DIGEST OF JUDGEMENTS OF SUPREME COURT FOR THE YEAR 2010

INDEX

2010 CRI. L. J. 29

(SUPREME COURT)

(Form : Madras)

V.S. SIRPURKAR AND DEEPAK VERMA, JJ

Criminal Appeal No.1984 of 2008 D/-22.10.2009.

Alagarsamy & Ors. V. State by Deputy Superintendent of Police.

Point of Law : - FIR is not be- all and end- all of the prosecution case. Discrepancies in FIR doest not affect the prosecution case.

"After all, the FIR is not a be-all and end-all of the matter, though it is undoubtedly, a very important document. In most of the cases, the FIR provides corroboration to the evidence of the maker thereof. It provides a direction to the Investigating Officer and the necessary clues about the crime and the perpetrator thereof. True it is that a concocted FIR, wherein some innocent persons are deliberately introduced as the accused persons, raises a reasonable doubt about the prosecution story, however, a vigilant, competent and searching investigation can despoil all the doubts of the Court and on the basis of the evidence led before the court, the court can weigh the inconsistencies in the FIR and the direct evidence led by the prosecution. It is not a universal rule that once FIR is found to be with discrepancies, the whole prosecution case, as a rule, has to be thrown. Such can never be the law. In the decision relied upon by Shri Altaf Ahmad, learned Senior Counsel for the appellants in Sevi & Anr. V. State of Tamilnadu, (AIR 1981 SC 1230) (cited supra), it is clear that the court had thrown the prosecution case not merely because the FIR was doubtful, but as the court found that the prosecution case and the evidence of the eye-witnesses, even otherwise, was liable to be rejected, as they were the partisan witnesses. The court took in to account the dramatic pattern of the evidence of the witnesses and therefore, thrown the prosecution case because of the non-availability of the FIR Book. The importance of the FIR Book can not be underestimated. At the same time, however, if the investigating agency is able to collect reasonable evidence against the accused persons and such evidence stands the scrutiny of the court, then such a discrepancy, as shown in that case, need not be fatal".

2010 CRI. L.J. 2815

(SUPREME COURT)

Dr. MUKUNDAKAM SHARMA AND A. K.PATNAIK, JJ.

Patai alias Krishna Kumar

V.

State of U.P.

Point of Law : -Telephonic message to the Police station with a request to reach the place of occurrence can not be treated as FIR.

If the telephonic message is cryptic in nature and the officer-in-charge, proceeds to the place of occurrence on basis of that information to find out the details of the nature of the offence itself , then it cannot be said that the information, which had been received by him on telephone, shall be deemed to be first information report, the object and purpose of giving such telephonic message is not to lodge the first information report, but to request the officer-in-chare of the police station to reach the place of occurrence. On the other hand, if the information given on telephone is not cryptic and on basis of that information, the officer-in-charge, is prima facie satisfied about the commission of a cognizable offence and he proceeds from the police station after recording such information, to investigate such offence then any statement made by any person in respect of the said offence including about the participants, shall be deemed to be a statement made by a person to the police officer “in the course of investigation”, covered by Section 162 of the Code. That statement cannot be treated as first information report. But any telephonic information about commission of a cognizable offence irrespective of the nature and details of such information cannot be treated as first information report.

(2010) 47 OCR (SC) – 396

Criminal Appeal No. 1500 of 2010, (Arising out of SLP (Crl.) No. 5440 of 2009), Decided on 12th August, 2010.

P. SATHASIVAM AND Dr. B.S. CHAUHAN, JJ.

Kishan Singh (D) Through L.Rs ..... Appellants

V.

Gurpal Sinngh & Ors. ..... Respondents

Point of law :- Code of Criminal Procedure, 1973-Section 154-Prompt and early reporting of an occurrence by the informant with all its vivid details gives an assurance regarding truth if its version-Where there is a delay in lodging of the F.I.R., Court has to look for a plausible explanation for such delay-In absence of such an explanation, the delay may be fatal.

In cases where there is a delay in lodging a FIR, the Court has to look for a plausible explanation for such delay. In absence of such an explanation, the delay may be fatal. The reason for quashing such proceedings may not be merely that the allegations were an after thought or had given a coloured version of events. In such cases the Court should carefully examine the facts before it for the reason that a frustrated litigant who failed to succeed before the Civil Court may initiate criminal proceedings just to harass the other side with mala fide intentions or the ulterior motive of wreaking vengeance on the other party. Chagrined and frustrated litigants should not be permitted to give vent to their prostrations by cheaply invoking the jurisdiction of the Criminal Court. The Court proceedings ought not to be permitted to degenerate onto a weapon of harassment and persecution. In such a case, where an FIR is lodged clearly with a view to spite the other party because of a private and personal grudge and to enmesh the other party in long and arduous criminal proceedings, the court may take a view that it amounts to an abuse of the process on law in the facts and circumstances of the case. (Vide: Chandrapal Singh & Ors. Vs. Maharaj Singh & Anr., AIR 1982 SC 1238; State of Haryana &Ors Vs. Ch. Bhajan Lal & Ors., AIR 1992 SC 604; G. Sagar Suri & Anr. Vs. State of U.P &Ors., AIR 2000 SC 754; and Gorige Pentaiha Vs. State of A.P & Ors., (2008) 12 SCC 531.

2010 CRI. L. J. 4283

(SUPREME COURT)

(From : Punjab & Haryana)

P. SATHASIVAM AND

Dr. B. S. CHAUHAN, JJ.

Criminal Appeal No.763 of 2008, D/- 28-7-2010.

