



# CRIMINAL JUSTICE ADMINISTRATION

## Fair trial and human rights

National Judicial Academy, January 2023

Geeta Ramaseshan, Advocate, Chennai

# Attributes of fair trial Constitutional Right ( pre trial and at trial)

## *Fair investigation.*

Rights on Arrest- Principles on arrest

▶ Production before a Magistrate within 24 Hours,

Remand- police custody, judicial custody

Confessional statements Validity

▶ Bail and Anticipatory Bail- cancellation of bail

# Constitutional rights Development in Public Interest Litigation

- ▶ Right to a lawyer- at both stages pre trial and trial Up to the Supreme Court
- ▶ Legal Aid Quality of a lawyer
- ▶ Right to Understand trial in a language known to the accused

# Other instances of shifting of burden of proof

- ▶ Narcotics and Psychotropics Substances Act ( NDPS)
- ▶ The Protection of Children from Child Abuses Act ( POCSO)
- ▶ Certain provisions of the Penal Code relating violence against women

# ROLE OF PROSECUTOR

- ▶ Prosecutor dictates the structure of the case
- ▶ Role of Prosecutor ends once the burden shifts to the accused.

When there is a shifting of the burden there is a greater responsibility on the Prosecutor to address the issue on a fair trial basis.

- ▶ While the police, the Courts and the prosecutors have responsibilities to each other, each also has legal duties that separate them from others.
- ▶ Prosecutors are independent of the police and the Courts.

# PRESUMPTIONS

- ▶ Presumptions are rules of evidence and do not conflict with the presumption of the innocence of the accused and the burden on the prosecution to prove the case still remains intact. ( Dhanwantri Rai Desai vs State of Maharashtra 1964 (1) Criminal Law Journal.
- ▶ Presumptions are not evidence but rules of evidence
- ▶ Can be used to remove lacunae in direct evidence

# FAIR INVESTIGATION

- ▶ Confessional statements
- ▶ Police confession inadmissible ( section 25 and 26 Evidence Act)
- ▶ However if there is a discovery in consequence of the information given by the accused that alone is admissible ( Section 27)
- ▶ The statement has to be split into its components and the admissibility has to be separated. It should be distinct.
- ▶

# Certain issues

Multiple First Information Reports or Complaints in different States and cities

Khushboo vs State of Tamil Nadu ( Cases clubbed together and quashed)

Mohammed Zubair Vs State of Uttar Pradesh ( Cases clubbed together trial pending)

( all relate to Freedom of Expression)

# RIGHT TO COMPENSATION

- ▶ Developed under Article 21 of the Constitution
- ▶ Rudal Shah vs State of Bihar ( 1983)
- ▶ Sebastian Hongaray ( 1984)
- ▶ Chairman Railway Board Vs Chandrima Das vs Indian Railways ( victim Bangladeshi National) (2000)
- ▶ Nilabati Behara Vs State of Orissa ( 1993)

# Section 319 Crpc

- ▶ During the enquiry or trial, if it appears from the evidence that a person who is not an accused has committed the offence along with the accused, the court can proceed against the such person
- ▶ Proceedings have to start afresh
- ▶ Witnesses reheard
- ▶ There has to be more than a prima facie case
- ▶ Court has to be prima facie satisfied that such person has committed the offence with the accused
- ▶ The need to prosecute another accused arises only during the course of the enquiry

# DENOVO INVESTIGATION or FRESH INVESTIGATION

Aarushi murder case

The case was closed on lack of evidence with a reference that the suspicion pointed at the father, the parents of the child sought a re investigation, it was rejected

But the Court converted the closure report into a chargesheet and summoned the parents as the accused.

After the trial they were found guilty of the murder by the trial court

High Court has acquitted them. Appeal by the CBI pending in the Supreme Court