/Coram: Jasti Chelameswar and Pinaki Chandra Ghose, JJ.

Facts:

This appeal, by special leave, arises from the judgment and order dated 22-07-2011 passed by the High Court of Karnataka in Criminal Revision Petition No. 263/2011 by which the High Court set aside the judgments of the two Courts below and acquitted the Respondent herein. The genesis of the litigation in the present case is that a complaint Under Section 138 of the Negotiable Instruments Act, 1881 was filed by the complainant before the XII Magistrate, Bangalore. The learned Magistrate had, after trial, found the Defendant guilty and sentenced her to pay Rs. 5,55,000/- and in default of payment of the said amount, to undergo simple imprisonment for a period of five months. This order of the learned Magistrate was challenged in the appeal before the Fast Track Court, Bangalore, but the same was dismissed by the Fast Track Court. The Defendant preferred a revision of the Fast Track Court's order before the High Court, being Criminal Revision Petition No. 263/2011.

The case of the complainant is that he is the owner of the Ullas Theatre situated at Yashwantpur, Bangalore, while the Defendant is the distributor of films. The two parties had a business relationship whereunder the Defendant provided movies to the complainant for screening at his Theatre. In May 2006, the Defendant sought a loan of Rupees Five Lakhs from the complainant for supporting the making of a Tamil movie "Pokari". The said loan was advanced by the complainant on 20-05-2006. The Defendant had promised to repay the loan on release of the said movie. However, the Defendant failed to repay the said loan. On repeated requests made by the complainant, the Defendant on 16-01-2007, gave a cheque for Rs. 5 lakhs, bearing No. 822408, drawn on State Bank of Mysore, Vyalikaval

Branch, Bangalore. This cheque was presented by the complainant on the same day through his banker Vijaya Bank, Yeshwantpur Branch, Bangalore. But the cheque was returned on 18-01-2007 by the Bank with the remarks: "Stop Payment". Thereafter, the complainant issued a legal notice to the Defendant on 27-01-2007, at the office address as well as residential address of the Defendant. The notice sent at the residential address through RPAD was duly received, while the one sent at the office address of the Defendant was returned with the report: "Absent-Information delivered". Even after the notice was served, the Defendant neither made the payment nor responded to the same.

The Trial Court found the Defendant guilty Under Section 138 of Negotiable Instruments Act and sentenced her to pay a fine of Rs. 5,55,000/-, in default of payment, she was to undergo simple imprisonment for five months. The first appellate Court found that although the Defendant disputed the transaction, they did not dispute the cheque or her signature on it. The learned Sessions Judge (Fast Track Court) also rejected the claim of the Defendant that she and her husband were not in Bangalore on the alleged date when the loan was advanced i.e. 20-05-2006. The Defendant had produced hotel bills of Chennai for those dates, but the Court held that the bills do not prove the presence of the Defendant along with her husband in Chennai. On these grounds the Court did not find weight in the case of the Defendant.

The High Court in appeal reversed the concurrent finding of the learned Magistrate and learned Sessions Judge. The High Court found that the cheque was actually from the cheque book that was issued prior to 2000 as the cheque leaf itself mentioned the date in printed ink as "__/__/199__". The High Court observed that it is hard to believe that a business transacting party would give a cheque which is of the decade 1990 in relation to the transaction in 2007.

The issue is whether complainant has to prove existence of a legally enforceable debt before the presumption Under Section 139 of the Negotiable Instruments Act starts operating and burden shifts to the accused?

Decision: The appeal is allowed. The judgment and order passed by the High Court is accordingly set aside and the judgment dated 22.01.2011, delivered by the Presiding Officer, Fast Track Court-I, Bengaluru, confirming the order passed by the XIIth Addl. Chief Metropolitan Magistrate, Bengaluru, convicting the Respondent for an offence Under Section 138 of the Negotiable Instruments Act and sentencing her to pay a fine of Rs. 5,55,000/-, in default to suffer Simple Imprisonment for five months, is hereby restored.

Reasoning:

The complainant has alleged that the money (loan) was advanced to the Defendant on 20-05-2006 in relation to which the cheque was issued to him by the Defendant on 16-01-2007. The cheque was for Rs. 5 lakhs only, bearing No. 822408. It is of great significance that the cheque has not been disputed nor the signature of the Defendant on it. There has been some controversy before us with respect to Section 139 of Negotiable Instruments Act as to whether complainant has to prove existence of a legally enforceable debt before the presumption Under Section 139 of the Negotiable Instruments Act starts operating and burden shifts to the accused.

> This Court has held in its three judge bench judgment in Rangappa v. Sri Mohan (2010) 11 SCC 441 that the presumption mandated by Section 139 includes a presumption that there exists a legally enforceable debt or liability. This is of course in the nature of a rebuttable presumption and it is open

to the accused to raise a defence wherein the existence of a legally enforceable debt or liability can be contested. However, there can be no doubt that there is an initial presumption which favours the Respondent complainant.

Therefore, in the present case since the cheque as well as the signature has been accepted by the accused Respondent, the presumption Under Section 139 would operate. Thus, the burden was on the accused to disprove the cheque or the existence of any legally recoverable debt or liability.

To this effect, the accused has come up with a story that the cheque was given to the complainant long back in 1999 as a security to a loan; the loan was repaid but the complainant did not return the security cheque. According to the accused, it was that very cheque used by the complainant to implicate the accused. However, it may be noted that the cheque was dishonored because the payment was stopped and not for any other reason. This implies that the accused had knowledge of the cheque being presented to the bank, or else how would the accused have instructed her banker to stop the payment. Thus, the story brought out by the accused is unworthy of credit, apart from being unsupported by any evidence.

Further, the High Court relied heavily on the printed date on the cheque. However, we are of the view that by itself, in absence of any other evidence, cannot be conclusive of the fact that the cheque was issued in 1999. The date of the cheque was as such 20/05/2006. The accused in her evidence brought out nothing to prove the debt of 1999 nor disprove the loan taken in 2006.

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4. Somnath Sarkar v. Utpal Basu Mallick and Anr AIR2014SC771

Hon'ble Judges/Coram:T.S. Thakur and Vikramajit Sen, JJ.

Facts:

The Appellant, who is the proprietor of M/s. Tarama Medical Centre, Tarakeswar, Hooghly, issued a cheque in favour of the Respondent/complainant bearing No. 419415 dated 6th September, 1999 drawn on SBI, Tarakeswar Branch for Rs. 69,500/- towards discharge of existing liabilities. When the cheque was presented by the complainant through his banker on 6th September, 1999 it was dishonoured for "insufficient funds", which dishonour was communicated to the complainant on 7th October, 1999. The complainant Respondent issued a demand notice, which was received by the accused Appellant within the prescribed limitation period. However, since the accused failed to repay the amount within time, the complainant filed a complaint Under Section 138 of the Negotiable Instruments Act, 1881 on 9th December, 1999.

The Metropolitan Magistrate, 6th Court, Calcutta convicted the Appellant for the offence Under Section 138, Negotiable Instruments Act and sentenced him to six months simple imprisonment and to pay compensation of Rs. 80,000/- Under Section 357(3) Code of Criminal Procedure Both the conviction and sentence were upheld by the Additional District and Sessions Judge of the Fast Track Court in appeal. In a revision petition filed against the said two orders, the High Court upheld the conviction, but imposed an additional fine of Rs. 69,500/- (cheque amount) in lieu of six months simple imprisonment awarded by the Metropolitan Magistrate. That the Appellant has paid the

compensation amount of Rs. 80,000/- in instalments of Rs. 30,000/- and Rs. 50,000/- is not disputed before us

The Issue whether the High Court was justified in directing payment of an additional fine of Rs. 69,500/- which happens to be the cheque amount also, having regard to the fact that the Appellant has already paid the sum of Rs. 80,000/- to the complainant towards compensation in obedience to the order made by the Metropolitan Magistrate.

Decision: The Appeal is allowed.

Reasoning:

It seems to us that since the Appellant has already faced prosecution in the Magistracy in which he presented virtually no defence, and has thereafter filed an appeal before the Sessions Court, and subsequently two Revisions before the High Court, the ends of justice will be met, were he be directed to
pay a sum of Rs. 20,000/- only, in default, of which he would be liable to undergo the punishment of simple imprisonment for a term of six months as imposed by the aforementioned Magistrate. The said payment should be made within eight weeks.
As already expressed, the language employed by the High Court in the impugned order raises a doubt as to the total liability of the Appellant. A perusal of the sentence passed by the Trial Court as well as the Sessions Judge while dismissing the Appeal also does not completely clarify the position. The cheque amount is Rs. 69,500/- and in this regard a sum of Rs. 80,000/- has been directed towards compensation which, by virtue of Section 357(3), Code of Criminal Procedure (Code of Criminal Procedure) would be receivable by the complainant. It appears that this sum of Rs. 80,000/- has been received by the complainant. The use of the word, 'additional sum' in the impugned order has led to considerable confusion. To put the matter finally at rest, we hold that the total compensation payable Under Section 138 of the N.I. Act read with Section 357(3), Code of Criminal Procedure is Rs. 80,000/-. i.e., the cheque amount of Rs. 69,500/- together with Rs. 10,500/- which may be seen as constituting interest on the dishonoured cheque. In the arguments addressed before us there appears to be no controversy that this sum has been duly paid to the Respondent-complainant. A reading of the impugned order appears to indicate that the payment of further sum of Rs. 69,500/-, in the instalments indicated in that order would be over and above the said sum of Rs. 80,000/-. This would violate Section 138 of the N.I. Act inasmuch as it would exceed the double of the cheque amount. This leads us to conclude that the intention of the High Court was that upon deposit/payment of the further sum of Rs. 69,500/- (in addition to the earlier sum of Rs. 80,000/-), the sentence of imprisonment for six months would stand withdrawn. Learned Counsel for the Appellant has fervently submitted that the Appellant is a man of limited financial means and this position has not been controverted. Palpably, the convict has filed appeals all the way to the Apex Court which would have entailed further expenses of no mean measure. We think that with the receipt of Rs. 80,000/-, the complainant has received compensation for the dishonoured cheque as per the adjudication of the Trial Court. In these circumstances, any further payment would be in the nature of fine. Accordingly, we clarify that the Appellant must pay a sum of Rs. 80,000/- receivable by the complainant within four weeks from today, if not already paid. The Appellant is also sentenced to payment of a fine of Rs. 20,000/-, payable within eight weeks from today, and on the failure to make this payment, would be liable for imprisonment for six months. The Appeal is allowed in these terms.

T.S. Thakur, J.

In as much as the High Court set aside the sentence of six months simple imprisonment awarded to the Appellant there is no quarrel nor any challenge mounted before us. That part of the order could be assailed by the complainant who has not chosen to do so. Whether or not the High Court was justified in setting aside the sentence of imprisonment awarded to the Appellant is, therefore, a non-issue before us.

Coming then to the question whether the additional amount which the High Court has directed the Appellant to pay could be levied in lieu of the sentence of imprisonment, we must keep two significant aspects in view. First and foremost is the fact that the power to levy fine is circumscribed under the statute to twice the cheque amount. Even in a case where the Court may be taking a lenient view in favour of the accused by not sending him to prison, it cannot impose a fine more than twice the cheque amount. That statutory limit is inviolable and must be respected. The High Court has, in the case at hand, obviously overlooked the statutory limitation on its power to levy a fine. It appears to have proceeded on the basis as though payment of compensation Under Section 357 of Code of Criminal Procedure is different from the power to levy fine Under Section 138, which assumption is not correct.

The second aspect relates precisely to the need for appreciating that the power to award compensation is not available Under Section 138 of Negotiable Instruments Act. It is only when the Court has determined the amount of fine that the question of paying compensation out of the same would arise. This implies that the process comprises two stages. First, when the Court determines the amount of fine and levies the same subject to the outer limit, if any, as is the position in the instant case. The second stage comprises invocation of the power to award compensation out of the amount so levied. The High Court does not appear to have followed that process. It has taken payment of Rs. 80,000/- as compensation to be distinct from the amount of fine it is imposing equivalent to the cheque amount of Rs. 69,500/-. That was not the correct way of looking at the matter. Logically, the High Court should have determined the fine amount to be paid by the Appellant, which in no case could go beyond twice the cheque amount, and directed payment of compensation to the complainant out of the same. Viewed thus, the direction of the High Court that the Appellant shall pay a further sum of Rs. 69,500/- does not appear to be legally sustainable as rightly observed by my erudite Brother Vikramajit Sen, J. I, therefore, entirely agree with my Brother's view that payment of a further sum of Rs. 20,000/- towards fine, making a total fine of Rs. 1,00,000/- (Rupees one lac) out of which Rs. 80,000/- has already been paid as compensation to the complainant, should suffice. The amount of Rs. 20,000/- (Rupees twenty thousand) now directed to be paid shall not go to the complainant who is, in our view, suitably compensated by the amount already received by him. In the event of failure to pay the additional amount of Rs. 20,000/- the Appellant shall undergo imprisonment for a period of six months.

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5. C. Keshavamurthy v. H.K. Abdul Zabbar MANU/SC/0886/2013

Hon'ble Judges/Coram: H.L. Gokhale and Jasti Chelameswar, JJ.

Facts:

The Respondent had issued four cheques to the Appellant, which had bounced. Out of the four cheques, a cheque dated 31st July, 2003, was issued for an amount of ` 1,36,000/-, and three other cheques dated 10th August, 2003, 15th August, 2003 and 18th August, 2003, respectively were for a sum of ` One lakh each. Since those cheques got bounced, the Appellant filed a Complaint bearing No. 2857 of 2003, in the Court of Judicial Magistrate, First Class-II, Davangere, in the State of Karnataka, under Section 138 of the Negotiable Instruments Act, 1881. The case of the Appellant is that since these cheques were dishonoured, an appropriate order under the law was necessary.

The defence of the Respondent was that there was an agreement of sale between the parties, and that the Complainant was a businessman dealing in lands, and it was in that transaction that the Respondent had issued some cheques earlier, but since transaction did not fructify, he had issued a notice dated 28th July, 2003, not to clear those cheques. However, this defence could not be accepted for the simple reason that all the cheques, which had bounced were issued subsequent to the said Notice dated 28th July, 2003. Therefore, no more justification was required for allowing the Complaint. The defence raised by the Respondent could not be accepted and, therefore, the Learned Magistrate considered the factual, as well as legal position and allowed the Complaint filed by the Appellant herein.

The Respondent being aggrieved therefrom filed a Criminal Appeal before the Additional Sessions Judge, Fast Track Court-II, Davangere. The learned Judge framed necessary points for consideration, namely, whether the impugned judgment of conviction recorded by JMFC-II, Davangere, could not be sustained under law and whether the punishment was in any way disproportionate. The learned Judge decided both those points in the negative, but passed an order whereby he partly allowed the appeal. The conviction recorded by the learned JMFC-II Court, Davangere, was confirmed, but the sentence was modified by him as follows:

The Accused/Appellant for the offence punishable under Section 138 of the Negotiable Instrument Act shall undergo simple imprisonment three months and pay fine of Rs. 5,000/-. In default to pay such fine he shall undergo simple imprisonment for a further period of three months.