Satpal Singh v. State of Haryana

Point of Law :- (A) Criminal P.c. (2 of 1974), S. 154-FIR-Sexual offences-Delay in lodging FIR has to be considered with different yardstick.

However, no straight-jacket formula can be laid down in this regard. In case of sexual offences, the criteria may be different altogether. As honour of the family is involved, its members have to decide whether to take the matter to the court or not. In such a fact-situation, near relations of the prosecutrix may take time as to what course of action should be adopted. Thus, delay is bound to occur. This Court has always taken judicial notice of the fact that "ordinarily the family of the victim would not intend to get a stigma attached to the victim. Delay in lodging the First Information Report in a case of this nature is a normal phenomenon" [vide Satyapal v. State of Haryana, AIR 2009 SC 2190] : (2009 AIR 2009 SCW 2882)

In State of Himachal Pradesh v. Prem Singh, AIR 2009 SC 1010: (2009 AIR SCW 105), this Court considered the issue at length and observed as under:-

"So far as the delay in lodging the FIR is concerned, the delay in a case of sexual assault, cannot be equated with the case involving other offences. There are several factors which with in the mind of the prosecutrix and her family members before coming to the police station to lodge a complaint. In a tradition bound society prevalent in India, more particularly, rural areas, it would be quite unsafe to throw out the prosecution case merely in the ground that there is some delay in lodging the FIR."

Thus, in view of the above, the delay in lodging the FIR in sexual offences has to be considered with a different yardstick.

AIR 2010 SUPREME COURT 3300

(From: Gauhati)

Criminal Appeal No. 342 of 2007, D/- 15-9-2010.

Sambhu Das alias Bijoy Das & Anr. V. State of Assam.

Point of Law :- (C) Criminal P.C. (2 of 1974), Ss. 154,174-FIR-Recorded after inquest report-Loss of authenticity of FIR- Not a universal rule to be applied in all cases and under all circumstances-Object of preparation of inquest report and its evidentiary value explained.

In the present case, there is the documentary evidence in the form of G.D. entry No. 164 recorded by PW-8 in the General Diary on 07.06.1997 at about 6.30 p.m. That entry was made on the telephonic message/information supplied by Asabudin Mazumdar, PW-3. It is clearly stated therein by PW-3 that a man named Fanilal Das was lying in a serious condition of the side of verandah of Chandan Das. It was on receipt of this information that PW-8 went to the place of occurrence of the incident, drew up the inquest report, made seizure of the material objects and recorded the statement of those present, including PW-1. Admittedly, the inquest report is prepared by PW-8 at 9.30 p.m. and the formal FIR is lodged by PW-1 at 11.30p.m. The learned senior counsel Shri M.N. Rao, by placing his fingers on the admission made by PW-8 in his evidence would contend that, FIR loses its authenticity if it is lodged after the inquest report is recorded. This submission of the learned counsel is a general proposition and may not be true in all cases and all circumstances. This general proposition cannot be universally applied, by holding that if the FIR is lodged for whatever reason after recording the inquest report the same would be fatal to all the proceedings arising out of the Indian Penal Code.

The Inquest Report is prepared under Section 174, Cr.P.C. The object of the inquest proceedings is to ascertain whether a person has died under unnatural circumstances or an unnatural death and if so, what the cause of death is? The question regarding the details as to how the deceased was assaulted or who assaulted him or under what circumstances he was assaulted, is foreign to the ambit and scope of the proceedings under Section 174 Cr.P.C. The names of the assailants and the manner of assault are not required to be mentioned in the inquest report. The purpose of preparing the inquest report is for making a note in regard to identification marks of the accused. The inquest report is not a substantive evidence. Mention of the name of the accused and eye-witness in the inquest report is not necessary. Due to non-mentioning of the name of the accused in the inquest report, it cannot be inferred the FIR was not in existence at the time of inquest proceedings. Inquest report and postmortem report cannot be termed to be substantive evidence and any discrepancy occurring therein can neither be termed to be fatal nor even a suspicious circumstance which would warrant a benefit to the accused and the resultant dismissal of the prosecution case. The contents of the inquest report cannot be termed as evidence, but they can be looked into to test the veracity of the witnesses. When an officer-in-charge of Police Station receives information that a person had committed suicide or has been killed or died under suspicious circumstances, he shall inform the matter to the nearest Magistrate to hold Inquest. A criminal case is registered on the basis of information and investigation is commenced under Section 157 of Cr.P.C and the information is recorded under Section 154 of Cr.P.C and, thereafter , the inquest is held under Section 174, Cr.P.C. This Court, in the case of Podda Narayana v. State of Andhra Pradesh [AIR 1975 SC 1252], has indicated that the proceedings under Section 174, Cr.P.C have limited scope. The object of the proceedings is merely to ascertain whether a person has died in suspicious circumstances or an unnatural death and if so, what is the apparent cause of the death. The question regarding details as to how the deceased was assaulted him or under what circumstances, he was assaulted is foreign to the ambit and scope of proceeding under Section 174. Neither in practice nor in law was it necessary for the Police to mention these details in the Inquest Report. In George v. State of kerala, AIR 19898 SC 1376: (1988 AIR SCW 1255), it has been held that the Investigating Officers is not obliged to investigate, at the stage of Inquest, or to ascertain as to who were the assailants. In Suresh Rai v. State of Bihar, AIR 2000 SC 2207 : (2000 AIR SCW2305), it has been held that under Section 174 read with Section 178 of Cr.P.C., Inquest Report is prepared by the Investigating Officer to find out prima facie the nature of injuries and the possible weapon used in causing those injuries as also possible cause of death.

