

# NATIONAL JUDICIAL ACADEMY



## Workshop on Criminal Trials in Serious offences

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Programme Coordinator

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The National Judicial Academy (NJA) organized a two day online Workshop on Criminal Trials in Serious offences for District & Sessions Judges/Additional District & Sessions Judges on 23rd & 24<sup>h</sup> January, 2021. The objective of the workshop was to provide a platform, for participant judges to deliberate upon, share experiences, insights on contemporary themes like Jurisprudence and Trial Process in Serious offences; Techniques and Preparation of Charge in Serious Offences; Appreciation of Evidence; and Witness Protection and Victim Compensation with a panel of distinguished resource persons from the judicial branch and other relevant domains. The workshop facilitated transmission of skills towards better, speedier and quality adjudication in serious offences.

### **Major Highlights and Suggestions from the Workshop**

#### **Session 1: Jurisprudence and Trial Process in Serious Offences**

The speakers commenced the session by explaining the importance of analysing facts related to the case before them and then deciding according to the legislative laws. The trial court judges should not search for case laws on each and every point because fact situation in each case is different and case laws should be referred in situation of facing difficulty. If trial court judges focus on case laws first then it is difficult for them to understand facts of the case. The speakers then deliberated on the definition of the term “*serious offence*” which is only defined in the Juvenile Justice Act. The speakers referred to the judgment in case *Shilpa Mittal v State of (NCT of Delhi) and another* 2020 Indlaw SC 20 to explain the concept of serious offence. In this case the Supreme Court declared that offences carrying punishment of imprisonment of seven years or more and when there is no minimum punishment then such offences should be categorized as serious offences.

The speakers then focused on principles of presumption of innocence and burden of proof and suggested that in situation of reverse burden of proof such as in POCSO cases, the trial court should ensure that no injustice is caused to accused person because of reverse burden of proof. In such cases the primary facts must be proved first and then only the benefit of presumption should be given to the victim. The speakers then focused on fair trial. The change of place of trial from one

state to another state and trial by media in serious offences were discussed. The discretion of the trial court judges in awarding less than minimum sentence was highlighted and it was emphasized that trial court judges must ensure that special and adequate reasons exist in such situation.

The speakers referred to use of the statement of witness and confession of the accused person recorded under the Section 164 of the Code of Criminal Procedure. It is a statement which can be used for contradiction and omission and it should be used carefully by trial courts. The speakers also referred to problem of hostile witnesses in serious offences and referred to Section 309 of the Code of Criminal Procedure, which should to be applied for examination of witnesses on day to day basis. In serious cases such as NDPS, Unlawful Activities Prevention Act and in terrorist offences, the trial should proceed on day to day basis to prevent unnecessary delay.

The speakers than focused on aspect of sanction in trial of corruption cases where superior authority decide whether the charge sheet should be filed or not. Judges should not to too technical in the review of this process and should keep in mind the purpose of legislation behind the necessity of sanction.

The judges should not give too much value to contradictions and omissions regarding the statement of witnesses which are given to police and should not declare witness as unreliable without deeper scrutiny. Natural witness cannot give exact statement in court as they initially give to police. Facts provided by witness which are believable should be considered by courts. All contradictions and omissions should be examined on their own merits. Due to increasing use of forensic evidence by investigating agencies the judges should have a working knowledge of Ballistics, DNA, electronic documents, computers and other technical aspects. Delay by prosecution should not be a ground to reject the prosecution's case. In situation of allegation of unfairness by parties, the trial court judge should see that whether the alleged unfairness has gone to the roots of the case and whether it has violated the principles of natural justice.

## **Session 2: Techniques and Preparation of Charge in Serious Offences**

The speakers commenced the session by discussing theory behind framing of charge and why it serve as notice to accused about case against him. The speakers discussed Sections 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221,222 and 223 Cr.P.C. and emphasized that precision and lack of ambiguity at the stage of framing of charge should be there. The speakers discussed judgement in case *William Stanley v. State of Madhya Pradesh* AIR 1956 SC 115 to highlight implications and essentials of framing charge. The judgment describes all aspects of framing of charge and emphasize that all details of the offence and charges should be made known to accused person so that he/she can prepare for his/her defense. Police files report under Section 173 (2) and that report should not be translated into charge without judicial scrutiny and if there is material to frame charge then judges should frame charge in their own language and according to legal principles. Minor error which do not cause miscarriage of justice should not vitiate the trial. There should be separate charges for distinct offences.