The Accused/Appellant shall pay to the Complainant/Respondent a sum of Rs. 4,50,000/- (Four lakhs Fifty thousand) as compensation to the Complainant/Respondent. In default to pay such compensation he shall undergo simple imprisonment for a further period of six months. It was further directed that the Accused/Appellant shall pay the fine amount and also the compensation amount within 45 (forty five) days from this date and surrender before the J.M.F.C.-II Court, Davangere, to undergo the sentence. In case of failure to do so, the Learned Magistrate shall take steps to enforce the sentence. This judgment and order rendered by the Addl. Sessions Judge on 4th May, 2006, was carried by the Respondent further in Criminal Revision Petition No. 1295 of 2006. This time, however, the Respondent was successful, and the plea raised by the Respondent based on the Notice dated 28th July, 2003, was accepted by the learned Single Judge of the Karnataka High Court. The learned Single Judge referred to the judgment of a Bench of two Judges of this Court in Krishna Janardhan Bhat v. Dattatraya G. Hegde 2008 (4) SCC 54, and stated that the burden is always on the Complainant to establish not only issuance of cheque, but existence of debt or legal liability. In the facts of this case, the learned Judge took the view that the Respondent had raised an acceptable defence. He therefore, allowed the Revision and set aside the judgment rendered by the courts below. The accused Respondent was acquitted of the offence under Section 138 of the Negotiable Instruments Act, 1888,

and the amount deposited in court was directed to be refunded. Being aggrieved by the judgment of the High Court the present criminal appeal has been filed.

The issue is whether it is necessary to intervene in the decision given by the High Court?

Decision: Appeal is allowed.

Reasoning:

It has clearly come on record that disputed cheques were given subsequent to the Notice not to clear the earlier cheques. There was no explanation as to why the subsequent cheques could not have been cleared. The agreement on the basis of which the submission was made was not produced in the courts below. That being so, on facts there was no error on the part of the learned Magistrate, as well as the learned Addl. Sessions Judge, in the view that they have taken.

The learned Single Judge of High Court of Karnataka referred to the judgment of a Bench of two Judges of this Court in Krishna Janardhan Bhat v. Dattatraya G. Hegde reported in MANU/SC/0503/2008 : 2008 (4) SCC 54, and stated that the burden is always on the Complainant to establish not only issuance of cheque, but existence of debt or legal liability. In the facts of this case, the learned Judge took the view that the Respondent had raised an acceptable defence. It must be noted that the same has been specifically held to be not a correct one in paragraph 26 of the judgment rendered by a three-Judge Bench in Rangappa v. Sri Mohan reported in 2010 (11) SCC 441.

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6. V.K. Bansal v. State of Haryana and ors AIR 2013 SC 3447

Hon'ble Judges/Coram: T.S. Thakur and Gyan Sudha Misra, JJ.

The facts:

The Appellant is a Director in a group of companies including Arawali Tubes Ltd., Arawali Alloys Ltd., Arawali Pipes Ltd. and Sabhyata Plastics Pvt. Ltd. The Appellant's case before us in that in connection with his business conducted in the name of the above companies, he had approached the Respondent, Haryana Financial Corporation for financial assistance and facilities. The Corporation had accepted the requests made by the Companies and granted financial assistance to the first three of the four companies mentioned above. Several cheques towards repayment of the amount borrowed by the Appellant in the name of the above companies were issued in favour of the Haryana Financial Corporation which on presentation was dishonored by the banks concerned for insufficiency of funds. Consequently, the Corporation instituted complaints under Section 138 of the Negotiable Instruments Act against the Appellant in his capacity as the Director of the borrowing companies. These complaints were tried by Judicial Magistrates at Hissar culminating in the conviction of the Appellant and sentence of imprisonment which ranged between 6 months in some cases to one year in some others besides imposition of different amounts of fine levied in each complaint case and a default sentence in the event of non payment of amount awarded in each one of those cases was directed to run consecutively.

Aggrieved by his conviction and the sentence in the cases filed against him the Appellant preferred appeals which were heard and dismissed by the Additional Sessions Judge, Hissar in terms of separate orders passed in each case. In some of the cases the Appellate Court reduced the sentence from one year to nine months.

The Appellant then approached the High Court by way of revision petitions. The High Court dismissed 15 out of 17 revisions petitions in which the Appellant was convicted. The remaining two revision petitions are still pending before the High Court. The High Court noticed that the Appellant had not questioned the correctness of the conviction before the appellate Court which disentitled him to do so in revision. That position was, it appears, not disputed even by the Appellant, the only contention urged before the High Court being that instead of the sentences awarded to him running consecutively they ought to run concurrently. That contention was turned down by the High Court holding that the sentence of imprisonment awarded to the Appellant was not excessive so as to warrant its reduction or a direction for concurrent running of the same.

The revision petitions filed by the Appellant along with the criminal miscellaneous applications moved under Section 482 of the Code of Criminal Procedure were accordingly dismissed. The present appeals assail the correctness of the orders passed by the High Court which are no doubt separate but in similar terms.

The issue is whether the High Court was right in declining the prayer made by the Appellant for a direction in terms of Section 427 read with Section 482 of the Code of Criminal Procedure for the sentences awarded to the Appellant in connection with the cases under Section 138 of the Negotiable Instruments Act filed against him to run concurrently.

Decision: In the result, these appeals succeed but only in part and to the following extent:

1) Substantive sentences awarded to the Appellant by the Courts of Judicial Magistrate, First Class, Hissar and Additional Chief Judicial Magistrate, Hissar, in Criminal complaint cases No. 269-II/97; No. 549-II/97; No. 393-II/97; No. 371-II/97; No. 372-II/97; No. 373-II/97; No. 877-II/96; No. 880-II/96; No. 878-II/96; No. 876-II/96; No. 879-II/96; No. 485-II/96 relevant to the loan transaction between Haryana Financial Corporation and Arawali Tubes shall run concurrently.

2) Substantive sentences awarded to the Appellant by the Court of Judicial Magistrate, First Class, Hissar in Criminal complaint cases No. 156-II/1997 and No. 396-II/1998 between Haryana Financial Corporation and Arawali Alloys relevant to the transactions shall also run concurrently;

3) Substantive sentences inter se by the Court of Judicial Magistrate, First Class, Hissar in the above two categories and that awarded in complaint case No. 331-II/97 shall run consecutively in terms of Section 427 of the Code of Criminal Procedure.

Reasoning:

It was argued on behalf of Appellant that the High Court has committed an error in declining the prayer made by the Appellant for an appropriate direction to the effect that the sentences awarded to the Appellant in the cases in which he was found guilty ought to run concurrently and not consecutively. It was urged that the trial Court and so also the appellate and the revisional Courts were competent to direct that the sentences awarded to the Appellant should run concurrently. The power vested in them to issue such a direction has not been properly exercised.

We are in the case at hand concerned more with the nature of power available to the Court under Section 427(1) of the Code, which in our opinion stipulates a general rule to be followed except in three situations, one falling under the proviso to Sub-section (1) to Section 427, the second falling under Sub-section (2) thereof and the third where the Court directs that the sentences shall run concurrently. It is manifest from Section 427(1) that the Court has the power and the discretion to issue a direction but in the very nature of the power so conferred upon the Court the discretionary power shall have to be exercised along judicial lines and not in a mechanical, wooden or pedantic manner.

It is difficult to lay down any strait jacket approach in the matter of exercise of such discretion by the Courts. There is no cut and dried formula for the Court to follow in the matter of issue or refusal of a direction within the contemplation of Section 427(1). Whether or not a direction ought to be issued in a given case would depend upon the nature of the offence or offences committed, and the fact situation in which the question of concurrent running of the sentences arises. High Courts in this country have, therefore, invoked and exercised their discretion to issue directions for concurrent running of sentence as much as they have declined such benefit to the prisoners.

In conclusion, we may say that the legal position favours exercise of discretion to the benefit of the prisoner in cases where the prosecution is based on a single transaction no matter different complaints in relation thereto may have been filed as is the position in cases involving dishonour of cheques issued by the borrower towards repayment of a loan to the creditor.

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7. R. Vijayan v. Baby and Anr AIR 2012 SC 528

Hon'ble Judges/Coram:R.V. Raveendran and R.M. Lodha, JJ.

Facts:

The complainant in a complaint under Section 138 of the Negotiable Instruments Act, 1881 ('Act' for short) is the Appellant in this appeal by special leave. A cheque dated 31.3.1995 for Rs. 20,000/- issued by the first Respondent drawn in favour of the complainant, towards alleged repayment of a loan was dishonoured when presented for payment. The Appellant sent a notice dated 20.4.1995 demanding payment According to the complainant, the notice was served on the first Respondent but the payment was not made. Therefore on 25.5.1995 the Appellant lodged a complaint against the first Respondent, under Section 138 of the Act before the First Class Magistrate -IV, (Mobile), Thiruvananthapuram. After trial, the learned Magistrate by judgment dated 30.11.1996 found the accused guilty under Section 138 of the Act and sentenced her to pay a fine of Rs. 2000/- and in default to undergo imprisonment for one month. He also directed the accused to pay Rs. 20,000/- as compensation to the complainant and in default to undergo simple imprisonment for three months.

The first Respondent challenged the said judgment and the criminal appeal filed by her was allowed by the First Additional Sessions Judge, Thiruvananthapuram by judgment dated 26.11.2001. The conviction and sentence imposed on the first Respondent was set aside and the Appellant was acquitted. The first appellate court held that the accused having denied her signature in the postal acknowledgement relating to the notice dated 20.4.1995, the Appellant ought to have examined the postman who served the notice; and as the Appellant did not do so, the court held that the complainant had not discharged the burden to prove that the notice was duly served on the first Respondent. The

Appellant filed criminal appeal before the High Court. The High Court allowed the appeal in part. It held that the service of notice was duly proved. As a consequence it restored the conviction entered by the learned Magistrate in reversal of the judgment of the first appellate court. However the High Court held that it could only restore the fine of Rs. 2000/- imposed by the Magistrate with the default sentence but not the direction for payment of compensation under Section 357(3) of the Code, as it could not co-exist with the imposition of fine. Therefore, the direction for payment of compensation was not restored. The said judgment is challenged in this appeal by special leave.

The issue is whether the fine can be increased to cover the sum of Rs. 20,000/- which was the loss suffered by the complainant so that the said amount could be paid as compensation under Section 357(1) (b) of the Code?

Decision: The appeal is dismissed.

Reasoning:

On a plain reading Section 357(3) of Cr. P. C, it is crystal clear that the power can be exercised only when the court imposes sentence by which fine does not form a part In the case in hand, a court having sentenced to imprisonment, as also fine, the power under Sub-section (3) of Section 357 could not have been exercised In that view of the matter, the impugned direction of the High Court directing payment of compensation to the tune of Rs. one lakh by the Appellant is set aside.

It is evident from Sub-section (3) of Section 357 of the Code, that where the sentence imposed does not include a fine, that is, where the sentence relates to only imprisonment, the court, when passing judgment, can direct the accused to pay, by way of compensation, such amount as may be specified in the order to the person who has suffered any loss or injury by reason of the act for which the accused person has been so sentenced The reason for this is obvious. Sub-section (1) of Section 357 provides that where the court imposes a sentence of fine or a sentence of which fine forms a part, the Court may direct the fine amount to be applied in the payment to any person of compensation for any loss or injury caused by the offence, when compensation is, in the opinion of the court, recoverable by such person in a Civil Court Thus, if-compensation could be paid from out of the fine, there is ho need to award separate compensation. Only where the sentence does not include fine but only imprisonment and the court finds that the person who has suffered any loss or injury by reason of the act of the accused person, requires to be compensated, it is permitted to award compensation under compensation under Section 357(3).

The difficulty arises in this case because of two circumstances. The fine levied is only Rs. 2,000/-. The compensation required to cover the loss/injury on account of the dishonour of the cheque is Rs. 20,000/-. The learned Magistrate having levied fine of Rs. 2,000/-, it is impermissible to levy any compensation having regard to Section 357(3) of the Code. The question is whether the fine can be increased to cover the sum of Rs. 20,000/- which was the loss suffered by the complainant, so that the said amount could be paid as compensation under Section 357(1)(b) of the Code.

Sub-section (2) of Section 29 of Cr. P. C empowers a court of a Magistrate of First Class to pass a sentence of imprisonment for a term not exceeding three years or fine not exceeding Rs. 5,000/- or of both. (Note: By Act No. 25 of 2005, Sub-section (2) of Section 29 was amended with effect from 23.6.2006 and the maximum fine that could be levied by the Magistrate of First Class, was increased to Rs. 10,000/-). At the relevant point of time, the maximum fine that the First Class Magistrate could

impose was Rs. 5,000/-. Therefore, it is also not possible to increase the fine to Rs. 22,000/- so that Rs. 20,000/- could be awarded as compensation, from the amount recovered as fine.

The first Respondent was a widow and police woman. On the facts and circumstances the learned Magistrate thought fit to impose only a fine and not imprisonment. When the conviction was set aside, the Appellant filed a revision, challenging the non-grant of compensation of Rs. 20,000/-. He did not however challenge the non-imposition of sentence of imprisonment. The High Court was, therefore, justified in holding that once the sentence consists of only fine, the power under Section 357(3) could not be invoked for directing payment of compensation. The High Court was also justified in not converting the sentence from fine to imprisonment, so enable itself to award compensation, as the facts and circumstances of the case did not warrant imprisonment. Therefore, we are of the view that the order of High Court does not call for interference.

It is of some interest to note, though may not be of any assistance in this case, that the difficulty caused by the ceiling imposed by Section 29(2) of the Code has been subsequently solved by insertion of Section 143 in the Act (by Amendment Act No. 55 of 2002) with effect from 6.2.2003. Section 143(1) provides that notwithstanding anything contained in the Code, all offences under Chapter XVII of the Act should be tried by a Judicial Magistrate of the First Class or by a Metropolitan Magistrate and the provisions of Sections 262 to 265 of the Code (relating to summary trials) shall, as far as may be, apply to such trials. The proviso thereto provides that it shall be lawful for the Magistrate to pass a sentence of imprisonment for a term extending one year and an amount of fine exceeding Rs. 5,000/-, in case of conviction in a summary trial under that section. In view of conferment of such special power and jurisdiction upon the First Class Magistrate, the ceiling as to the amount of fine stipulated in Section 29(2) of the Code is removed. Consequently, in regard to any prosecution for offences punishable under Section 138 of the Act, a First Class Magistrate may impose a fine exceeding Rs. 5000/-, the ceiling being twice the amount of the cheque.

The avowed object of Chapter XVII of the Act is to "encourage the culture of use of cheques and enhance the credibility of the instrument". In effect, its object appears to be both punitive as also compensatory and restitutive, in regard to cheque dishonour cases. Chapter XVII of the Act is an unique exercise which blurs the dividing line between civil and criminal jurisdictions. It provides a single forum and single proceeding, for enforcement of criminal liability (for dishonouring the cheque) and for enforcement of the civil liability (for realization of the cheque amount) thereby obviating the need for the creditor to move two different fora for relief.

The apparent intention is to ensure that not only the offender is punished, but also ensure that the complainant invariably receives the amount of the cheque by way of compensation under Section 357(1)(b) of the Code. Though a complaint under Section 138 of the Act is in regard to criminal liability for the offence of dishonouring the cheque and not for the recovery of the cheque amount, (which strictly speaking, has to be enforced by a civil suit), in practice once the criminal complaint is lodged under Section 138 of the Act, a civil suit is seldom filed to recover the amount of the cheque. This is because of the provision enabling the court to levy a fine linked to the cheque amount and the usual direction in such cases is for payment as compensation, the cheque amount, as loss incurred by the complainant on account of dishonour of cheque, under Section 357 (1) (b) of the Code and the provision for compounding the offences under Section 138 of the Act. Most of the cases (except those where liability is denied) get compounded at one stage or the other by payment of the cheque amount with or without interest. Even where the offence is not compounded, the courts tend to direct payment of compensation equal to the cheque amount (or even something more towards interest) by levying a

fine commensurate with the cheque amount. A stage has reached when most of the complainants, in particular the financing institutions (particularly private financiers) view the proceedings under Section 138 of the Act, as a proceeding for the recovery of the cheque amount, the punishment of the drawer of the cheque for the offence of dishonour, becoming secondary.