AIR 2010 SUPREME COURT 3624

(From : Punjab and Haryana)*

P. SATHASIVAM AND Dr. B.S. CHAUHAN, JJ.

Criminal Appeal No.1500 of 2010 (arising out of SLP (Cri.) No.5440 of 2009), D/- 12-8-2010.

Kisan Singh (D) through L. Rs. V. Gurpal Singh & Ors.

Point of Law :- Criminal P.C. (2 of 1974), Ss. 482, 154-Quashing of FIR-Agreement to sell executed in favour of two different persons-FIR lodged by one vendee u/sS. 420, 467, 468, IPC alleging cheating and forgery of signatures of vendors on agreement to sell –Civil Suit for specific performance earlier filed in respect of same property by another vendee was pending –findings of facts recorded by Civil Court in said suit would not have any bearing on criminal case and vice-versa-FIR cannot be quashed relying on said findings-However, since delay in filing FIR was not explained, criminal proceedings amount to an abuse of process of law.

Thus, in view of the above, the law on the issue stands crystallized to the effect that the findings of fact recorded by the Civil Court do not have any bearing so far as the criminal case is concerned and vice-versa. Standard of proof is different in civil and criminal cases. In civil cases it is preponderance probabilities while in criminal cases it is proof beyond reasonable doubt. There is neither any statutory nor any legal principle that findings recorded by the court either in civil or criminal proceedings shall be binding between the same parties while dealing with the same subject-matter and both the cases have to be decided on the basis of the evidence adduced therein. However, there may be cases where the provisions of Sections 41 to 43 of the Indian Evidence Act, 1872, dealing with the relevance of previous Judgments in subsequent cases may be taken into consideration.

In view of the above, the Judgment and order of the High Court dated 13.02.2009 is not sustainable in the eye of law and is liable to be set aside. However, the facts and circumstances of the case do not warrant so. The agreement to sell in favour of the appellants' father is dated 22.10.1988 and sale deed was to be executed and registered by 15.06.1989. The respondent Nos. 1 to 4 filed Civil suit No. 60/1989 in 1989. it is difficult to believe that the appellants' father was not aware of the pendency of that suit. No explanation has been furnished as to why after expiry of the date of execution of the sale deed in favour of Kishan Singh, i.e. 15.06.1989, the appellants' father did not file the suit for specific performance which was subsequently filed on 6.2.1996 as Civil Suit No. 81/1996. Even if it is presumed that Kishan Singh was not aware of pendency of suit filed by the respondent Nos. 1 to 4, no explanation could be furnished that in case, the appellant's father filed another Suit No. 1075/1996 for setting aside the decree dated 8.5.1996 in Civil suit No.. 60/1989, why di8d he wait till the decision of that suit for lodging FIR, as the civil and criminal proceedings could have proceeded simultaneously. The FIR has been filed only on 23.07.2002 i.e. after filing the RFA No. 2488/2002 before the High Court on 15.07.2002. Therefore, there is an inordinate delay on the part of the appellants' father in filing the FIR and there is no explanation whatsoever for the same.

2010 CRI. L. 1899
(SUPREME COURT)
(From : Punjab & Haryana)
P.SATHASIVAM AND H.L.DATTU, JJ.

Point of Law :- Testimony of official witnesses Can not be rejected on ground of non corroboration by independent witnesses – More so when police officer was not able to get public witnesses to associate with raid or arrest of culprit.
H.L.DATTU, J.: --

"The learned Counsel for the appellant has submitted that the evidence of the official witness can not be relied upon as their testimony, has not been corroborated by any independent witness. We are unable to agree with the said submission of the learned counsel. It is clear from the testimony of the prosecution witnesses PW-3 Paramjit Singh Ahalawat, DSP Pehowa, PW-4 Raja Ram, Head Constable and PW -5 Maya Ram, which is on record, the efforts were made by the investigating party to include independent witness at the time of recovery, but none was willing. It is true that a charge under the Act is serious and carries onerous consequence. The minimum sentence prescribed under the Act is imprisonment of 10 years and fine. In this situation, it is normally expected that there should be independent evidence to support the case of the prosecution. However, it is not an inviolable rule. Therefore, in the peculiar circumstances of this case, we are satisfied that it would be travesty of justice, if the appellant is acquitted merely because no independent witness has been produced. We cannot forget that ti may not be possible to find independent witness at all places, at all times. The obligation to take public witnesses is not absolute. It after making efforts which the court considered in the circumstances of the case reasonable, the police officer is not able to get public witnesses to associate with the raid or arrest of the culprit, the arrest and the recovery made would not be necessarily vitiated. The court will have to appreciate the relevant evidence and will have to determine whether the evidence of the police officer was believable after taking due care and caution in evaluating their evidence. In the present case, both trial court and the High Court by applying recognized principle of evaluation of evidence of witnesses has rightly come to the conclusion that the appellant was arrested and Charas was recovered from the possession of the appellant for which he had no licence. We find no good reason to differ from that finding.”

(2010) 47 OCR (SC) – 451

Criminal Appeal No. 1599 of 2010 (Arising out of SLP (Crl.) No. 2077 of 2010) with Criminal Appeal Nos. 1600-1605 of 2010 (Arising out of SLP (Crl.) Nos. 3235-3240 of 2010), Decided on 26th August, 2010.