The speakers discussed various aspects of framing of charge in serious offences under TADA, POTA, CBI cases, financial frauds, money laundering cases and offences under the Organized Crime Control Act in Maharashtra and in some other states. The role of judges in reviewing charges framed by police and prosecutors was emphasized. The speaker discussed Section 226 of the Code of Criminal Procedure where prosecutor present charges against accused. The prosecutor should be asked that on what evidence he/she will prove charges against accused person. The prosecutor should apply his/her mind to charges and then he/she can be of some assistance to judge in framing of proper charge. There is always a possibility that charges are framed merely on heresay.

There is misconception that admissibility of material against accused should not be seen at the stage of Section 227 Cr.P.C. This is wrong approach. The rule that judges must not examine material meticulously at this stage does not signify that material should be taken in record in superficial way. The judges should see the material in a reasonable manner and should make sure that material exist at the first place and charge is not framed on heresay. The judges must see that there are sufficient grounds to proceed against the accused person and the material against him/her is capable of being translated as evidence during trial. The guilt or innocence of accused should not be decided at this stage and judges cannot see any defense evidence at this stage. The

prosecutor should be asked to open the case and present the material against accused. There should not be any vagueness in the material against accused person. The speakers also discussed judgements in cases *State of Orissa v. Devendra Nath Padi* (2005) 1 SCC 568, *State Represented by CBI v. Bangarappa* (2001) 1 SC 222 and *Vijayan v. State Of Kerala* (2010) 2 SCC 398 to highlight the legal position that judges can frame charge when there are grave materials against the accused person. The explicit reason for framing a charge is not mandatory but reasons are required if there is a discharge.

The speakers also focused on complicated issues such as framing of alternating charges together in a case. The use of Section 221 Cr.P.C. which permit framing of alternating charge and the issue that whether such provision can be used to frame charges of offences ingredients of which are diametrically or drastically opposite were discussed. The speakers presented the question that whether the charge under Section 302 of IPC and Section 306 of the IPC can be framed in the alternative on same facts. The speakers said that this cannot be done but it is sought to be done by virtue of the Section 221, Cr.P.C. The speakers opined that recourse to the Section 221, Cr.P.C. in such situation is not a right way. The law is not clear on this issue and the Hon'ble Supreme Court must decide this issue and settle the legal position. The speakers referred to judgments in *Nanakchand v Punjab* AIR 1955 SC 274 and *Chellur MNI Namboodari v Travancore Cochin* AIR 1953 SC 478 in this regard. Section 221, Cr.P.C. is applicable when the facts are not in dispute but when there is doubt whether this will be this offence or another offence then Section 221, Cr.P.C. will not apply. These situations arise in theft, dowry death and suicide and abetment to suicide cases. For instance the Section 304 (B), I.P.C. can additionally be applied in suicide case related to dowry. The evidence may be short of murder in such cases so the Section 304 (B), I.P.C. has been enacted to prevent the situation that cases of murder are not passed off as cases of suicide. Charges under Section 302, I.P.C. and Section 304 (B), I.P.C. can also be framed together by virtue of the Section 221 Cr.P.C. But whether charges under Section 304 (B), I.P.C. and 306, I.P.C. can be framed together is an open issue. The speakers opined that it cannot be done but the issue is open for debate. The speakers added that in case (1997) 5 SCC 348, the Supreme Court has said that the Section 306, I.P.C. is not a minor offence so far the Section 302, I.P.C. is concerned. The speakers opined that a person charged with the Section 302, I.P.C. cannot be convicted under the Section 306, I.P.C. unless trial court frame a distinct charge under the Section 306, I.P.C.