We are conscious of the fact that proceedings under Section 138 of the Act cannot be treated as civil suits for recovery of the cheque amount with interest. We are also conscious of the fact that compensation awarded under Section 357(1) (b) is not intended to be an elaborate exercise taking note of interest etc. Our observations are necessitated due to the need to have uniformity and consistency in decision making. In same type of cheque dishonour cases, after convicting the accused, if some courts grant compensation and if some other courts do hot grant compensation, the inconsistency, though perfectly acceptable in the eye of law, will give rise to certain amount of uncertainty in the minds of litigants about the functioning of courts. Citizens will not be able to arrange or regulate their affairs in a proper manner as they will not know whether they should simultaneously file a civil suit or not. The problem is aggravated having regard to the fact that in spite of Section 143(3) of the Act requiring the complaints in regard to cheque dishonour cases under Section 138 of the Act to be concluded within six months from the date of the filing of the complaint, such cases seldom reach finality before three or four years let alone six months. These cases give rise to complications where civil suits have not been filed within three years on account of the pendency of the criminal cases. While it is hot the duty of criminal courts to ensure that successful complainants get the cheque amount also, it is their duty to have uniformity and consistency, with other courts dealing with similar cases.

One other solution is a, further amendment to the provision of Chapter XVII so that in all cases where there is a conviction, there should be a consequential levy of fine of an amount sufficient to cover the cheque amount and interest thereon at a fixed rate of 9% per annum interest, followed by award of such sum as compensation from the fine amount This would lead to uniformity in decisions, avoid multiplicity of proceedings (one for enforcing civil liability and another for enforcing criminal liability) and achieve the object of Chapter XVII of the Act, which is to increase the credibility of the instrument. This is however a matter for the Law Commissioner of India to consider.

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8. Rangappa v. Sri Mohan AIR 2010 SC 1898

Hon'ble Judges/Coram: K.G. Balakrishnan, C.J., P. Sathasivam and J.M. Panchal, JJ.

Facts:

In the present case, *the trial court had acquitted the appellant-accused* in a case related to the dishonour of a cheque under Section 138 of the Negotiable Instruments Act, 1881 [Hereinafter `Act']. On appeal by the respondent-complainant, the High Court had reversed the trial court's decision and *recorded a finding of conviction while directing that the appellant-accused should pay a fine of Rs. 75,000, failing which he would have to undergo three months simple imprisonment.* Aggrieved by this final order passed by the High Court of Karnataka appellant-accused has approached this Court by way of a petition seeking special leave to appeal. As per the respondent-complainant, the chain of facts unfolded in the following manner. In October 1998, the accused had requested respondent for a hand loan of Rs. 45,000 in order to meet the construction expenses. In view of their acquaintance, the complainant had paid Rs. 45,000 by way of cash. On receiving this amount, the appellant-accused had initially assured repayment by October 1999 but on the failure to do so, he sought more time till

December 2000. The accused had then issued a cheque bearing No. 0886322, post-dated for 8-2-2001 for Rs. 45,000 drawn on Syndicate Bank, Kudremukh Branch. Consequently, on 8-2-2001, the complainant had presented this cheque through Karnataka Bank, for encashment. However, on 16-2-2001 the said Bank issued a return memo stating that the `Payment has been stopped by the drawer' and this memo was handed over to the complainant on 21-2-2001. The complainant had then issued notice to the accused in this regard on 26-2-2001. On receiving the same, the accused failed to honour the cheque within the statutorily prescribed period and also did not reply to the notice sent in the manner contemplated under Section 138 of the Act. Following these developments, the complainant had filed a complaint (under Section 200 of the Code of Criminal Procedure) against the accused for the offence punishable under Section 138 of the Act.

The appellant-accused had raised the defence that the cheque in question was a blank cheque bearing his signature which had been lost and that it had come into the hands of the complainant who had then tried to misuse it. The accused's case was that there was no legally enforceable debt or liability between the parties since he had not asked for a hand loan as alleged by the complainant.

The trial judge found in favour of the accused by taking note of some discrepancies in the complainant's version. As per the trial judge, in the course of the cross-examination the complainant was not certain as to when the accused had actually issued the cheque. It was noted that while the complaint stated that the cheque had been issued in December 2000, at a later point it was conceded that the cheque had been handed over when the accused had met the complainant to obtain the work completion certificate for his house in March 2001. Later, it was stated that the cheque had been with the complainant about 15-20 days prior to the presentation of the same for encashment, which would place the date of handing over of the cheque in January 2001. Furthermore, the trial judge noted that in the complaint it had been submitted that the complainant had paid Rs. 45,000 in cash as a hand loan to the accused, whereas during the cross-examination it appeared that the complainant had spent this amount during the construction of the accused's house from time to time and that the complainant had realised the extent of the liability after auditing the costs on completion of the construction. Apart from these discrepancies on part of the complainant, the trial judge also noted that the accused used to pay the complainant a monthly salary in lieu of his services as a building supervisor apart from periodically handing over money which was used for the construction of the house. In light of these regular payments, the trial judge found it unlikely that the complainant would have spent his own money on the construction work. *With regard to these observations, the trial judge held that there was no material to substantiate that the accused had issued the cheque in relation to a legally enforceable debt.* It was observed that the accused's failure to reply to the notice sent by the complainant did not attract the presumption under Section 139 of the Act since the complainant had failed to prove that he had given a hand loan to the accused and that the accused had issued a cheque as alleged. Furthermore, the trial judge erroneously decided that the offence made punishable by Section 138 of the Act had not been committed in this case since the alleged dishonour of cheque was not on account of insufficiency of funds since the accused had instructed his bank to stop payment. Accordingly, the trial judge had recorded a finding of acquittal.

However, on appeal against acquittal, the High Court reversed the findings and convicted the appellant-accused. The High Court in its order noted that in the course of the trial proceedings, the accused had admitted that the signature on the impugned cheque (No. 886322, dated 8-2-2001) was indeed his own. Once this fact has been acknowledged, Section 139 of the Act mandates a presumption that the cheque pertained to a legally enforceable debt or liability. This presumption is of a rebuttal nature and the onus is then on the accused to raise a probable defence. The High Court also

noted that if the accused had indeed lost a blank cheque bearing his signature, the question of his mentioning the date of the cheque as 20-7-1999 could not arise.

Once the cheque relates to the account of the accused and he accepts and admits the signatures on the said cheque, then initial presumption as contemplated under Section 139 of the Negotiable Instruments Act has to be raised by the Court in favour of the complainant. The presumption referred to in Section 139 of the N.I. Act is a mandatory presumption and not a general presumption, but the accused is entitled to rebut the said presumption. What is required to be established by the accused in order to rebut the presumption is different from each case under given circumstances. But the fact remains that a mere plausible explanation is not expected from the accused and it must be more than a plausible explanation by way of rebuttal evidence. In other words, the defence raised by way of rebuttal evidence must be probable and capable of being accepted by the Court. The defence raised by the accused was that a blank cheque was lost by him, which was made use of by the complainant. Unless this barrier is crossed by the accused, the other defence raised by him whether the cheque was issued towards the hand loan or towards the amount spent by the complainant need not be considered.

Hence, the High Court concluded that the alleged discrepancies on part of the complainant which had been noted by the trial court were not material since the accused had failed to raise a probable defence to rebut the presumption placed on him by Section 139 of the Act.

The issue before the Supreme Court pertains to the proper interpretation of Section 139 of the Act which shifts the burden of proof on to the accused in respect of cheque bouncing cases.

Decision: The Appeal is allowed and the decision of the High Court has been upheld.

Reasoning:

Existence of legally recoverable debt is not a matter of presumption under Section 139 of the Act. It merely raises a presumption in favour of a holder of the cheque that the same has been issued for discharge of any debt or other liability.

Because both Sections 138 and 139 require that the Court `shall presume' the liability of the drawer of the cheques for the amounts for which the cheques are drawn, ..., it is obligatory on the Court to raise this presumption in every case where the factual basis for the raising of the presumption has been established. It introduces an exception to the general rule as to the burden of proof in criminal cases and shifts the onus on to the accused. Such a presumption is a presumption of law, as distinguished from a presumption of fact which describes provisions by which the court may presume a certain state of affairs. Presumptions are rules of evidence and do not conflict with the presumption of innocence, because by the latter all that is meant is that the prosecution is obliged to prove the case against the accused beyond reasonable doubt. The obligation on the prosecution may be discharged with the help of presumptions of law or fact unless the accused adduces evidence showing the reasonable probability of the non-existence of the presumed fact.

Further Supreme Court held that we are in agreement with the respondent-claimant that the presumption mandated by Section 139 of the Act does indeed include the existence of a legally enforceable debt or liability to *that extent, the impugned observations in* Krishna Janardhan Bhat v. Dattatraya G. Hegde *(2008) 4 SCC 54 may not be correct.* However, this does not in any way cast doubt on the correctness of the decision in that case since it was based on the specific facts and

circumstances therein.

The accused had failed to reply to the statutory notice under Section 138 of the Act leads to the inference that there was merit in the complainant's version. Apart from not raising a probable defence, the appellant-accused was not able to contest the existence of a legally enforceable debt or liability.

As per the record of the case, there was a slight discrepancy in the complainant's version, in so far as it was not clear whether the accused had asked for a hand loan to meet the construction-related expenses or whether the complainant had incurred the said expenditure over a period of time. Either way, the complaint discloses the prima facie existence of a legally enforceable debt or liability since the complainant has maintained that his money was used for the construction-expenses. Since the accused did admit that the signature on the cheque was his, the statutory presumption comes into play and the same has not been rebutted even with regard to the materials submitted by the complainant.

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9. Damodar S. Prabhu v. Sayed Babalal AIR 2010 SC 1907

Hon'ble Judges/Coram: K.G. Balakrishnan, C.J., P. Sathasivam and J.M. Panchal, JJ.

Facts:

The present appeals are in respect of litigation involving the offence enumerated by Section 138 of the Negotiable Instruments Act, 1881 [Hereinafter `Act']. It is not necessary for us to delve into the facts leading up to the institution of proceedings before this Court since the appellant and the respondent have arrived at a settlement and prayed for the compounding of the offence as contemplated by Section 147 of the Act. It would suffice to say that the parties were involved in commercial transactions and that disputes had arisen on account of the dishonor of five cheques issued by the appellant. Thereafter, the parties went through the several stages of litigation before their dispute reached this Court by way of special leave petitions. With regard to the impugned judgments delivered by the High Court of Bombay at Goa, the appellant has prayed for the setting aside of his conviction in these matters by relying on the consent terms that have been arrived at between the parties.

The issue is whether it is permissible to compound cheque bouncing case at Appellate stage?

Decision*:* The present set of appeals is disposed of accordingly.

Reasoning:

At this point, it would be apt to clarify that in view of the *non-obstante* clause, the compounding of offences under the Negotiable Instruments Act, 1881 is controlled by Section 147 and the scheme contemplated by Section 320 of the Code of Criminal Procedure [Hereinafter `Cr P C'] will not be applicable in the strict sense since the latter is meant for the specified offences under the Indian Penal Code. So far as the Cr. P. C is concerned, Section 320 deals with offences which are compoundable, either by the parties without the leave of the court or by the parties but only with the leave of the Court. Sub-section (1) of Section 320 enumerates the offences which are compoundable without the leave of the Court, while Sub-section (2) of the said section specifies the offences which are compoundable with the leave of the Court. Section 147 of the Negotiable Instruments Act, 1881 is in

the nature of an enabling provision which provides for the compounding of offences prescribed under the same Act, thereby serving as an exception to the general rule incorporated in Sub-section (9) of Section 320 of the Cr.P.C which states that `No offence shall be compounded except as provided by this Section'. A bare reading of this provision would lead us to the inference that offences punishable under laws other than the Indian Penal Code also cannot be compounded. However, since Section 147 was inserted by way of an amendment to a special law, the same will override the effect of Section 320(9) of the CrPC, especially keeping in mind that Section 147 carries a non- obstante clause.

The compounding of the offence at later stages of litigation in cheque bouncing cases has also been held to be permissible in a recent decision of this Court, reported as *K.M. Ibrahim v. K.P. Mohammed and Anr 2009 (14) SCALE 262*, wherein Kabir, J. has noted that so far as the non-obstante clause included in Section 147 of the 1881 Act is concerned, the 1881 Act being a special statute, the provisions of Section 147 will have an overriding effect over the provisions of the Code relating to compounding of offences. It is true that the application under Section 147 of the Negotiable Instruments Act was made by the parties after the proceedings had been concluded before the Appellate Forum. However, Section 147 of the aforesaid Act does not bar the parties from compounding an offence under Section 138 even at the appellate stage of the proceedings. Accordingly, we find no reason to reject the application under Section 147 of the aforesaid Act even in a proceeding under Article 136 of the Constitution.

It is quite obvious that with respect to the offence of dishonor of cheques, it is the compensatory aspect of the remedy which should be given priority over the punitive aspect. There is also some support for the apprehensions raised by the learned Attorney General that a majority of cheque bounce cases are indeed being compromised or settled by way of compounding, albeit during the later stages of litigation thereby contributing to undue delay in justice delivery. The problem herein is with the tendency of litigants to belatedly choose compounding as a means to resolve their dispute. Section 320 of the Cr P C, Section 147 of the Negotiable Instruments Act provides no explicit guidance as to what stage compounding can or cannot be done and whether compounding can be done at the instance of the complainant or with the leave of the court. As mentioned earlier, the learned Attorney General's submission is that in the absence of statutory guidance, parties are choosing compounding as a method of last resort instead of opting for it as soon as the Magistrates take cognizance of the complaints. One explanation for such behaviour could be that the accused persons are willing to take the chance of progressing through the various stages of litigation and then choose the route of settlement only when no other route remains. While such behaviour may be viewed as rational from the viewpoint of litigants, the hard facts are that the undue delay in opting for compounding contributes to the arrears pending before the courts at various levels. If the accused is willing to settle or compromise by way of compounding of the offence at a later stage of litigation, it is generally indicative of some merit in the complainant's case. In such cases it would be desirable if parties choose compounding during the earlier stages of litigation. If however, the accused has a valid defence such as a mistake, forgery or coercion among other grounds, then the matter can be litigated through the specified forums.

With regard to the progression of litigation in cheque bouncing cases, the learned Attorney General has urged this Court to frame guidelines for a graded scheme of imposing costs on parties who unduly delay compounding of the offence. It was submitted that the requirement of deposit of the costs will act as a deterrent for delayed composition, since at present, free and easy compounding of offences at any stage, however belated, gives an incentive to the drawer of the cheque to delay settling the cases for years. An application for compounding made after several years not only results in the system

being burdened but the complainant is also deprived of effective justice. In view of this submission, we direct that the following guidelines be followed:

THE GUIDELINES

(i) In the circumstances, it is proposed as follows:

(a) That directions can be given that the Writ of Summons be suitably modified making it clear to the accused that he could make an application for compounding of the offences at the first or second hearing of the case and that if such an application is made, compounding may be allowed by the court without imposing any costs on the accused.

(b) If the accused does not make an application for compounding as aforesaid, then if an application for compounding is made before the Magistrate at a subsequent stage, compounding can be allowed subject to the condition that the accused will be required to pay 10% of the cheque amount to be deposited as a condition for compounding with the Legal Services Authority, or such authority as the Court deems fit.

(c) Similarly, if the application for compounding is made before the Sessions Court or a High Court in revision or appeal, such compounding may be allowed on the condition that the accused pays 15% of the cheque amount by way of costs.

(d) Finally, if the application for compounding is made before the Supreme Court, the figure would increase to 20% of the cheque amount.