P. SATHASIVAM AND Dr. B.S. CHAUHAN, JJ.

Babubhai	.....	Appellant
	V.	
State of Gujarat & Ors.	.....	Respondents

Point of Law :- Code of Criminal Procedure, 1973- Section 154-More than one information given about the same incident involving one or more than one cognizable offences-Held, the police officer in-charge of the police station need not enter each piece of information in the diary-All other information given orally of writing after the commencement of investigation will be statements falling under Section 162 Cr.P.C.

In T.T. Antony Vs. State of Kerala & Ors. (2001) 6 SCC181, this Court dealt with a case wherein in respect of the same cognizable offence and same occurrence two FIRs had been lodged and the Court held that there can be no second FIR and no fresh investigation on receipt of every subsequent information in respect of the same cognizable offence or same occurrence giving rise to one or more cognizable offences. The investigating agency has to proceed only on the information about commission of a cognizable offence which is first entered in the Police Station diary by the Officer in-charge under Section 158 of the Code of Criminal Procedure, 1973 (hereinafter called the Cr.P.C.) and all other subsequent information would be covered by Section 162 Cr.PC. for the reason that it is the duty of the Investigating Officer not merely to investigate the cognizable offence reporting the FIR but also other connected offences found to have been committed in the course of the same transaction or the same occurrence and the investigating Officer has to file one or more reports under Section 173 Cr.P.C. . Even after submission of the report under Section 173(2) Cr.P.C., if the Investigating Officer comes across any further information pertaining to the same inside, he can make further investigation, but it is desirable that he must take the leave of the court and forward the further evidence, if any, with further report or reports under Section 173(8) Cr.P.C. in case the officer receives more than one piece of information in respect of the same incident involving one or more than one cognizable offences such information cannot properly be treated as an FIR as it would, in effect, be a second FIR and the same is not in conformity with the scheme of the Cr.P.C.

2010 CRI. L. J. 3862
(SUPREME COURT)
(From : Calcutta)*
Dr. B. S. CHAUHAN AND
SWATANTER KUMAR, JJ.
Criminal appeal No. 1733of 2008, D/- 8-7-2010
Uday Chakraborty & Ors. V State of West Bengal.

Point of Law :- Criminal P.C. (2 of 1974), S. 161- Dowry death-Recording statement of witness-Transfer of investigation to CID-Investigating Officer who took over investigation can record fresh statement of witness-Plea that he ought to have relied on statement recorded by earlier Investigating Officer–Not tenable.

Learned counsel appearing on behalf of the appellants, with some emphasis, contended that the Investigating Officer (PW-30), who took over the investigation at the subsequent stage upon transfer of investigation to the CID, ought to have relied and referred only to the statements recorded under Section 161 of Cr.P.C. by the earlier Investigating Officer. In other words, he had no jurisdiction to record fresh statement of the witnesses. We do not find any force even in this argument. Firstly, for the reason that it is settled principle of law that the statements under Section 161 of Cr.P.C. recorded during the investigation are not substantive piece of evidence but can be used primarily for a very limited purpose that is for confronting the witnesses. If some earlier statements were recorded under Section 161, Cr.P.C. then they must be on the police file and would continue to be part of police file. However, if they have been filed on judicial record they would always be available to the accused and as such no prejudice is caused to anyone. Secondly, when the case was transferred to CID for investigation, it obviously means that in the normal course the authorities were not satisfied with the conduct of the investigation by PW-31 and considered it appropriate to transfer the investigation to a specialized branch i.e CID. Once, the direction was given to PW-30 to conduct the investigation afresh and in accordance with law, we see no error of jurisdiction or otherwise committed by PW-30 in examining the witnesses afresh and filing the charge-sheet under Section 173 of Cr.P.C. stating that the appellants and other accused had committed the offence and were liable to face trial under sections 304-B and 498-A of IPC.

AIR 2010 SUPREME COURT 3692

(From : Gujarat)*

HARJIT SINGH BEDI AND C.K. PRASAD, JJ.

Criminal Appeal No. 15 of 2010,D/- 4-8-2010.

Mukeshbhai Gopalbhai Barot v. State of Gujrat.

Point of Law :- Evidence Act (1 of 1872), S. 32-Dying declaration-Statement of person recorded under S. 161 of Cr.P.C. would be treated as dying declaration after his death.

A bare perusal of the aforesaid provision when read with Section 32 of the Indian Evidence Act would reveal that a statement of a person recorded under Section 161 would be treated as a dying declaration after his death.

(2010) 46 OCR (SC) — 403

Criminal Appeal No. 475 of 2008 with Criminal Appeal No. 550 of 2008, 19th April 2010

P.SATHASIVAM AND R.M. LODHA, JJ

Ram Babu .... Appellant

State of UP .... Respondent

Point of Law :- Nine accused persons were arrested successively within a period of one month and the T.I. parade was conducted after the last arrest. Held, T.I. parade does not suffer from undue and unexplained delay.

"As per Section 9 of the Evidence Act, fact which establish the identity of an accused are relevant. Identification parade belongs to investigation stage and if adequate precautions are ensured, the evidence with regard to test identification parade may be used by the a Court for the purpose of corroboration. The purpose of the identification parade is to test and strengthen trustworthiness. The purpose of the test identification parade is to test and strengthen reason that test identification parade is held under the supervision of a Magistrate to eliminate any suspicion or unfairness and to reduce the chances of testimonial error as Magistrate is expected to take all possible precautions.