### **Session 3: Appreciation of Evidence in Serious Offences**

The speaker initiated the discussion by emphasizing importance of evidence in serious offences. It was stated that evidence should not be confused with proof because proof is the effect or result of evidence, while evidence is the medium of proof. A reference was drawn to Section 5 of the Indian Evidence Act, while elaborating upon the facts in issue and relevant facts. The speaker further deliberated upon the prominence of admission and appreciation of evidence. During the course of discussion various key concepts such as; document, evidence, proved, disproved, not proved, may presume, shall presume and conclusive proof were deliberated upon at length amongst participating justices. It was suggested by the speaker that assumption cannot be accepted, but legal presumption can be accepted. Thereafter, types of confessions such as; oral, written, voluntary, involuntary, judicial and extra judicial were defined and discussed in depth. A reference was made to Section 24 of the Indian Evidence Act that a confession made by an accused is irrelevant if making of such confession have been caused by any inducement, threat or promise. The case of *Kuna v State of Orissa, (2018) 1 SCC 296* was referred, wherein the Apex court held that expressions proved, disproved and not proved lays down the standard of proof that is in existence or non-existence of circumstances from the point of view of a prudent man as an appropriate standard to measure proof.–Further, various landmark judgments–were highlighted during the course of discussion such as; *Nagubai Ammal v. B Shama Rao, AIR 1956 SC 593*, *Narayanswamy v. State of Maharashtra, AIR 1971 SC 1789*, *Natesan Agenecis Plantations v. State (2019) 15 SCC 70*, *State of Madras v. A. Vaidyanatha Iyer AIR 1958 SC 61*, *Dhanvantrai Balwantrai Desai v. State of Maharashtra AIR 1964 SC575* and *Sat Paul v. Delhi Administration AIR 1976 SC 294*

### **Session 4: Witness Protection and Victim Compensation in Serious Offences**

The speaker commenced the discussion by asserting that courts have to play a proactive and not reactive role when it comes to protection of witness. A reference was made to various provisions of different legislations such as: Terrorist and Disruptive Activities (Prevention) Act, The Prevention of Terrorism Act, The National Investigation Agency Act and The Scheduled Castes

and Tribes (Prevention of Atrocities) Act to provide an insight and acute need to protect witness. A distinction between serious and heinous offences as provided in the juvenile Justice (Care and Protection of Children) Act was highlighted by the speaker. The speaker further deliberated upon various reports of the Law Commission of India and 4<sup>th</sup> report of National Police Commission relevant to the theme. A reference was made to 198<sup>th</sup> report, which carried out an exhaustive study on Witness Identity Protection and Witness Protection programmes, *inter alia*, observing that there was an absence of Witness Protection Program in India, dealing with the protection of victims and witnesses, outside Court proceedings.

Various landmark cases were referred to highlighting the importance of witness protection such as: *Zahira Habibullah Sheikh v. State of Gujarat* 2006 (3) *SCALE* 104, the Apex court expressed that the witnesses were pressurized by the accused to go back on their earlier statements and the trial was totally vitiated; In *National Human Rights Commission v. State of Gujarat and Ors* (2006) 3 SCC 374, the court duly acknowledged the importance of witness protection and highlighted the role to be played by the State. In *Neelam Katara v. Union of India* *ILR* (2003) II Del 377, the court stated that “Witness means a person whose statement has been recorded by the Investigating Officer under section 161 of the Cr.P.C., pertaining to a crime punishable with death or life imprisonment”; In *Mahendra Chawla & Ors. v. Union of India & ors.* 2018 SCC OnLine SC 2679, the Apex court approved the Witness Protection Scheme, 2018 and has asked the Centre, States and Union Territories to enforce it in letter and spirit.

Further, with regard to victim compensation a reference was made to the case *Ankush Shivaji Gaikwads v State of Maharashtra* (2013) 6 SCC wherein the court held that “While the award or refusal of compensation under Section 357 of Code of Criminal Procedure, in a particular case may be within the Court's discretion, there exists a mandatory duty on the Court to apply its mind to the question in every criminal case. Application of mind to the question is best disclosed by recording reasons for awarding/refusing compensation.