Let it also be clarified that any costs imposed in accordance with these guidelines should be deposited with the Legal Services Authority operating at the level of the Court before which compounding takes place. For instance, in case of compounding during the pendency of proceedings before a Magistrate's Court or a Court of Sessions, such costs should be deposited with the District Legal Services Authority. Likewise, costs imposed in connection with composition before the High Court should be deposited with the State Legal Services Authority and those imposed in connection with composition before the Supreme Court should be deposited with the National Legal Services Authority.

We are also conscious of the view that the judicial endorsement of the above quoted guidelines could be seen as an act of judicial law-making and therefore an intrusion into the legislative domain. It must be kept in mind that Section 147 of the Act does not carry any guidance on how to proceed with the compounding of offences under the Act. We have already explained that the scheme contemplated under Section 320 of the Cr P C cannot be followed in the strict sense. In view of the legislative vacuum, we see no hurdle to the endorsement of some suggestions which have been designed to discourage litigants from unduly delaying the composition of the offence in cases involving Section 138 of the Act. The graded scheme for imposing costs is a means to encourage compounding at an early stage of litigation. In the status quo, valuable time of the Court is spent on the trial of these cases and the parties are not liable to pay any Court fee since the proceedings are governed by the Code of Criminal Procedure, even though the impact of the offence is largely confined to the private parties. Even though the imposition of costs by the competent court is a matter of discretion, the scale of costs has been suggested in the interest of uniformity. The competent Court can of course reduce the costs with regard to the specific facts and circumstances of a case, while recording reasons in writing for such variance. Bona fide litigants should of course contest the proceedings to their logical end.

10. P. Venugopal v. Madan P. Sarathi MANU/SC/8651/2008

Hon'ble Judges/Coram: S.B. Sinha and Cyriac Joseph, JJ.

Facts:

Appellant is before us aggrieved by and dissatisfied with the judgment and Order passed by the Learned Single Judge of the High Court of Karnataka at Bangalore in Criminal Revision No. 1020/2006, whereby and whereunder the revision application filed by him from the judgment passed by the 6th Fast Track Court at Bangalore affirming the judgment and Order passed by the 16th Additional Chief Metropolitan Magistrate, Bangalore in CC No. 3400/ 2002, was dismissed. Respondent allegedly gave a hand loan of Rs. 1,20,000/- to the Appellant on 4.10.2000. In discharge of the said debt the Appellant is said to have issued two cheques for Rs. 60,000/- each on 26.4.2001 and 5.4.2001. The said cheques were presented before the bank on July 10, 2001 and were returned dishonoured on the ground that sufficient fund therefor was not available. Upon service of notice to the Respondent, a criminal complaint was filed. By an Order Dated 20th November, 2002, cognizance of the offence under Section 138 of the Negotiable Instruments Act, 1881, was taken by the Learned Magistrate.

Trial Judge held in the present case, the accused, to prove the arguments, has not produced any documentary evidence supports before the Court. On the contrary, the Accused has admitted his Signature on the document Ex. P.12 produced by the Complainant. It is marked as Ex. P 12-A. In the Ex.P 12, there is writing to the effect of having given the disputed cheques to the Complainant. As stated in this, these cheques are produced on 2.7.01. Therefore, in the absence of arguments of this Accused, having not produced in support, cannot be accepted. In case, if this Accused had really having given the Cheques to Sathyamurthy, if he, having mingled with this Complainant, had field this Complaint, the Accused should have taken legal action against this Satysmurthy and the Complainant; for having mis-used the alleged Cheques, but, there are no evidences before the Court, for having taken such any legal proceedings. Therefore the defence evidence, raised by this accused, having been rejected, the evidence produced by the Complainant, and the Rulings reported hereinabove, coupled with the and keeping in mind the rulings reported by the Learned Counsel for the Complainant, in AIR 2005 Karnataka Page 4486; ILR 1998 1825; ILR 2001 Kar 4027; by coming to the conclusion that, the Accused has committed the offence punishable under Section 138 of Negotiable Instruments Act, I answer the Point No. One in the 'Affirmative'. On the aforementioned finding that the Respondent had proved its case against the Appellant beyond any shadow of doubt, *a sentence of three months' simple imprisonment as also a fine of Rs. 1,55,000/- was imposed upon the Appellant.* Out of the said amount of fine, Rs. 1,50,000 was, however, directed to be paid to the complainant and the remaining amount of Rs. 5,000/- was directed to be credited to the Government. An appeal was preferred before Appellate Court, and it upheld the decision of Trial Court and observed that what is required is had there been any transaction between complainant and the accused, had the accused in order to discharge the legally enforceable debt, issued the cheque, had the cheque issued was dishonoured when presented for realization and had in spite of statutory notice being issued and served, the accused did not discharge the legally enforceable debt.

On the aforementioned finding, the appeal was dismissed. The revision application filed by the Appellant was also dismissed by reason of the impugned Judgment. Hence the present special leave to appeal has been preferred before the Supreme Court.

Decision: The appeal is dismissed for the reasons mentioned below, we are of the opinion that no case has been made out for our interference with the impugned Judgment. As the amount of fine has already been deposited, the Trial Court shall release the amount of Rs. 1,55,000/- in favour of the Respondent, if it has not already been withdrawn.

In support of the said contentions raised earlier in Courts below, the Learned Counsel strongly relied upon a decision of this Court in

Krishna Janardhan Bhat v. Dattatraya G. Hegde MANU/SC/0503/2008 : (2008) 39 OCR (SC) 578 : 2008 (4) SCC 54.

17. Section 138 of the Negotiable Instruments Act reads as under:

Dishonour of cheque for insufficiency, etc., of funds in the account-Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for a term which may be extended to two years, or with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this Section shall apply unless

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, which ever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and (c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or as the case may be, to the holder in due course of the cheque within fifteen days of the receipt of the said notice.

Indisputably, in view of the decisions of this Court in Krishna Janardhan Bhat (supra), the initial burden was on the complainant. The presumption raised in favour of the holder of the cheque must be kept confined to the matters covered thereby

The complainant contended that he gave a loan of Rs. 1,20,000 to the Appellant. He (Appellant) denied and disputed the said fact. Both parties adduced their respective evidences.

All the three Courts below have arrived at a concurrent finding that the complainant has been able to prove his case of grant of a loan. Admittedly the burden of proof shifted to the Appellant. Again a finding of fact was arrived at that the Appellant had failed to discharge his burden.

In the aforementioned situation, we are of the opinion that the finding of fact arrived at by the Courts below cannot be said to be such which warrants interference by us.

So far as the question of service of notice in terms of the proviso appended to Section 138 of the Act is concerned, again the same is essentially a question of fact. If the evidence of PW-2 has been believed by the Learned Trial Judge as also by the Appellate Court and the Revisional Court, we in exercise of our jurisdiction under Article 136 of the Constitution of India should not be interfere therewith.

So far as the address of the complainant is concerned, it appears, he is a resident of Marenahalli, J.P. Nagar, Bangalore, as it appears from the affidavit affirmed in support of the counter affidavit. From a perusal of the memo of appeal field by the Appellant himself before the Appellate Court, it would appear that therein also the same address was given, namely, Marenahalli, J.P. Nagar, Bangalore.

Appellant, therefore, was aware that the Respondent had been residing at Marenahalli, J.P. Nagar, Bangalore as also the fact that he had shifted from his earlier residence, namely, No. 326, 41st Cross Road, 8th Block, Jayangar, Bangalore.

It must be noted that the decision in *Krishna Janardhan Bhat v. Dattatraya G. Hegde 2008 (4) SCC 54*.

has been specifically held to be not a correct one in paragraph 26 of the judgment rendered by a three-Judge Bench in Rangappa v. Sri Mohan reported in 2010 (11) SCC 441.

Session no 9 Sentencing in Bribery Cases

1. Shanti Lal Meena v. State of NCT of Delhi, CBI (2015) 6SCC 185

Hon'ble Judges/Coram: T.S. Thakur, Kurian Joseph and R. Banumathi, JJ.

Facts:

By judgment dated 29.03.2008 of the learned Special Judge (CBI), Delhi in CC No. 194/2001, the Appellant was convicted for the offences Under Section 7 and 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 and thereafter sentenced to two years rigorous imprisonment for the offence Under Section 7 with a fine of Rs. 15,000/- and rigorous imprisonment for two years with a fine of Rs. 15,000/- Under Section 13(2) read with Section 13(1)(d) of the PC Act. There was a default sentence as well. The sentences were to run concurrently. The allegation was that the Appellant, who was working as Sub-Inspector of Police, demanded a bribe of Rs. 25,000/- for releasing the nephew of the de-facto complainant. On such complaint of PW-5, the Anti-Corruption Branch of the CBI laid a successful trap on 13.01.2001 which led to the trial.

In appeal, the High Court of Delhi found that the conviction was fully justified. It was further held that "as regards the sentence, the Appellant was a Sub Inspector and entrusted with the task of law enforcement. In the circumstances, the punishment awarded by the trial Court cannot be said to be disproportionate. The sentence awarded to the Appellant by the trial Court is upheld", and hence the appeal.

The issue is whether punishment could be limited to period already undergone?

Decision: There is no reason to interfere with the punishment awarded by the trial court and confirmed in appeal by High Court. This appeal is hence dismissed.

Reasoning:

In determining the quantum of sentence, the kind of forbidden conduct, the kind of social condemnation, the sanction prescribed in law, the object of punishment, the nature of crime, the status of the criminal, etc., are some of the relevant factors to be considered by the courts. The Prevention of Corruption Act was first introduced in the year 1947 when "imperative need was felt to introduce a special legislation with a view to eradicate the evils of bribery and corruption". It was subsequently amended in 1952 and 1964. "To make the anti-corruption laws more effective by widening their coverage and by strengthening the provisions", the Prevention of Corruption Act, 1988 was enacted. The Act was amended in the year 2014.

A few special legislations provide for mandatory minimum punishments and the Prevention of Corruption Act is one such statute. Prior to the amendment in 2014, the offence Under Section 7, the mandatory minimum punishment was six months which may be extended up to five years with fine. Section 13 of the PC Act provided for a mandatory punishment of minimum one year which may be extended to seven years with fine. Section 5 of the Prevention of Corruption Act, 1947, which is the predecessor to Section 13 of the Prevention of Corruption Act, 1988, granted the court a further discretion to reduce the sentence to less than one year for special reasons to be recorded in writing. However, in the PC Act, 1988, this discretion given to the court, was taken away. Vide 2014 amendment, the minimum sentence Under Section 7 of the PC Act was raised to three years and the

maximum to seven years and that Under Section 13 of the PC Act, it was raised from one year to four years and maximum to ten years and fine.

An analysis of the provisions on punishment under the PC Act would give a clear indication on the penal philosophy of deterrence conceived by the Parliament. Though no authentic reference is available as to what prompted the law maker to take away the discretion conferred on the court to reduce the minimum punishment and in enhancing the minimum punishment, it is fairly clear that the Parliament intended to restrict the discretion of the courts while imposing the sentence for offences under the Prevention of Corruption Act. It is submitted that in view of the ordeal of a long trial and taking note of the fact that the incident is of the year 2001, the punishment may be limited to the period already undergone. Shri Ranjit Kumar, learned Solicitor General, appearing on behalf of the Respondent, on the other hand submitted that since the Appellant was caught red-handed while accepting the bribe in the case at the investigation stage and stressed on the fact that since the Appellant was Sub-Inspector of Police at the relevant time, if the punishment is reduced, it will give a wrong signal to the society.

As far as punishment for offences under the PC Act is concerned, we do not think that there is any serious scope for reforming the convicted public servant. The moment he is convicted, he loses his job. Hence, there is no significance to the theory of reformation of his conduct in public service. The only relevant object of punishment in such cases is denunciation and deterrence. That is the reason the Parliament has restricted the judicial discretion in imposing punishment. To quote Friedmann, "Generally, the philosophy of deterrence still prevails in modern criminology. We continue to be concerned with preventing, by appropriate punitive sanctions, both the individual offender and other members of society from the repetition of crime, or the imitation on the part of others by similar actions"[2]. Unless the courts award appropriately deterrent punishment taking note of the nature of the offence under the PC Act and the status of the public servant at the relevant time, people will lose faith in the justice delivery system and the very object of the legislation on prevention of corruption will be defeated. The court is the conscience of the statute and hence its judgments should project and promote the policy aims of punishment, lest it should shake the faith of common man in courts. The judgment on sentence shall not shock the common man. It should reflect the public abhorrence of the crime. The court has thus a duty to protect and promote public interest and build up public confidence in efficacy of rule of law. Misplaced sympathy or unwarranted leniency will send a wrong signal to the public giving room to suspect the institutional integrity, affecting the credibility of its verdict. Thus, while awarding sentence in cases under the PC Act, the court should bear in mind the expectation of the people of its paramount duty to prevent corruption in society by providing prompt conviction and stern sentence.

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2. Vinod Kumar v. State of Punjab AIR2015SC1206

Hon'ble Judges/Coram: Dipak Misra and Rohinton Fali Nariman, JJ.

Facts:

The prosecution case, as has been unfurled, is that Baj Singh, PW-5, used to bring earth in tractor trolley within the municipal area of Rajpura. The Appellant, at the relevant time, was posted as Octroi Inspector and he demanded Rs. 20/- per trolley for permitting him to enter into the municipal area. Eventually, a deal was struck that the accused-Appellant would be paid Rs. 500/- per month for the

smooth operation. As the prosecution story further unfolds, on 25.1.1995, Baj Singh met Jagdish Verma, PW-7, and disclosed before him the fact about the demand of the accused for permitting the entry of the tractor trolley inside the municipal area and thereafter, as he was not desirous of obliging the accused, he narrated the entire story to DSP Vigilance, who in his turn, with the intention to lay the trap, explained it to Baj Singh, PW-5, and Jagdish Verma, PW-7 about the procedure of the trap. As alleged, Baj Singh gave five notes of Rs. 100/- to the DSP Vigilance who noted the numbers of the notes and completed other formalities like applying phenolphthalein powder on the currency notes. Thereafter, they proceeded to the place of the accused and a trap was laid. Eventually, currency notes amounting to Rs. 500/- were recovered from the trouser of the Appellant and were taken into possession. The statements of the witnesses were recorded and after completing the investigation chargesheet was placed for the offences punishable Under Sections 7 and 13(2) of the Act.

To bring home the charges against the accused-Appellant, the prosecution examined eight witnesses. PW-1 to PW-4 are formal witnesses. PW-5, the complainant resiled from his previous statement and was cross-examined by the prosecution. Sher Singh, PW-6, a clerk in the office of Tehsildar, Rajpura had joined the police party as an independent witness. He supported the case of the prosecution in detail. Jagdish Verma, PW-7, in his examination-in-chief, supported the prosecution case in all aspects, but in cross-examination, resiled from his examination-in-chief. The witness, PW-7, was declared hostile on a prayer being made by the Public Prosecutor and was re-examined. Narinder Pal Kaushal, PW-8, DSP of Vigilance Bureau who had led the raiding party on 25.1.1995, in his deposition, deposed in detail about the conducting of the raid and recovery of the amount. The learned trial Judge, on the basis of the evidence brought on record, came to hold that though the complainant had not supported the case of the prosecution yet prosecution had been able to prove the demand and acceptance of the bribe and the recovery of the tainted money from the accused and, therefore, the presumption as envisaged Under Section 20 of the Act would get attracted and accordingly convicted the accused and sentenced him accordingly.