We may also consider the contention of the learned counsel of the appellants that as the test identification parade was held belatedly and delay has not been explained sufficiently, the identification of appellants is rendered doubtful. It is true that A-2 was arrested on April 30, 1980 A-5 on May 6 1980 and 1-4 on May 29 , 1980 while the test identification parade was held on June 4, 1980 but the explanation that has been put forth by the prosecution for this delay is that the suspects (9 in number) including the appellants were arrested on different dates and the last of such arrest being of A- 4 on May 29 1980, the test identification parade was held only thereafter. In our view in the facts and circumstances of the case explanation is acceptable and it cannot e said tat test identification parade held on June 4, 1980 suffers from any undue and unexplained delay."

2010 CRI. L. J. 3910

(SUPREME COURT)

(From : Andhra Pradesh)

R.M. LODHA AND A.L. PATNAIL, JJ.

Criminal Appeal no. 1852 of 2008, D/- 27-7-2010.

Siddanki Ram Reddy v. State of Andhra Pradesh.

Point of Law :- Evidence Act (1 of 1872), Ss.3, 9-Eye-witness-Testimony-Necessity of corroboration-Mob attack in crowded place-Witnesses claming to have identified accused-Witnesses get very little time to see accused-Substantive evidence of witnesses need to be corroborated in T.I. parade.

This Court has held in Daya Singh v. State of Haryana (AIR 2001 SC1188 : 2001 AIR SCW 936) (supra) cited by Mr. Reddy that the purpose of test identification is to have corroboration to the evidence of the eye witnesses in the form of earlier identification and that the substantive evidence of a witness is the evidence in the Court and if that evidence is found to be reliable then absence of corroboration by test identification would not be in any way material. In the facts of the present case, a mob attacked the deceased in the crowded corridors of the court of the 2nd additional District Judge and PW-1, PW-5 and PW-6 in their evidence in the court claim to have seen the accused No.1 (appellant) chasing the deceased with an axe and assaulting the deceased with axe on his neck. All these three eye witnesses have also stated that soon after the assault the appellant ran away from the court premises. The three eye witnesses thus saw the assailant for a very short time when he assaulted the deceased with the axe and thereafter when he made his escape from the court premises. When an attack is made on the assailant by a mob in a crowded place and the eye witnesses had little time to see the accused, the substantive evidence should be sufficiently corroborated by a test identification parade held soon after the occurrence and any delay in holding the test identification parade may be held to be fatal to the prosecution case. In Lal Singh & Ors. V. State of U.P., (AIR 2004 SC 299 : 2003 AIR SCW 6133) this Court has held that where the witness had only a fleeing glimpse of the accused at the time of occurrence, delay in holding a test identification parade has to be viewed seriously.

2010CRI.L.J. 3910

(SUPREME COURT)

(From : Andhra Pradesh)

R.M. LODHA AND A.L. PATNAIK, JJ.

Criminal Appeal no. 1852 of 2008, D/- 27-7-2010.

Siddanki Ram Reddy v. State of Andhra Pradesh.

Point of Law :- Evidence act (1 of 1872), S.9-Test Identification parade-Eight suspects arrested in murder case-However, accused-appellant and one other only produced in parade-Parade in not fair-Identification done in parade is not trustworthy.

Further, the test identification parade in this case has not been fair to the appellant. Although eight suspects were arrested, only the appellant and one other were produced before the witnesses at the Test Identification Parade. This gives room for a lot of doubt on the case of the prosecution that none other than the appellant was the assailant. In State of Maharashtra v. Suresh (supra), on which reliance was placed by Mr. Reddy, the Court found that the suspect was permitted to stand anywhere among seven persons and the witnesses were then asked to identify the person whom they saw on the crucial day and on these facts this Court held that the test identification parade was conducted in a reasonably foolproof manner. This is not what has been done in the present case and, therefore, the corroboration of the substantive evidence of PWs 1, 5 and 6 on the identification of the suspect by the test identification parade is not trustworthy.

2010 CRI. L. 2293
(SUPREME COURT)
(From : Madras)

ALTAMAS KABIR AND DEEPAK VERMA, J J.

HDFC Bank Ltd. v. J.J. Mannan @ J.M; Johan Paul and Anr.
Criminal Appeal No. 2415 of 2009 (arising out of SLP(Cri.) No. 4190 of 2006) , D/16-12-2009
ALTAMAS KABIR, J. :- Leave granted.

Point of Law : - Order of Anticipatory Bail remains in force during period of investigation. The benefit of the said order is not available after submission of charge sheet.

"This appeal has been filed by the HDFC Bank Lt. (hereinafter referred to as "the Bank") against the Judgment and order dated 3rd July, 2006 passed by the Madras High Court in Crl. M.P. No. 3784 of 2006 and Crl. O.P. No.15271 of 2006, allowing the application filed by the Respondent No.1 under Section 438 of the Code of Criminal Procedure (Cr.P.C) for grant of anticipatory bail to him. The object of Section 438 Cr.P.C. has been repeatedly explained by this Court and the High Courts to mean that a person should not be harassed or humiliated in order to satisfy the grudge or personal vendetta of the complainant. But at the same time the provisions of Section 438 Cr.P.C.

cannot also be invoked to exempt the accused from surrendering to the Court after the investigation is complete and it charge-sheet is filed against him. Such an interpretation would amount to violation to provisions of Section 438 Cr.P.C, since even though a charge sheet may be filed against an accused and charge is framed against him, he may still not appear before the Court at all even during the trial Section 438 Cr.P.C. contemplates arrest at the stage of investigation and provides a mechanism for an accused to be released on bail should he be arrested during the period of investigation. Once the investigation makes out of a case against him and he is included as an accused in the charge sheet the accused has to surrender to the custody of the Court and pray for regular bail. On the strength of an order granting Anticipatory Bail, an accused against whom charge has been framed cannot avoid appearing before the trial court."