In appeal, it was contended before the High Court that when the testimony of Baj Singh, PW-5, and Jagdish Verma, PW-7, the shadow witness, was absolutely incredible, the same could not have been pervertedly filtered by the learned trial Judge to convict the accused-Appellant for the crime in question. It was also urged that mere recovery of the currency notes would not constitute the offence Under Section 7 of the Act. It was also propounded that the offence Under Section 13(2) of the Act would not get attracted unless the demand and acceptance were proven. Non-involvement of any independent witness in the raid was also seriously criticised. The High Court posed the question whether the prosecution had been able to prove the factum of demand of bribe, its acceptance and the recovery of the money from the possession of the accused. With regard to demand of bribe, the High Court placed reliance on the testimony of the independent witness Sher Singh, PW-6, and the examination-in-chief of Jagdish Verma, PW-7, and came to hold that the demand of bribe had been proven. It appreciated the deposition of PW-7 and the documents, especially, the Chemical Examiner's report of the hand wash liquid and came to hold there had been acceptance of bribe. Relating to the recovery of the tainted money, the High Court took note of the fact that the ocular testimony had been duly corroborated by the documentary evidence and hence, the recovery had been proved. Criticizing the conviction as recorded by the learned trial Judge and affirmed by the High Court, it is submitted by Mr. Jain, learned senior counsel for the Appellant that when the informant had not supported the case of the prosecution, it was not justifiable on the part of the learned trial Judge to record a conviction against the accused.

The issue is whether impugned order rightly convicted Appellant for offences in question on basis of testimonies of witnesses?

Decision: In the ultimate analysis, we perceive no merit in the appeal and consequently the same stands dismissed. As the Appellant is on bail, his bail bonds are cancelled. He be taken into custody forthwith to suffer the sentence.

Reasoning:

Now, ordinarily this Court does not interfere with concurrent findings of fact reached by the trial court and the High Court on an appreciation of the evidence. But this is one of those rare and exceptional cases where we find that several important circumstances have not been taken into account by the trial court and the High Court and that has resulted in serious miscarriage of justice calling for interference from this Court. We may first refer to a rather disturbing feature of this case. It is indeed such an unusual feature that it is quite surprising that it should have escaped the notice of the trial court and the High Court. Head Constable Ram Singh was the person to whom the offer of bribe was alleged to have been made by the Appellant and he was the informant or complainant who lodged the first information report for taking action against the Appellant. It is difficult to understand how in these circumstances Head Constable Ram Singh could undertake investigation of the case. How could the complainant himself be the investigator? In fact, Head Constable Ram Singh, being an officer below the rank of Deputy Superintendent of Police, was not authorised to investigate the case but we do not attach any importance to that fact, as that may not affect the validity of the conviction. The infirmity which we are pointing out is not an infirmity arising from investigation by an officer not authorised to do so, but an infirmity arising from investigation by a Head Constable who was himself the person to whom the bribe was alleged to have been offered and who lodged the first information report as informant or complainant. This is an infirmity which is bound to reflect on the credibility of the prosecution case.

In the present case, the complainant did not support the prosecution case insofar as demand by the accused is concerned. The prosecution has not examined any other witness, present at the time when the money was allegedly handed over to the accused by the complainant, to prove that the same was pursuant to any demand made by the accused. When the complainant himself has disowned what he had stated in the initial complaint (exbt. P-11) before LW-9, and there is no other evidence to prove that the accused had made any demand, the evidence of PW-1 and contents of Exbt. P-11 cannot be relied upon to come to the conclusion that the above material furnishes proof of the demand allegedly made by the accused. We are, therefore, inclined to hold that the Ld. Trial court as well as the High Court was not correct in holding the demand alleged to be made by the accused as proved. The only other material available is the recovery of the tainted currency notes from the possession of the accused. In fact, such possession is admitted by the accused himself. Mere possession and recovery of the currency notes from the accused without proof of demand will not bring home the offence Under Section 7. The above also will be conclusive insofar as the offence Under Section 13(1)(d)(i)(ii) is concerned as in the absence of any proof of demand for illegal gratification, the use of corrupt or illegal means or abuse of position as a public servant to obtain any valuable thing of pecuniary advantage cannot be held to be established.

Before parting with the case we are constrained to reiterate what we have said in the beginning. We have expressed our agony and anguish the manner in which trials in respect of serious offences relating to corruption are being conducted by the trial courts. Adjournments are sought on the drop of

a hat by the counsel, even though the witness is present in court, contrary to all principles of holding a trial. That apart, after the examination-in-chief of a witness is over, adjournment is sought for cross-examination and the disquieting feature is that the trial courts grant time. The law requires special reasons to be recorded for grant of time but the same is not taken note of. As has been noticed earlier, in the instant case the cross-examination has taken place after a year and 8 months allowing ample time to pressurize the witness and to gain over him by adopting all kinds of tactics. There is no cavil over the proposition that there has to be a fair and proper trial but the duty of the court while conducting the trial to be guided by the mandate of the law, the conceptual fairness and above all bearing in mind its sacrosanct duty to arrive at the truth on the basis of the material brought on record. If an accused for his benefit takes the trial on the path of total mockery, it cannot be countenanced. The Court has a sacred duty to see that the trial is conducted as per law. If adjournments are granted in this manner it would tantamount to violation of rule of law and eventually turn such trials to a farce. It is legally impermissible and jurisprudentially abominable. The trial courts are expected in law to follow the command of the procedure relating to trial and not yield to the request of the counsel to grant adjournment for non-acceptable reasons. In fact, it is not all appreciable to call a witness for cross-examination after such a long span of time. It is imperative if the examination-in-chief is over, the cross-examination should be completed on the same day. If the examination of a witness continues till late hours the trial can be adjourned to the next day for cross-examination. It is inconceivable in law that the cross-examination should be deferred for such a long time. It is anathema to the concept of proper and fair trial. The duty of the court is to see that not only the interest of the accused as per law is protected but also the societal and collective interest is safe-guarded. It is distressing to note that despite series of judgments of this Court, the habit of granting adjournment, really an ailment, continues. How long shall we say, "Awake! Arise!". There is a constant discomfort. Therefore, we think it appropriate that the copies of the judgment be sent to the learned Chief Justices of all the High Courts for circulating the same among the learned trial Judges with a command to follow the principles relating to trial in a requisite manner and not to defer the cross-examination of a witness at their pleasure or at the leisure of the defence counsel, for it eventually makes the trial an apology for trial and compels the whole society to suffer chicanery. Let it be remembered that law cannot allowed to be lonely; a destitute.

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3. Chaitanya Prakash Audichya v. C.B.I. MANU/SC/0695/2015

Hon'ble Judges/Coram: A.K. Sikri and U.U. Lalit, JJ.

Facts:

This appeal by Special Leave challenges the judgment and order dated 06-12-2010 passed by the High Court of Bombay at Goa in Criminal Appeal No. 12 of 2010 by which the High Court affirmed the conviction and sentence of the Appellant Under Sections 7 and 13(1)(d) and 13(2) of the Prevention of Corruption Act 1988 (hereinafter referred to as "the Act"). The trial court after considering the material on record came to the conclusion that the case against the Appellant stood fully established and that he had abused his position as public servant by accepting illegal gratification and had committed offences as alleged. The trial court convicted the Appellant Under Section 7 of the Act and sentenced him to suffer imprisonment for one year and to pay fine of Rs. 10,000/-, in default whereof to suffer simple imprisonment for two months. The Appellant was also convicted Under Section 13(1)(d) read with Section 13(2) of the Act and sentenced to suffer imprisonment for one year and to pay fine of Rs. 10,000/-, in default whereof to undergo simple imprisonment for two months. Both the

sentences were ordered to run concurrently. The Appellant preferred Criminal Appeal No. 12 of 2010 in the High Court and the High Court by the judgment under appeal confirmed the conviction and sentence as ordered by the trial court. In this appeal by special leave, the Appellant was directed to be released on bail, which facility he continues to enjoy.

The issue is whether the judgment of the High Court requires any intervention?

Decision: Affirming the decisions taken by the High Court and the trial court, we dismiss the present appeal. The bail bonds stand cancelled and the Appellant shall be taken in custody forthwith to undergo the sentence awarded to him.

Reasoning:

We have gone through the record and considered the relevant material. The fact that PW1 was awarded contracts by ONGC and that it was a mandatory requirement to have the requisite licence from the office of the Assistant Labour Commissioner is well established. Further the fact that PW1 preferred applications Exts. 31 and 32 for necessary licences is also established on record. According to PW3 the applications were registered on 13.05.2003 and that the applications were in order. Furthermore, according to this witness such applications would normally be dealt with in 2-3 days and that the applications were kept pending because of the instructions of the Appellant himself. Though a feeble attempt was made to submit that there were interpolations in the applications, the assertion that the applications were complete and kept pending because of instructions of the Appellant could not be controverted. We, therefore, accept that the applications were complete in all respects and as stated by PW3 they were kept pending because of the instructions of the Appellant. It is also part of the record that the site in question was inspected by the Appellant on 29.05.2003 as the inspection notes Ext. 33 would disclose. The assertion on part of PW1 that he had an occasion to meet the Appellant that day is well supported. Though it was denied that any meeting had taken place in the Rest House where demand was made as alleged, the facts as they stand unfolded, fully substantiate the assertion made by PW1.

In the present case the versions of PW1 and PW2 are completely consistent establishing the basic ingredients of demand and acceptance. The tainted currency notes were found on the person of the Appellant. The explanation give by him soon after the incident through his letter dated 10.06.2003 is completely different from the theory put forth while the Appellant examined himself as DW2. In our view, the demand and acceptance thus not only stand fully established but the presumption invocable Under Section 20 of the Act also stood unrebutted.

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4. Dhulabhai Gokuldas Drarji v. State of Gujarat MANU/SC/0430/2015

Hon'ble Judges/Coram:T.S. Thakur and Rohinton Fali Nariman, JJ.

Facts:

This appeal arises out of an order dated 07.08.2007 passed by the High Court of Gujarat at Ahmedabad whereby Criminal Appeal No. 801 of 1996 filed by the Appellant has been dismissed, his conviction for offences punishable Under Sections 7, 13(1)(d)(ii) read with 13(2) of the Prevention of Corruption Act, 1988 and sentence of six months on the former count and one year on the later

upheld. The Appellant it appears was working as a Mamlatdar and Krishi Panch, Dehhgam in the Kachchh District, State of Gujarat. He is accused of having demanded and received a sum of ` 1,000/- from the complainant in connection with a case under The Bombay Tenancy and Agricultural Lands Act, 1948 pending before him. Not ready to part with that amount towards bribe the complainant appears to have approached the Anti Corruption Bureau at Ahmedabad who organised a trap in which the Appellant is said to have demanded and received the bribe amount from the complainant in the presence of the witness accompanying him. The recovery of the amount from the person of the Appellant and related steps taken in connection with the trap eventually culminated in the filing of a charge-sheet against the Appellant before the Jurisdictional Court at Ahmedabad who eventually found the Appellant guilty relying upon the deposition of the complainant Somji Chhaganbhai, Devram Premji and Vasudev Ambaram. The Trial Court was of the view that the deposition of the complainant and so also the two witnesses named above examined at the trial inspired evidence and proved not only the factum of the Appellant having made a demand from the complainant but also having received the bribe amount. The Trial Court accordingly recorded a finding of guilt against the Appellant and sentenced him to undergo imprisonment for a period of 6 months Under Section 7 and one year Under Section 13(1)(d) (ii) read with 13(2) of the Prevention of Corruption Act, 1988. An appeal by the Appellant against his conviction and sentence awarded to him before the High Court having failed, the Appellant has assailed the judgment of the courts below in the present appeal as already noticed above.

The issue is whether the courts below appreciated the evidence properly or not? Whether there is any need to intervene in the sentence awarded by the trial Court which was affirmed by the High Court?

Decision: The appeal fails and is hereby dismissed.

Reasoning:

We have no hesitation in holding that the version given by the complainant and the two other witnesses examined by the prosecution in support of its case is consistent and has been rightly accepted by the courts below. There is nothing unworthy or improbable in the version given by the said witnesses to call for rejection of the prosecution story.

The demand and receipt of bribe on 25.09.1989 was improbable in view of the fact that an appropriate order in relation to the complainant's case stood already passed in his favour on 18.09.1989 was noticed and rejected by the courts below and in our opinion rightly so. That is because the version of the complainant and so also the other two witness is that on 25.09.1989 when they approached the complainant with the money pursuant to the trap organized by the Anti Corruption Bureau, the complainant was shown the order passed in his favour but the Appellant declined to hand-over the same to the complainant unless the bribe money was paid to him. That explains the reason why the order passed on 18.09.1989 in favour of the complainant was of no assistance to the Appellant. The view taken by the courts below appears to be perfectly justified. There is no perversity in the appreciation of evidence or the conclusions which the courts below have drawn to warrant our interference.

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5. C. Sukumaran v. State of Kerala MANU/SC/0076/2015

Hon'ble Judges/Coram: V. Gopala Gowda and R. Banumathi, JJ.

Facts:

This appeal is filed by the Appellant against the impugned judgment and order of High Court of Kerala, at Ernakulum, whereby the High Court has partly allowed the appeal of the Appellant and upheld the order of conviction recorded by the Court of Ld. Enquiry Commissioner and Special Judge, Thiruvananthapuram, vide its judgment and order and convicted the Appellant for the offence punishable Under Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 with rigorous imprisonment for a period of one year and a fine of Rs. 10,000/- and in default of payment of fine, to further undergo six months simple imprisonment.

The issue is whether the concurrent findings on the charge Under Section 13(1)(d) of the Act, recorded by the High Court against the Appellant is legal and valid and whether the judgment and order of conviction and sentence Under Section 13(2) of the Act, imposed upon the Appellant by the High Court, warrants interference by this Court.

Decision: The appeal is allowed. Since, the charge against the Appellant is not proved, the conviction and sentence imposed upon the accused-Appellant by the High Court Under Section 13(1)(d) read with Section 13(2) of the Act is set aside. The jail authorities are directed to release the Appellant forthwith, if he is not required to be detained in any other case.

Reasoning:

The demand of illegal gratification by the accused is the sine qua non for constituting an offence under the provisions of the Act. Thus, the burden to prove the accusation against the Appellant for the offence punishable Under Section 13(1)(d) of the Act with regard to the acceptance of illegal gratification from the complainant PW2, lies on the prosecution. In the present case, as has been rightly held by the High Court, there is no demand for the illegal gratification on the part of the Appellant Under Section 7 of the Act. Therefore, in our view, the question of acceptance of illegal gratification from the complainant under the provision of Section 13(1)(d) of the Act also does not arise. The learned Special Judge has come to the erroneous conclusion that the Appellant had received the money and therefore he had recorded the finding that there was demand and acceptance of the bribe money on the part of the Appellant and convicted and sentenced the Appellant. However, the High Court on re-appreciation of evidence on record has held that the demand alleged to have been made by the Appellant from the complainant PW2, was not proved and that part of the conviction and sentence was rightly set aside in the impugned judgment. However, the High Court has erroneously affirmed the conviction for the alleged offence Under Section 13(1)(d) read with Section 13(2) of the Act, although as per law, demand by the Appellant Under Section 7 of the Act, should have been proved to sustain the charge Under Section 13(1)(d) of the Act.

Further, the fact that out of Rs. 1500/- that was allegedly demanded as bribe money from the complainant, an amount of only Rs. 250/- was paid by him, out of which the Appellant allegedly managed to return Rs. 50/- to the complainant, since he had no money left, makes us pause and ponder over the facts and circumstances of the case and casts a serious shadow of doubt on the sequence of events as narrated by the prosecution. Further, none of the prosecution witnesses have actually deposed in the case that the Appellant was the person who had demanded and accepted the bribe from the complainant and since PW2 has materially turned hostile, therefore, neither the demand aspect nor the acceptance of the bribe money can be verified from any other witnesses of the prosecution. Further, PW1 in his deposition before the Special Judge has also not supported the case of the prosecution, as he had refused to acknowledge the ownership of the tea shop, on the premises

of which the bribe money was allegedly accepted by the Appellant from the complainant. Hence, it is safe to say that the prosecution has failed to prove beyond any reasonable doubt that the Appellant had accepted the illegal gratification from the complainant Under Section 13(1)(d) of the Act.