(2010) 47 OCR (SC) – 296
BLAPL No. 5690 of 2009, Decided on 29th June, 2010.

M.M. DAS, J.

In the matter of an application under Section 439 of the Code of Criminal Procedure.

Prasat kumar Sahoo ...... Petitioner

V.

State of Orissa .... Opp. Party

Point of Law :- Code of Criminal Procedure, 1973-Sec. 439-Bail-Parity-Co-accused released on bail stands in a different footing- Held, consideration of parity dose not arise.

Law with regard to dealing with second bail application or consecutive bail applications was vividly dealt with by this Court, referring to various judgments of the Apex Court, in the case of Sri Braja Bhai v. State of Orissa, (2008) 40 OCR 44 : 2008 (II) OLR 161. It would be profitable to mention here that though an argument was advanced on behalf of the petitioner that grant of bail to other co-accused persons is a ground for considering a second bail application of an accused as it is found that the said co-accused persons, who have been released on bail clearly stand on different footing than the petitioner, this Court is not inclined to consider the said contention in the present case. The Supreme Court has categorically laid down in the case of Kalyan Chandra Sarkar v. Rajesh Ranjan alias Pappu Yadav and another (2005) 30 OCR (SC) 455 that even though there is room for filing of a subsequent bail application in case where earlier bail applications have been rejected, the same can be done, if there is change in the fact situation or in law, which requires the earlier views to be interfered with or where the earlier finding has become obsolete. In the said case, the Supreme Court finding that in a previous order, by which the prayer for bail was rejected, it having been held that there was existence of prima facie case against the respondent concluded that there is no scope for re-agitating the said point of the part of the respondent while contending that there is no prima facie case made out against him.

(2010) 46 OCR (SC) - 672

ALTAMAS KABIR AND CYRIAC JOSEPH, JJ

Devendar Kumar & Anr. tec. .... Appellants
State of Haryana & Ors tec. .... Respondents

Point of Law :- Application for police remand. Once the period of first 15 day from the date of arrest expires the Magistrate can not passed orders for police remand.

"It appears that when the appellant No.1, Devender Kumar, was produced before the Judicial Magistrate, Palwal on 8th October, 2008, in connection with case FIR NO.333 dated 18th September, 2008, registered at Hodal Police Station, District Faridabad under Sections 498-A, 406, 506,323 read with Section 34 IPC, an application was made for police remand by an officer of the rank of Assistant Sub-Inspector, which was rejected vide an order dated 8.10.2008 , as the said application was contrary to the provisions of Section 167(1) Cr.P.C. which provide that an application for police remand can be made only by an officer not below the rank of Sub-Inspector. Accordingly, the Appellant No.1 was remanded to judicial custody and was directed to be produced on 22nd October, 2008. Subsequently, however, the position was rectified and as indicated hereinabove, an application was made by the S.H.O, Hodal, on 9th October 2008, praying for grant of police remand of the accused/appellant

Devender Kumar for a period of three days. It was mentioned therein that custodial interrogation of the accused was necessary for recovery of the dowry articles. The said application was dismissed by the learned Judicial Magistrate on 10th October, 2008. It is held that within the first 15 days period of remand, the Magistrate could direct police custody, but if the investigation was not completed within the first 15 days period of remand, no further police remand would be made. It was emphasized that police remand would only be made during the first 15 days after arrest and production before the magistrate and not otherwise."

(2010) 45 OCR-50

ORISSA HIGH COURT

W.P.(Crl.) No.525 of 2009, Decided on 22nd October 2009

I.M. Quddusi A.C.J. and Sanju Panda, J.

Lakshya India .... Petitioner

Vrs.

State of Orissa & Ors, ... Opp. Parties.

Point of law- "Whether the investigating officer has authority to seize /freeze any Bank Account in respect of which investigation is continuing ?
Held- Yes.

"The brief facts of the case are that the petitioner is a company under the name and style of Lakshya Level Marketing Pvt. Ltd which is registered under the Indian Companies Act. 1956 with a website name "Lakshya India". The said company is represented by its Managing Director Naresh Mundhra. One Himansu Sekhar Panigrahi filed an FIR on 25.7.09 before Sahadevkhunta Police Station which was registered as Sahadevkhunta PS Case No.130 of 2009 corresponding to C.T. Case No.1358 of 2009. As per the allegations made in the FIR, the informant after verifying the scheme in the website of the petitioner company invested Rs.15,000/- with an impression that he would get more benefits. As per the scheme, if one deposits Rs.5,000/- with the petitioner company, he would get Rs.75/- in the first month. Rs.150/- in the second month, Rs.300/- in the third month and likewise every month he would get double amount received by him in the proceeding month for one year consecutively and in the process he would get about Rs.2 lakhs. If the said person promotes another person, he would get promotional benefit of Rs.50/- per person. While the matter was investigated by the CID(CB), the investigating authority issued letter dated 30.7.09 to the banks to freeze the petitioner's accounts. The investigating authority also issued instructions to other sister concerns working throughout India not to enter into any banking transaction with the company. The company's various bank accounts have been frozen i.e. HDFC Bank, Andheri West and Malad West, State Bank of India, Malad West and ICICI Bank account, Andheri West and Kandivali West, Mumbai.

The Hon'ble High Court held that the investigating authority has in no way violated the constitutional rights of the petitioners as envisaged under Article 19(1)(g) of the Constitution of India."

(2010) 46 OCR—662

INDRAJIT MAHANTY, J.

In the matter of an application under Section 482 Cr.P.C.

Harischandra Patel --- Peritioner

V.