Now, coming to the legality of the conviction of the Appellant Under Section 13(2) of the Act by the High Court in its judgment, the same cannot be allowed to sustain in law, as the prosecution has failed to prove the demand of illegal gratification made by the Appellant from the complainant and acceptance of the bribe money by the Appellant. Further, the phenolphthalein test cannot be said to be a conclusive proof against the Appellant, as the colour of the solution with regard to the other samples were pink and had remained so throughout. However, the lime solution in which the Appellant's hands were dipped in, did not show the same pink colour. The reason assigned by the Trial Court is that the colour could have faded by the lapse of time. The said explanation of the Trial Court cannot be accepted by us in view of the fact that the colour of the other samples taken by the Investigation Officer after the completion of the trap laid against the Appellant had continued to retain the pink colour. Moreover, the sample of the shirt worn by the Appellant which was produced before the Trial Court did not show any colour change on the shirt's pocket section, where the bribe money was allegedly kept by him after the complainant had allegedly given him the bribe money. Thus, on a careful perusal of the entire evidence on record along with the statement of the prosecution witnesses, we have to hold that the prosecution has failed to satisfy us beyond all reasonable doubt that the charge levelled against the Appellant is proved.

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6. V.K. Verma v. C B I MANU/SC/0100/2014

Hon'ble Judges/Coram: S.J. Mukhopadhaya and Kurian Joseph, JJ.

Facts:

Appellant is the accused in C.C. No. 205 of 1994 on the file of the Special Judge, Delhi. He was tried for offences under Section 161 of the Indian Penal Code (45 of 1860) (hereinafter referred to as 'Indian Penal Code') and Section 5(1)(d) read with Section 5(2) of the Prevention of Corruption Act, 1947. The charge was that the Appellant demanded and accepted bribe of Rs. 265/- from a contractor by name Sanjeev Kumar Sawhney on 21.12.1984. According to the Appellant, the said contractor had an axe to grind since the Appellant did not budge to his demand for improper measurement of the work done by him and he was actually trapped at his instance. FIR was registered on 21.12.1984. The sessions court convicted him of the charges and sentenced him to undergo rigorous imprisonment for a period of one and a half years with a fine of Rs. 5,000/- each under the charged Sections, as per judgment dated 10.04.2003. The High Court declined to interfere with the conviction and sentence and dismissed the appeal as per judgment dated 22.07.2013 and, hence, the appeal. Hence the present appeal.

The issue is whether the sentence could be reduced for any special reason?

Decision:

The appeal is partly allowed. The substantive sentence of imprisonment is reduced to the period already undergone. However, an amount of Rs. 50,000/- is imposed as fine. The Appellant shall

deposit the fine within three months and, if not, he shall undergo imprisonment for a period of six months. On payment of fine, his bail bond will stand cancelled.

Reasoning:

In imposing a punishment, the concern of the court is with the nature of the act viewed as a crime or breach of the law. The maximum sentence or fine provided in law is an indicator on the gravity of the act. Having regard to the nature and mode of commission of an offence by a person and the mitigating factors, if any, the court has to take a decision as to whether the charge established falls short of the maximum gravity indicated in the statute, and if so, to what extent.

The long delay before the courts in taking a final decision with regard to the guilt or otherwise of the accused is one of the mitigating factors for the superior courts to take into consideration while taking a decision on the quantum of sentence. As we have noted above, the FIR was registered by the CBI in 1984. The matter came before the sessions court only in 1994. The sessions court took almost ten years to conclude the trial and pronounce the judgment. Before the High Court, it took another ten years. Thus, it is a litigation of almost three decades in a simple trap case and that too involving a petty amount.

The Appellant is now aged 76. We are informed that he is otherwise not keeping in good health, having had also cardio vascular problems. The offence is of the year 1984. It is almost three decades now. The accused has already undergone physical incarceration for three months and mental incarceration for about thirty years. Whether at this age and stage, it would not be economically wasteful, and a liability to the State to keep the Appellant in prison, is the question we have to address. Having given thoughtful consideration to all the aspects of the matter, we are of the view that the facts mentioned above would certainly be special reasons for reducing the substantive sentence but enhancing the fine, while maintaining the conviction.

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7. Baldev Singh v. State of Punjab MANU/SC/0170/2014

Hon'ble Judges/Coram: K. S. Panicker Radhakrishnan and Vikramajit Sen, JJ.

Facts:

The Appellant has filed the present Special Leave to Appeal in an endeavour to set aside the concurrent findings of the Courts below with regard to his conviction and sentence under Section 13(2) of the Prevention of Corruption Act, 1988 (hereinafter 'the P.C. Act'). The Special Judge had convicted the Appellant, which came to be sustained by the High Court in terms of its impugned judgment dated 8.7.2013. Accordingly, the Courts below have concurrently found the Appellant guilty, and sentenced him to undergo Rigorous Imprisonment for a period of three years and to payment of a fine of Rs. 5000/-, and in default thereof, to further undergo Rigorous Imprisonment for a period of six months.

The issue is whether impugned order of conviction for alleged offences was sustainable?

Decision: The appeal is allowed and reduce the sentence to two years Rigorous Imprisonment, but increase the fine to Rs. 10,000/-, and on failure to pay the said amount, to further undergo Rigorous Imprisonment for an enhanced period of nine months.

Reasoning:

In the particular circumstances of the case, we have noted that the Appellant is 62 years of age, and has already retired. As already mentioned, he has been sentenced to undergo Rigorous Imprisonment for a period of three years and to pay a fine of Rs. 5000/- and in default thereof, to further undergo Rigorous Imprisonment for a period of six months. Keeping in perspective the age of the Appellant and that he is no longer in service and, therefore, cannot indulge in corrupt practices,

According to the Prosecution, a complaint was received from Nishan Singh, an agriculturist who along with his family owned farm land in village Golewala, which, however, was at two separate places, but was being irrigated at the same time. Since this was obviously fraught with inconvenience, the Complainant wanted to have an earlier and separate allocation of canal water for the said two parcels of land. It was in regard to this request that the Appellant had demanded Rs. 2000/- from the Complainant, and the matter was eventually "settled" at Rs. 1000/-. The Complainant paid the said amount to the Appellant in his house, as demanded by him, but after alerting the Vigilance Authorities. These currency notes aggregating to Rs. 1000/- were applied with Phenolphthalein Powder and were handed over to the Appellant in the presence of official/shadow witness, Jaskaran Singh, who was examined as PW 4. Two other official witnesses also constituted the raid party.

We have perused the order of the Special Judge dated 11.8.2003, as well as the impugned order of the High Court dated 8.7.2013, both of which have gone into the minute details of the case, which exercise we do not consider necessary to replicate. Suffice it to say that the evidence establishes that the Complainant had handed over to the Appellant a sum of Rs. 1000/- which was subsequently recovered from beneath the files. The formality of tallying the numbers on the currency notes was complied with, including the washing of the Appellant's hands in Sodium Carbonate solution, leading to his unassailable implication. The Courts below have disbelieved the Appellant's version, inter alia, that the currency notes had been kept under the files by the Complainant on his own volition without any demand being made in that regard by the Appellant. The Courts below have also rightly noted that the Complainant would have had no occasion to go to the house of the Appellant unless he had been specifically called; and it was improbable for the Complainant to be called to the home and not to the office, unless there was some ulterior motive, such as claim and receipt of the subject bribe. It also appears that the Complainant's turn to receive water would not have occurred before 1.10.2000, whereas, in fact, water was received much in advance of the previous practice on 28.6.2000. The Appellant has not succeeded in showing any contradiction or inconsistency in the statement of the Complainant, who appeared as PW 3 In this conspectus, we find no error in the impugned Judgment, which in turn affirms the Order of the Special Judge.

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8. Satvir Singh v. State of Delhi AIR 2014 SC 3798

Hon'ble Judges/Coram: Dipak Misra and V. Gopala Gowda, JJ.

Facts:

This appeal is filed by the Appellant against the judgment dated 07.01.2011 and order on sentence dated 08.03.2011 passed in Criminal Appeal No. 337 of 1999 by the High Court of Delhi, whereby the High Court reversed the order of acquittal dated 11.03.1999 recorded by the Trial Court in C.C. No. 19 of 1993 and convicted the Appellant for the offence punishable Under Section 7 of the Prevention of Corruption Act, 1988 (hereinafter referred to as 'the Act') with rigorous imprisonment for one year and a fine of Rs. 50,000/-, in default of payment of fine, to further undergo three months simple imprisonment. The Appellant has prayed for allowing the appeal by setting aside the impugned judgment of the High Court and to acquit him from the charge urging various facts and grounds in support of the questions of law framed in this appeal.

The issues are 1) Whether the demand, acceptance and recovery of gratification are proved by the prosecution and whether the presumption of offence alleged to have been committed by the Appellant would arise in this case? 2) Whether the findings and reasons recorded on the charges by the High Court in reversing the findings of acquittal recorded by the Trial Court are based on proper re-appreciation of legal evidence on record and within the legal parameters laid down by this Court in its decisions?

Decision: The appeal is allowed. The Appellant is on bail. The bail bonds shall stand discharged.

Reasoning:

The point Nos. 1 and 2 are inter-related and therefore, the same are answered together by assigning the following reasons: The learned senior Counsel on behalf of the Appellant has rightly placed reliance upon the evidence elicited in the cross examination of PW-2 by the prosecutor. The relevant portion from translation of deposition of PW-2 made by Appellant is extracted hereunder: One P.S. Saini from the customs department asked me to pay Rs. 2 lakhs and at that time the Appellant/accused Satvir Singh was checking the goods in the godown. On the same day, at about 4.00 p.m. they took me to Customs House at C.R. Building, and produced me before Shri Sudan, Custom (Suptd.) who checked my papers. Thereafter, I was advised to keep cordial relations with his subordinates. Thereafter, when I came out of the office of the superintendent, the accused Satvir Singh was standing outside the office with P.S. Saini who again demanded money from me. I refused to pay the same. On 7th July, 1989, I received a telephone call from the accused Satvir Singh. At about 5-6 p.m. the accused told me over the telephone, either to make the payment or otherwise they would seize the goods from my premises. The accused further asked me to make the payment at Gagan Vihar residence. The accused asked me to pay Rs. 60,000/- first on 8.7.1989 at 8.00 a.m. as I could not arrange the entire amount. The accused further asked to make the payment of the remaining balance amount within three-four days. My brother in law, Shri Ram Malhotra was sitting with me at the time of the telephonic conversation.

During the cross-examination of PW-2, he has stated that the demand of Rs. 2 lakhs was made by P.S. Saini on 4.7.1989 at his godown between 11.30 to 12.30 p.m. On the very same day, he was taken to office of Customs department where Saini demanded the money at two places i.e. firstly just outside the office of Superintendent and secondly, at the staircase of the office building and on both the occasions, the accused had not demanded the money from the complainant, PW-2 at any time. It has been further stated by him during his cross-examination that on both the occasions, the accused was at a distance of three-four feet. It has been further stated by him that he did not have any direct talk with the accused either at the C.R. Building or at his godown. He has further stated that he had met the

accused only once, so he had neither conversant with the voice of the accused nor knows his style of talking.

It has been further stated by PW-2 in his evidence that, when he had gone to the house of the accused along with the punch witness, during the entire conversation, there was no talk about the contents of the rexine bag which he was carrying and neither did the accused enquire about the money nor received the same from the complainant.

The law on the issue is well settled that demand of illegal gratification is sine qua non for constituting an offence under the 1988 Act. Mere recovery of tainted money is not sufficient to convict the accused, when the substantive evidence in the case is not reliable, unless there is evidence to prove payment of bribe or to show that the money was taken voluntarily as bribe. Mere receipt of amount by the accused is not sufficient to fasten the guilt, in the absence of any evidence with regard to demand and acceptance of the amount as illegal gratification, but the burden rests on the accused to displace the statutory presumption raised Under Section 20 of the 1988 Act, by bringing on record evidence, either direct or circumstantial, to establish with reasonable probability, that the money was accepted by him, other than as a motive or reward as referred to in Section 7 of the 1988 Act. While invoking the provisions of Section 20 of the Act, the court is required to consider the explanation offered by the accused, if any, only on the touchstone of preponderance of probability and not on the touchstone of proof beyond all reasonable doubt. However, before the accused is called upon to explain as to how the amount in question was found in his possession, the foundational facts must be established by the prosecution. The complainant is an interested and partisan witness concerned with the success of the trap and his evidence must be tested in the same way as that of any other interested witness and in a proper case the court may look for independent corroboration before convicting the accused person.

Further, the learned senior Counsel for the Appellant has rightly placed reliance upon the questions put to the Appellant by the Court seeking the explanation from him Under Section 313, Code of Criminal Procedure which reads thus:

The learned senior Counsel on behalf of the Appellant has further rightly placed reliance upon the letter written by PW-2 Exh. PW-1/DA dated 15.11.1989 to the Collector of Customs, which reads thus:

In this connection, it is submitted that as written earlier Shri Satvir Singh, Inspector has never demanded any money on 4.7.1989 when they visited my premises. As far as telephone of 7.7.1989 is concerned, someone telephoned me in the name of Satvir Singh, but I could not recognize his voice as I have met Satvir Singh only once and that on 4.7.1989. However, when I visited his house on 8.7.1989, Satvir Singh did not demand any money nor accepted the same. This is for your information please.

It is clear from the contents of the aforesaid documentary evidence on record upon which Appellant has rightly placed strong reliance that he is innocent is evident from the version of the investigating officer PW-9, who had examined those witnesses at the time of the investigation of the case. They have stated that initially this case was recommended for being sent for departmental action and not for criminal prosecution against the Appellant. The said evidence would clearly go to show that there is no case of illegal gratification either demanded by him or paid to him by the complainant PW-2. This important aspect of the matter has been over-looked by the High Court at the time of exercising its appellate jurisdiction for setting aside the order of acquittal passed in favour of the Appellant. In fact, the Trial Court on proper appreciation of both oral and documentary evidence particularly the

contents of the said letter-Ex. PW-1/DA as admitted by PW-9 was considered by him and come to the right conclusion to hold that the Appellant is not guilty of the offence and rightly passed the order of acquittal which has been erroneously reversed by the High Court as the same is contrary to the laws laid down by this Court in the cases referred to supra which relevant paragraphs are extracted while adverting to the submissions of the learned senior Counsel for the Appellant.

Therefore, this Court has to hold that the High Court has exceeded its jurisdiction by not adhering to the legal principles laid down by this Court in reversing the judgment and order of the Trial Court in exercise of its appellate jurisdiction. After careful observation of the above-mentioned facts and evidence on record and on careful examination of the aforesaid rival legal contentions urged on behalf of the parties, with reference to the extracted portion of the evidence of PW-2, PW-3 and PW-9, we are of the considered view that the prosecution has failed to prove the demand and acceptance of illegal gratification by the Appellant from the complainant PW-2, upon whose evidence much reliance has been placed by the learned Counsel for the Respondent. We, accordingly answer the point No. 2 in favour of the Appellant that exercise of appellate jurisdiction by the High Court to reverse the judgment and order of acquittal is not only erroneous but also suffers from error in law and liable to be set aside. Accordingly, we answer the point Nos. 1 and 2 in favour of the Appellant.

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9. State of Kerala and Anr v. C.P. Rao (2011) 6 SCC 450

Hon'ble Judges/Coram: A.K. Ganguly and Deepak Verma, JJ.