State of Orissa --- Opp. Party

Point of Law: - In order to substantiate the operation of section 34 I.P.C., the prosecution has to establish that there was a plan or meeting of minds of all the accused persons to commit offence.

In terms of the law laid down by the Supreme Court, it is clear that Section 34 has been enacted on the "principle of joint liability" in the commission of a criminal act. While the section is only a rule of evidence, the same does not create a substantive offence. It is laid down in the aforesaid judgments that the distinctive feature of the Section 34 is the element of participation in action. The liability of one person for an offence committed by another in the course of criminal act perpetrated by several persons arises with in Section 34, if such criminal act is done in furtherance of a common intention of the persons who join in committing the crime. Direct proof of such common intention is seldom available and, therefore, such intention can only be "inferred from the circumstances" appearing from the proved facts of the case and the proved circumstances. In order to bring home the charge of "common intention", the prosecution has to establish by evidence whether direct or circumstantial, that there was a plan or meeting of minds of all the accused persons to commit the offence for which they are charged with the aid of Section 34, be it pre-arrange or on the spur of the moment; but it must necessarily be before the commission of the crime.

(2010) 47 OCR (SC) – 442

Criminal Appeal No. 928 of 2007, Decided on 27th August, 2010.
B. SUDERSHAN REDDY AND SURINDER SINGH NIJJAR, JJ.

Shaikh Sattar ...... Appellant

V.

State of Maharashtra ...... Respondent

Point of Law :- Evidence Act, 1872- Section 11-Plea of alibi-Burden of establishment such plea lay upon the accused and it has to be proved with absolute certainty so as to completely exclude the possibility the presence of the accused at the spot at the relevant time-failure of the plea of alibi would not necessarily lead to the success of prosecution case which has to be independently proved by the prosecution beyond reasonable doubt.

The appellant had given an explanation that in fact on the fateful night and the morning of the death, he was actually preoccupied in reading the Koran at Chikalthana. He had also stated that he had gone to his house after Namaj was over. He stated that he had reached the house at about 7.00 am, and learnt about the accidental death of his wife. The plea of alibi has been disbelieved by the Trial Court.

The Trial Court has recorded that the following facts had been proved:-

(a) There was demand for money from the side of the accused No. 1 from the maternal home of the deceased Shaminabee.
(b) She was being ill-treated by accused No. 1 in connection with that demand.
(c) Accused No. 1 left the maternal home of the deceased Shaminabee along with her prior to about two days of the incident, by exhibiting anger for non-fulfillment of his demand for cash amount.

(d) The dead body of Shaminabee with severe bleeding injuries on her head was found in the house of the accused No. 1 in a room which was having a roof made of clay and wood.

(e) There was absolutely no possibility of falling of stone on the head of the deceased Shaminabee from over the tin sheets shed, which was in front of the house of accused No.1.

(f) Accused No. 1 has given a false explanation and/or he failed to establish the possibility of falling of a stone on the head of the deceased Shaminabee from the roof of his house.

(g) The deceased Shaminabee died because of the head injuries in the form of intracranial hemorrhage and contusion of brain due to fracture of skull bone, which were sufficient in the ordinary course of nature to cause death.

(h) Accused No. 1 did not establish the plea of alibi set up by him.

The High Court, in appeal, re-appreciated the entire evidence and recorded that the parents of the appellant were residing separately from the appellant and his wife. The appellant had failed to establish that he was at the masjid in Chikalthana at the time when the Shaminabee died. The appellant had taken a false plea that at the relevant time he was residing at Chikalthana although his wife and the child were residing at Village Naigaon. The appellant was present in the house at the time when Sk. Nawab had visited the house at about 6 or 6.30 am. but the appellant had claimed that he did not reach the residence till 7.00 am. The report given by Sk. Nawab about the accidental death was not based on personal knowledge. He reported the matter to the police on the basis of the information given to him by Sk. Shamsher. This witness in evidence in Court stated that he had heard about the accidental death from the villagers but he was unable to identify the person who gave the information. The High Court also found that the report Ex. 36 submitted by Sk. Nawab to the police station narrates two stories, which are mutually exclusive of each other. In either case, the location of the stone ought to be about 1 foot away from the terminal head of the tin sheet roof. The dead body was lying in the inner room of the 2 room tenement. A stone was lying by the side of the dead body. This would further falsify the plea of the defence. On the basis of the above, the High Court concluded that the prosecution had established the accused was residing with his wife in the rented premises at Naigaon. It was not open for the defence to say that the prosecution had not prima facie established any case or that the trial court had shifted the onus of proof on the shoulders of the defence at a premature stage. The version given by the appellant in the statement under Section 313 of the Cr. P.C has been disbelieved by both the Trial Court as well as the High Court.

(2010) 46 OCR (SC)-588

V.S. SIRPURKAR AND Dr. MUKUNDAKAM SHARMA, JJ.

Niranjan Panja --- Appellant

V.

State of West Bengal --- Respondent

Point of Law: - Last Seen Theory – For pressing into service the theory of 'last seen together' the prosecution should necessarily establish the time of death.