Facts:

This is an appeal against the judgment and order of acquittal dated 19th January, 2005 rendered by the High Court. The Respondent facing a trial, was convicted under Sections 7 and 13(2) read with Section 13(1)(d) of Prevention of Corruption Act, 1988 by the Special Judge, Thiruvananthapuram, in Criminal Case No. 9 of 1996 and the Respondent was sentenced to undergo rigorous imprisonment for 20 months and pay a fine of Rs. 2500/- under the former charge and rigorous imprisonment for two years and a fine of Rs. 2500/- under the second charge. Default stipulations were also there. In passing the order of acquittal, the High Court examined and analyzed in detail the evidence of the case. The High Court found that the complainant CW 1 was not examined and the only explanation given was that he was not available in the country but no details were given as to where the complainant was. The defense of the Respondent in this case has also been noted by the High Court in some detail.

The issue is whether there is any merit in the Appeal which requires intervene in the judgment of High Court?

Decision: There is no merit in the appeal and therefore dismissed it.

Ratio Decidendi: In an Appeal against acquittal, prosecution has to prove its case beyond reasonable doubt.

Reasoning:

The prosecution case is that the demand of illegal gratification of Rs. 5000/- was made by the Respondent from CW 1 on 19.10.1994 for the purpose of giving pass marks to all the students who appeared in the practical examination of pharmaceutical-II in D-Pharma final examination in the year 1994. It is an admitted case that the Respondent alone cannot give such marks. In view of the examination system prevailing such marks have to be approved by others. The Respondent alone, therefore, is admittedly not in a position to allot higher marks. Apart from that, it is the case of the Respondent that when CW 1 met him in a hotel room, the Respondent shouted that some currency notes had been thrust into his pocket by CW 1. Such shouts of the Respondent were heard by PW 1 and PW 2. The evidence of PW 1 and PW 2 were recorded by the Trial Court. The evidence of PW 1 and PW 2 could not be, in any way, shaken by manner of cross-examination. PW 3 has also given evidence of the previous animosity between the college authorities and the Respondent who had an occasion to file reports with the college authorities on the basis of some inspection. In the background of these facts, especially the non-examination of CW 1, was found very crucial by the High Court. We find it difficult to countenance the approach of the High Court. In the absence of semblance of explanation by the investigating officer for the non-examination of the complainant, it was not open to the courts below to find out their own reason for not tendering the complainant in evidence. It has, therefore, to be held that the best evidence to prove the demand was not made available before the court.

Those observations quoted above are clearly applicable in this case. In the context of those observations, this Court in paragraph 28 of A. Subair (supra) made it clear that the prosecution has to prove the charge beyond reasonable doubt like any other criminal offence and the accused should be considered innocent till it is proved to the contrary by proper proof of demand and acceptance of illegal gratification, which is the vital ingredient to secure the conviction in a bribery case. In view of the aforesaid settled principles of law, we find it difficult to take a view different from the one taken by the High Court.

In coming to its conclusion, we are reminded of the well settled principle that when the court has to exercise its discretion in an appeal arising against an order of acquittal, the Court must remember that the innocence of the accused is further re-established by the judgment of acquittal rendered by the High Court. Against such decision of the High Court, the scope of interference by this Court in order of acquittal has been very succinctly laid down by a Three-Judge bench of this Court in the case of Sanwat Singh and Ors. v. State of Rajasthan MANU/SC/0078/1960 : 1961 (3) SCR 120. At page 129, Justice Subba Rao(as His Lordship then was) culled out the principles as follows: The foregoing discussion yields the following results: (1) an appellate court has full power to review the evidence upon which the order of acquittal is founded; (2) the principles laid down in Sheo Swarup's case MANU/PR/0071/1934 : 1934 L.R. 61 I.A. 398 afford a correct guide for the appellate court's approach to a case in disposing of such an appeal; and (3) the different phraseology used in the judgments of this Court, such as (i) "substantial and compelling reasons", (ii) "good and sufficiently cogent reasons", and (iii) "strong reasons" are not intended to curtail the undoubted power of an appellate court in an appeal against acquittal to review the entire evidence and to come to its own conclusion; but in doing so it should not only consider every matter on record having a bearing on the questions of fact and the reasons given by the court below in support of its order of acquittal in its arriving at a conclusion on those facts, but should also express those reasons in its judgment, which lead it to hold that the acquittal was not justified.

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10. Balasubramanian v. State thr. Inspector of Police (2010) 3 SCC 1125

Hon'ble Judges/Coram: Anil R. Dave and Mukundakam Sharma, JJ.

Facts:

Being aggrieved by the Judgment and Order passed in Criminal Appeal No. 765 of 2000 by the Madras High Court, the appellant has approached this Court by way of this appeal. By virtue of the impugned judgment, the High Court has confirmed the Order of conviction dated 25th August, 2000, passed by the First Additional District Judge-cum-Chief Judicial Magistrate, Karur, whereby the appellant has been convicted under the provisions of Section 7 and Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988, (hereinafter referred to as `the Act') sentencing him to undergo rigorous imprisonment for one year and to pay a fine of Rs. 1,000/-, in default, to undergo simple imprisonment for two months for each of the offences and ordered both the sentences to run concurrently.

The issue is whether there is any error in the judgment of the High Court which requires to intervene in it?

Decision: The appeal is dismissed.

Ratio Decidendi: "If accused fails to prove amount received by him as illegal gratification, then it is sufficient to convict the accused person."

Reasoning:

Having gone though the records, we are satisfied that prosecution was able to prove their case to the hilt. There is no error in the judgment of the High Court. We heard the learned Counsel and also noted the fact that the submission made by learned Counsel appearing for the appellant had not been made earlier. Had the submission made before this Court been correct, the appellant would have made such a statement at the time of the trap or he would have revealed the said fact while making the statement under Section 313 of the Cr.P.C.

It is a known fact that the accused is given an opportunity to explain the circumstances appearing in the evidence against him after the witnesses for the prosecution are examined. The appellant was also given such an opportunity as per provisions of Section 313 of the Cr.P.C. but the appellant did not give any explanation in relation to the amount accepted by him. We have carefully gone through the said Statement but we could not find such an explanation given by the appellant and, therefore, at this stage we can not accept the submission made by the learned Counsel for the appellant that the said sum of Rs. 5,000/- was paid to him by P.W.3 towards his tax liability.

From what has been stated hereinabove, it is crystal clear that for the first time the learned Counsel appearing for the appellant has made an effort to make out a different case to an effect that the appellant had accepted the amount of tax payable by P.W.3 and the amount was not received as an illegal gratification. We do not find any substance in the aforesaid argument.

Session No 10 Death Sentence Useful or Not

1. B. Kumar v. Insp. of Police (2015)2 SCC 346

Hon'ble Judges/Coram: H.L. Dattu, C.J.I., S.A. Bobde and Abhay Manohar Sapre, JJ.

Facts:

These criminal appeals have been filed by the Appellant/accused against the final common judgment and order dated 02.08.2011 in Trial Case No. 4 of 2010 and Criminal Appeal No. 161 of 2011 passed by the High Court of Madras. A sentence of death having been imposed upon the Appellant, learned Sessions Judge, Nagapattinam, referred the matter for confirmation to the High Court Under Section 366 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the 'Code of Criminal Procedure'). The Appellant preferred an appeal against conviction and sentences imposed upon him by the learned Sessions Judge, Nagapattinam. The High Court having dismissed the appeals the Appellant stands convicted and sentenced to death, for house-trespass Under Section 449; for wrongful confinement Under Section 342; for rape Under Section 376(1); for murder Under Section 302; for attempt to murder Under Section 307; for causing hurt during robbery Under Section 394 and for robbery or dacoity with attempt to cause death Under Section 397 of the Indian Penal Code

The Appellant has been charged and convicted for committing the rape of the prosecutrix and slitting her throat and decamping with jewellery; further for the murder of her brother, Manikandan, who saw him committing the rape and for slitting the throat of P.W.-2 Sangeetha, who saw him kill the boy.

The issue is whether cruel and heinous manner of committing crime is sufficient to attract death sentence?

Decision: Appeal is allowed the Appellant thus stands convicted for the remainder of his life instead of death sentence for the offence of murder.

Reasoning:

It is not sufficient for a Criminal Court to give reasons pertaining to the cruel and heinous acts of the accused, but the Court must consider the special reasons why it is of the opinion that in a particular case before it, the death sentence should be imposed. Having regard to the fact that he was initially content with tying up the deceased to keep him out of the way, he was infuriated later on at his insurgence. His motive in going to the place was not to commit murder, but was to satisfy his lust, as suggested by the learned Counsel for the State. The Appellant attacked the deceased boy because he suddenly panicked at the thought that he would be caught. It is also clear that it was in the same state of mind that he attacked P.W.-2 Sangeetha, who had seen him attacking the deceased. Similarly, he then attacked the prosecutrix with a view to intimidate her. We have no doubt that if it was truly his intention to do so, he could have killed all the three, who were much weaker than him, with the aruval at the outset, but he did not do so. We make these observations only by way of assessment of the predominant motive of the Appellant in injuring his victims and killing one of them. Our observations do not detract from the fact that the injuries were caused during the course of and as a part of, a heinous crime of lust. The assault on the P.W.-2 Sangeetha and the prosecutrix certainly constitute an attempt to murder as found by the Sessions Court and the High Court. The Appellant has thus been rightly convicted for the offences having regard to the nature of the injuries, their location and the weapon with which they were caused.

In the light of the above we may now consider whether the only penalty that could have been imposed on the Appellant for the murder of the deceased Manikandan was the death penalty. We do not intend to delve into the justification or propriety of the death penalty being on the statute book, since no such question has been raised. The only consideration is whether the circumstances of this case rightly attracted the death penalty the main motive was not to commit murder but to satisfy his lust. There is undoubtedly an element of recklessness in the Appellant's actions, but that in our view may not be sufficient in the circumstances of this case to attract the extreme penalty of death.

This Court must remain mindful of the two fundamental objectives of penology which apply even in such grotesque cases: i.e. (a) deterrence and (b) reformation. Other factors such as seriousness of the crime, the criminal history of the Appellant and also his propensity to remorselessly commit similar dastardly crimes in the future, must be considered. In the present case, having assessed the aforesaid mitigating factors including the Appellant's conduct after the commission of the crime, we observe that this case does not fall into the category of rarest of the rare. Consequently, the conviction and other sentences except the death sentence are hereby upheld.

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2. Kamla Kant Dubey and Ors. v. State of U.P. and Ors. MANU/SC/0694/2015

Hon'ble Judges/Coram: Pinaki Chandra Ghose and U.U. Lalit, JJ.

Facts:

These appeals by special leave challenge the judgment and order dated 15.05.2009 passed by the High Court of Judicature at Allahabad in Reference No. 6/2008 and in Criminal (Capital) Appeal No. 3588 of 2008 acquitting the Respondents accused of the charges Under Sections 302 read with 34 Indian Penal Code. PW1 with the deceased had gone to relieve themselves some distance from the village. The Respondents came in a tractor and swerved in the direction of the deceased. The deceased got up in fright but was pushed down by the tractor and was crushed. The tractor turned around and came back to crush him again. PW1 narrated the facts about civil litigation, for which the deceased was an important witness, serving as motive for the murder. SSI went to the spot and prepared spot panchnama, finding marks of wheels of a tractor in a circular or round motion. Accepting the evidence and motive for the crime, the trial court convicted all of the accused. However, it observed that the name of PW3 was not mentioned in the original complaint by PW1 and it would be doubtful to accept PW3 as witness who had seen the accused making good their escape.

On appeal, the High Court found infirmities in the version of PW 1: the trial court having refused to rely on the testimony of PW3 meant that PW1 had introduced PW3 as eye witness to lend cogency to the case of prosecution; PW1 had changed the place of occurrence. The High Court thus gave benefit of doubt to the accused and allowed their appeal acquitting them of all charges. Hence, the present appeal.

The issue is whether testimony of sole witness can be relied?

Decision:

However, we do not deem it appropriate to restore the sentence of death. In our view, the appropriate sentence in the matter ought to be sentence for imprisonment for life, which we proceed to impose on

said Basant Lal and Om Prakash. Consequently, the appeals are partly allowed. The acquittal of Lalji and Gyan Prakash as recoded by the High Court is affirmed. The appeals as regards Basant Lal and Om Prakash are allowed and their acquittal is set aside. Accused Basant Lal and Om Prakash are convicted Under Sections 302 read with Section 34 Indian Penal Code and sentenced to suffer life imprisonment. They are directed to be taken into custody forthwith to suffer the sentence awarded to them. Appeal is allowed partly.

Reasoning:

The assessment that the medical evidence belies that the deceased was repeatedly crushed under the wheels of the tractor, is completely incorrect. Further, the area where the incident occurred is such where a vehicle would not enter by mistake causing an accident but the attempt was definitely deliberate.

It is not seen how there was an improvement in the version in court as against the one which finds mention in the complaint or that the place of occurrence was changed. Even if there were some improvements on part of PW1, these matters are not so fundamental affecting the very core to such an extent that his testimony needs to be discarded completely. We find the version coming from PW1 to be consistent, supported by all relevant circumstances and lodged with promptitude. Having found his presence to be natural and his version getting complete support on material particulars, in our considered view, the witness is completely trustworthy.

It is well accepted principle that the first information report need not contain every single detail and every part of the case of the prosecution. Assuming them to be improvements, the basic substratum of the matter does not get affected by such improvements at all.

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3. Pawan Kumar and Ors v. State of U. P. and Ors AIR 2015 SC 2050

Hon'ble Judges/Coram: S.J. Mukhopadhaya and N.V. Ramana, JJ.

Facts:

The Trial Court convicted and sentenced the accused No. 1-Pawan Kumar @ Monu Mittal to death for offences Under Section 302 r/w 149, Indian Penal Code and to pay a fine of Rs. 10,000/-, in default to undergo simple imprisonment (SI) for one year. He was also sentenced to 2 years RI and to pay a fine of Rs. 5000/-, in default 3 months SI for the offence Under Section 404, Indian Penal Code and 6 months imprisonment Under Section 30 of the Arms Act, 2 years RI and to pay a fine of Rs. 5000/- Under Section 404, Indian Penal Code and in default to undergo 3 months S.I. The other accused, namely accused No. 2-Devesh Agnihotri, accused No. 3- Sanjay Awasthi, accused No. 4-Rakesh Kumar Anand, accused No. 5- Shivkesh Giri @ Lalla Giri, accused No. 6- Harish Mishra, accused No. 7- Vivek Sharma and accused No. 8- Rajesh Verma were also convicted Under Section 302 r/w Section 149, Indian Penal Code and sentenced to suffer life imprisonment. They were further sentenced to suffer one year RI Under Section 148, 5 years RI Under Section 201, Indian Penal Code, 5 years RI Under Section 120B Indian Penal Code. Accused No. 8- Rajesh Verma was also convicted Under Section 212, Indian Penal Code and sentenced to 3 years RI and to pay a fine of Rs. 5,000/-, in default to undergo 6 months SI Under Section 25 of the Arms Act and sentenced to 1 year RI and to pay a fine of Rs. 1,000/-, in default to suffer SI for 3 months and 6 months RI Under Section 30 of the

Arms Act. Accused Rakesh Anand, Vivek Sharma and Pawan Kumar were also sentenced to 2 years RI Under Section 411 Indian Penal Code. All the sentences were, however, directed to run concurrently.

Aggrieved thereby, the Accused--Appellants preferred appeals before the High Court. The High Court by the impugned judgment dated 11.12.2009 partly allowed the appeal of Pawan Kumar (Accused No. 1) and modified his death sentence to life imprisonment Under Section 302 r/w 149 but upheld the convictions for the other offences they are charged with. The appeals of the accused Devesh Agnihotri (A-2), Rakesh Anand (A-4), Shivkesh Giri @ Lalla Giri (A-5), Vivek Sharma (A-7) and Rajesh Verma (A-8) were, however, dismissed by the High Court. The appeals of other co-accused Harish Mishra (A-6) and Sanjay Awasthi (A-3) were allowed giving them benefit of doubt and acquitted them of all charges. Against the said judgment passed by the High Court, Accused Nos. 1, 2, 4, 5, 7 & 8 filed the present appeals before this Court.

The issue is whether prosecution had established beyond reasonable doubt complete chain of events which pointed at guilt of accused?

Decision: The appeals fail and are dismissed.

Reasoning:

In the present case, on scrutiny of evidence on record, we are convinced that the prosecution had established beyond reasonable doubt the complete chain of events which points at the guilt of the accused. Accused Nos. 4 & 7 disclosed names of their co-accused at whose instance various incriminating materials including pistols, cartridges, bullets, blood stained articles were recovered. Confession given by accused was not basis for courts below to convict accused, but it was only source of information to put criminal law into motion. Hence, accused could not take shelter under Section 25 of Evidence Act. Motive behind brutal murder of deceased as brought forward by prosecution was trustworthy in light of material available on record. Merely because all bullets fired from gun did not hit target and were not recovered from scene of offence, was no ground to conclude that incident did not take place. Nexus between accused as well as their participation in crime is well established beyond reasonable doubt and nothing on record to suggest that accused were unnecessarily implicated by police. Entire evidence brought on record by prosecution, was not only convincing, but was also trustworthy. Prosecution had established beyond reasonable doubt complete chain of events which points at guilt of accused. Therefore, impugned order of conviction was sustainable and required no interference.

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4. Purushottam Dashrath Borate and Ors v. State of Maharashtra AIR 2015 SC 2170

Hon'ble Judges/Coram: H.L. Dattu, C.J.I., S.A. Bobde and Arun Mishra, JJ.

Facts:

This appeal is directed against the judgment and order, passed by the High Court of Judicature for Maharashtra at Bombay in Confirmation Case No. 1 of 2012 and Criminal Appeal No. 632 of 2012, dated 12.09.2012, 13.09.2012, 24.09.2012 and 25.09.2012. By the impugned judgment and order, the High Court has confirmed the judgment of conviction and order of sentence of death passed by the

Court of Sessions Judge, Pune in Sessions Case No. 284 of 2008, dated 20.03.2012, whereby the learned Sessions Judge has convicted the accused-Appellants for the offence Under Sections 302, 376(2)(g), 364 and 404 read with Section 120-B of the Indian Penal Code, 1860 (for short, "the Indian Penal Code") and consequently awarded death sentence.

Decision:

This appeal is rejected and the sentence of death of death awarded to the accused/Appellants is confirmed. The judgment and order passed by the High Court is accordingly affirmed.

Reasoning:

It would now be necessary for this Court to consider the balance sheet of aggravating and mitigating circumstances. In the instant case, the learned Counsel for the accused-Appellants has laid stress upon the age of the accused persons, their family background and lack of criminal antecedents. Further, the learned Counsel has fervently contended that the accused-Appellants are capable of reformation and therefore should be awarded the lighter punishment of life imprisonment.

In our considered view, in the facts of the present case, age alone cannot be a paramount consideration as a mitigating circumstance. Similarly, family background of the accused also could not be said to be a mitigating circumstance. Insofar as Accused No. 1 is concerned, it has been contended that he was happily married and his wife was pregnant at the relevant time. However, the Accused No. 1 did not take into consideration the condition of his wife or his mother while committing the said offence and, as a result, his wife deserted him and his widowed mother is being looked after by his nephew and niece. Insofar as Accused No. 2 is concerned, he has two sisters who are looking after his widowed mother. Lack of criminal antecedents also cannot be considered as mitigating circumstance, particularly taking into consideration, the nature of heinous offence and cold and calculated manner in which it was committed by the accused persons. In our considered view, the "rarest of the rare" case exists when an accused would be a menace or, threat to and incompatible with harmony in the society. In a case where the accused does not act on provocation or on the spur of the moment, but meticulously executes a deliberate, cold-blooded and pre-planned crime, giving scant regard to the consequences of the same, the precarious balance in the sentencing policy evolved by our criminal jurisprudence would tilt heavily towards the death sentence. This Court is mindful of the settled principle that criminal law requires strict adherence to the rule of proportionality in awarding punishment, and the same must be in accordance with the culpability of the criminal act. Furthermore, this Court is also conscious to the effect, of not awarding just punishment, on the society.

Thus, the manner in which the commission of the offence was so meticulously and carefully planned coupled with the sheer brutality and apathy for humanity in the execution of the offence, in every probability they have potency to commit similar offence in future. It is clear that both the accused persons have been proved to be a menace to society which strongly negates the probability that they can be reformed or rehabilitated. In our considered opinion, the mitigating circumstances are wholly absent in the present factual matrix.

In the result, after having critically appreciated the entire evidence on record as well as the judgments of the Courts below in great detail, we are in agreement with the reasons recorded by the trial court and approved by the High Court while awarding and confirming the death sentence of the accused-Appellants. In our considered view, the judgment and order passed by the Courts below doe not suffer from any error whatsoever.

5. Vikram Singh and Ors v. Union of India and Ors MANU/SC/0901/2015

Hon'ble Judges/Coram: T.S. Thakur, R.K. Agrawal and A.K. Goel, JJ.

Facts:

This appeal, by special leave, arises in somewhat peculiar circumstances. The Appellants were tried, convicted and sentenced to death for commission of offences punishable Under Sections 302 and 364A of the Indian Penal Code, 1860. The conviction and sentence awarded to them was affirmed by the High Court of Punjab and Haryana in appeal and eventually by this Court in Criminal Appeals No. 1396-1397 of 2008. The Appellants did not, however, give-up. They filed Writ Petition (Crl.) D No. 15177 of 2012 before this Court for a declaration that Section 364A inserted in the Indian Penal Code by Act 42 of 1993 was ultra vires the Constitution to the extent the same prescribes death sentence for anyone found guilty. The Petitioner further prayed for quashing the death sentence awarded to the Petitioner by the trial court as affirmed by the High Court and by this Court in Criminal Appeals No. 1396-1397 of 2008. A mandamus directing commutation of the sentence awarded to the Petitioner to imprisonment for life was also prayed for. The writ petition was eventually withdrawn with liberty to the Petitioners to approach the jurisdictional High Court for redress. The Appellant, thereafter, moved the High Court of Punjab and Haryana at Chandigarh in CWP No. 18956 of 2012 praying for a mandamus striking down Section 364A of the Indian Penal Code and for an order restraining the execution of the death sentence awarded to them. Reopening of the case of the Appellants and commutation of the death sentence for imprisonment for life were also prayed for in the writ petition. A Division Bench of the High Court of Punjab and Haryana has, while dismissing the said petition by its judgment and order dated 3rd October, 2012, taken the view that the question whether Section 364A of the Indian Penal Code was attracted to the case at hand and whether a person found guilty of an offence punishable under the provision could be sentenced to death was not only raised by the Appellants as an argument before this Court in appeal filed by them, but, was noticed and found against them. The writ petition was, on that reasoning, dismissed by the High Court, which dismissal is what is under challenge in this appeal before us.

The issues are as whether a sentence of life imprisonment or death is disproportionate to the gravity of the crime committed? Whether life imprisonment of an offence under Section 364A IPC is in violation of Article 21 of the Constitution? Whether the Appellants' sentence can be reduced to life imprisonment?

Decision: Appeal dismissed.

Reasoning:

With reference to Rupa Ashok Hurra v. Ashok Hurra and Anr., the Court held: 'the duty to do justice in these rarest of rare cases shall have to prevail over the policy of certainty of judgment as though it is essentially in public interest that a final judgment of the final court in the country should not be open to challenge, yet there may be circumstances, as mentioned above, wherein declining to reconsider the judgment would be oppressive to judicial conscience and cause perpetuation of irremediable injustice.' In the instant case, the petition filed by the Appellants under Article 32 of the Constitution of India was dismissed as withdrawn with liberty reserved to the Appellants to approach the High Court. If against a final judgment of the Supreme Court a remedy was not available Under Article 32 of the Constitution, the same would also not be available with the High Court under Article 226 of the Constitution. The only remedy which the Appellants could resort to in terms of Rupa

Ashok Hurra v. Ashok Hurra and Anr. is by invoking the Supreme Court's inherent powers Under Articles 129 and 142 of the Constitution. A writ petition before the High Court for that relief was untenable.

Relying on a plethora of national and international judgments, it is summed up:
(a)Punishments must be proportionate to the nature and gravity of the offences for which the same are prescribed.

(b)Prescribing punishments is the function of the legislature and not the Courts'.

(c)The legislature is presumed to be supremely wise and aware of the needs of the people and the measures that are necessary to meet those needs.

(d)Courts show deference to the legislative will and wisdom and are slow in upsetting the enacted provisions dealing with the quantum of punishment prescribed for different offences.

(e)Courts, however, have the jurisdiction to interfere when the punishment prescribed is so outrageously disproportionate to the offence or so inhuman or brutal that the same cannot be accepted by any standard of decency.

(f)Absence of objective standards for determining the legality of the prescribed sentence makes the job of the Court reviewing the punishment difficult.

(g)Courts cannot interfere with the prescribed punishment only because the punishment is perceived to be excessive.

(h)In dealing with questions of proportionality of sentences, capital punishment is considered to be different in kind and degree from sentence of imprisonment...While there are several instances when capital punishment has been considered to be disproportionate to the offence committed, there are very few and rare cases of sentences of imprisonment being held disproportionate.

Section 364A IPC was included initially because of the increasing incidence of kidnapping and abduction for ransom. The gradual growth of the challenges posed by kidnapping and abductions for ransom, not only by ordinary criminals for monetary gain or as an organized activity for economic gains but by terrorist organizations necessitated the incorporation of Section 364A IPC and a stringent punishment for those indulging in such activities. Given the background in which the law was enacted, the punishment prescribed for those committing any act contrary to Section 364A cannot be dubbed as so outrageously disproportionate to the nature of the offence as to call for the same being declared unconstitutional. Judicial discretion available to the Courts to choose one of the two sentences prescribed for those falling foul of Section 364A will be exercised by courts following judicially recognized lines, and death sentences awarded only in the rarest of rare cases. In the ordinary course and in cases which qualify to be called rarest of the rare, death may be awarded only where kidnapping or abduction has resulted in the death either of the victim or anyone else in the course of the commission of the offence. Where the act which the accused is charged with is proved to be an act of terrorism may possibly be the only other situations where Courts may consider awarding the extreme penalty. However, short of death in such extreme and rarest of rare cases, imprisonment for life for a proved case of kidnapping or abduction will not qualify for being described as barbaric or inhuman so as to infringe the right to life guaranteed under Article 21 of the Constitution. Assumed hypothetical situations cannot be brought to bear upon the vires of Section 364A IPC because the

Appellants have been held guilty not only under Section 364A IPC, but even for murder punishable under Section 302 IPC. Sentence of death awarded to them for both was considered to be just, fair and reasonable, even by the standards of rarest of rare cases, evolved and applied by this Court. The provisions of Section 364A as far as they prescribe death or life imprisonment are not unconstitutional on account of the punishment being disproportionate to the gravity of the crime committed by the Appellants.

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6. Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra MANU/SC/0801/2009

Hon'ble Judges/Coram: S.B. Sinha and Cyriac Joseph, JJ.

Facts:

These two appeals arise out of a common judgment of conviction and sentence dated 12th August, 2005 passed by the High Court of Judicature at Bombay in Confirmation Case No. 2 of 2004 and three connected appeals; one filed by the State and two by the accused, whereby and whereunder it confirmed and accepted the reference made to it in terms of Section 366 of the Code of Criminal Procedure, 1973 in the case of Santoshkumar Satishbhushan Bariyar and upheld the conviction and sentence of life imprisonment in the case of the other accused

Whereas Criminal Appeal No. 1478 of 2005 has been preferred by Santoshkumar Satishbhushan Bariyar (A1) (hereinafter referred to as "the appellant"), the State has filed Criminal Appeal No. 452 of 2006 praying for enhancement of sentence for Sanjeevkumar Mahendraprasad Roy (A2) and Sanotshkumar Shrijailal Roy (A3).

Accused persons including appellant conspired to abduct deceased and demand ransom. Accused persons made threatening calls to father of deceased. First Information Report (FIR) lodged against accused persons for offences under sections 363 and 387 of IPC. All accused persons arrested by trap of police. One of accused turned approver he was granted pardon by Sessions Judge. Prosecution witness and evidence based on statement of approver. Appellant and second accused strangulated deceased and all other accused cut body into several pieces and disposed it after packing as per version of approver. Sessions Judge convicted appellant under section 302 read with section 120B as also under sections 364A read with 120B of IPC and sentenced to death. Second and third accused convicted under section 302 read with section 120B as also under sections 364A read with 120B of IPC and sentenced to rigorous imprisonment for life. Decision of conviction and sentence confirmed by High Court

In the first appeal **the issue** is whether Sessions Judge acted illegally in granting pardon to approver?

Decision: Appeal dismissed.

Reasoning:

Magistrate can record pardon after recording his reasons for so doing. Condition mentioned in Section 307 refers to the condition laid down in Sub-section (1) of Section 306, namely that the person in whose favour the pardon has been tendered will make a full and true disclosure of the whole of the

circumstances within his knowledge. Power of a Sessions Court is not hedged with any other condition. Power of the learned Sessions Judge is independent of the provisions contained in Section 306. In the present case, Order of Sessions Judge showed application of mind on application for grant of pardon filed by Investigating Officer as well as examination of appellant by putting relevant questions to him. Sessions Judge not passed order only on basis of purported confessional statement made by approver. Hence order of judge granting pardon to approver legal and valid.

In second appeal **the issue** is whether case fell under 'rarest of rare cases' category?

Decision: Appeal dismissed

Reasoning:

The role and responsibility of sentencing court and Appellate Court is to follow standard of rigor and fairness. Court is duty bound to equally consider both aggravating and mitigating circumstances and then arrive at conclusion. True import of rarest of rare doctrine speaks of extraordinary and exceptional case. Sentencing court or appellate court has to reach to finding of rational and objective connection between capital punishment and purpose for which it being prescribed during sentencing process. Court has to determine whether case at hand fell within rarest of rare case.

Reasons assigned by courts below do not satisfy test of rarest of rare case as evolved in Bachan Singh case. The Courts should not to determine punishment on grounds of proportionality alone. The prosecution fails to prove that Appellant /accused cannot be reformed and rehabilitated. Mere mode of disposal of dead body may not by itself be made ground for inclusion of case in rarest of rare category for purpose of imposition of death sentence. Prudence doctrine can be invoked when entire prosecution case revolved around statement of approver or dependant upon circumstantial evidence. Accused persons are not professional killers and no criminal history. Section 354(3) of Cr.P.C required court to provide special reasons in decision of imposing death sentence when conviction for offence is punishable with death. Reasons assigned by courts below not disclosed any special reason to uphold death penalty. Appellant/accused are sentenced to undergo rigorous imprisonment for life instead of death sentence this is only modification in sentence of appellant and not the conviction.

Ratio Decidendi: Power of the Sessions Judge is independent of the provisions contained in Section 306 and he can pardon an approver after recording sufficient reasons for it. For awarding death sentence Court, while applying the rarest of rare case doctrine, is duty bound to equally consider both aggravating and mitigating circumstances and then arrive at conclusion.