The second witness was Ram Chand Bar (PW-2) who was a gate keeper in the Gram Panchayat. There is hardly anything in his evidence which is incriminating except that he had seized cloths from the dead body. PW-3, Naryan Das Adhikari spoke about the deceased, himself and the accused being there and their consuming liquor at Bholanath Pal's liquor shop. He, however, claimed that at about 9 p.m. he parted way and proceeded towards left and Haripada and Niranjan proceeded towards right i.e. towards Sarberia. It means that he was also in the company of the deceased till 9 p.m. He had not stated about their taking liquor in his police statement which he had accepted. He admitted that he and Haripada got down from the Bus at Mahisadal on return from Midnapore. He also admitted that no body had witnessed that he had parted company from Haripada and Niranjan at 9 p.m. on 12.12.1988. He could not ever tell as to how far Haripada and Niranjan went together. He admitted that he parted way at a spot in Ghagraa Mouza. He further stated that the house of the deceased was barely five minutes walk away from that spot while the accused's house was about half a mile. It was also in the vicinity of the village itself. The evidence of this witness would be of no consequence, particularly, because the prosecution in this case has not fixed the time of death and there is no evidence led to that effect. Where the prosecution depends upon the theory of 'last seen together', it is always necessary that the prosecution should establish the time of death, which the prosecution has failed to do in this case. The evidence of Ranjit Samanta (PW-4) also is of no consequence.

(2010) 46 OCR - 627.

Orissa High Court

Jail Criminal Appeal No.220 of 1998, Decided on 16th February 2010-08-05

Pradip Mohanty and B.P.Ray, JJ

Garbapu Venkatiramana .... Appellant

V.

State of Orissa .... Respondent

Point of Law :- Leading to discovery u/s 27 of the Evidence Act.

"Let us now examine whether leading to discovery has been proved by the prosecution or not. The apex court has ruled that for application of Section 27 of the Evidence Act the following requirements are necessary to be fulfilled by the prosecution.

(i) The fact of which evidence sought to be given must be relevant to the issue.

(ii) The fact must have been discovered in consequence of same information received from the accused.

(iii) The person giving information must be accused of the offence; and

(iv) He must be in custody of Police.

From the aforesaid, it emanates that discovery of a fact in consequence of information from accused in custody must be proved. Only that portion of the information which relates distinctly to the fact discovered can be proved and rest is inadmissible. In this case, police arrested the accused on 11.3.1997 at about 12 noon. Thereafter, it is alleged, the accused-appellant gave the disclosure statement to the police in presence of P.W.4 vide Ext.5, led them to the half constructed house of one Babu Rao and brought out M.O.I from the heap of bricks and the same was seized vide Ext.6. P.W.4 is said to be the witness to the leading to discovery. But he admitted that he signed the Police paper on the night of occurrence, i.e.10.3.97 and that the accused disclosed the fact, led the Police and M.O.I. was recovered at 2.30 PM. Since there is discrepancy with regard to date of seizure and arrest of the appellant, this court is not inclined to place reliance upon Exts. 5 and 6."

(2010) 45 OCR (SC)-653

Criminal Appeal No.1396-97 of 2008 with Decided on 25th January, 2010

HARJIT SINGH BEDI AND J.M PANCHAL, JJ

Vikram Singh & Ors. . ... Appellants

v.

State of Punjab ... Respondent

Point of Law :- It is incorrect to say that section 27 of Evidence Act. (leading to discovery) would operable only after a formal arrest under section 46(1) of the Cr.PC.

"Mr. Sharn has, however referred us to Section 46(1) of the Code of Criminal procedure to argue that till the appellants had been arrested in accordance with the aforesaid provision they cold not be said to be in police custody. We see that Section 46 deals with 'Arrest how made'. We are of the opinion that word "arrest" used in Section 46 relates to a formal arrest whereas Section 27 of the Evidence Act talks about custody of a person accused of offence. In the present case the appellants were undoubtedly put under formal arrest on the 15th February 2005 whereas the recoveries had been made prior to that date but admittedly, also, they were in police custody and accused in an offence at the time of their apprehension on the 14th February 2005. moreover in the light of the judgment in the Constitution Bench and the observation that in words in Section 27 "accused of any offence" are descriptive of the person making the statement, the submission that this Section would be operable only after formal arrest under Section 46(1) of the Code, cannot be accepted. The argument does not merit any further discussion."

(2010) 45 OCR (SUPREME COURT)- 559

Criminal Appeal No.2041 of 2009 (Arising out of S.L.P.(Crl.) No.2915 of 2007, Decided on 6th November 2009

ALTAMAS KABIR AND CYRIAC JOSEPH, JJ.

Rasiklal Dalpatram Thakkar ... Appellants
Vrs.
State of Gujarat & Ors, ... Respondents.

Point of Law :- When a complaint petition is transmitted by the Magistrate to the police station u/s 156(3) of the Cr.P.C., police can not decide not to conduct investigation on the ground of territorial jurisdiction.

"The Supreme Court held that the Investigating Agency was required to place the facts elicited during the investigation before the Court in order to enable the court to come to a conclusion as to whether it had jurisdiction to entertain the complaint or not. Without conducting such an investigation, it was improper on the part of the Investigating Agency to forward its report with the observation that since the entire cause of action for the alleged offence had purportedly arisen in the city of Mumbai within the State of Maharashtra, the investigation should be transferred to the concerned Police Station in Mumbai. Section 156(3) Cr.P.C. contemplates a stage where the learned Magistrate is not convinced as to whether process should issue on the facts disclosed in the complaint. Once the facts are received, it is for the Magistrate to decide his next course of action. In this case, there are materials to show that the appellant had filed his application for loan with the Head Office of the Bank at Ahmedabad and that the processing and the sanction of the loan was also done in Ahmedabad which clearly indicates that the major part of the cause of action for the complaints arose within the jurisdiction of the Chief Metropolitan Magistrate, Ahmedabad. It was not, therefore, desirable on the part of the Investigating Agency to make an observation that it did not have territorial jurisdiction to proceed with the investigation, which was required to be transferred to the Police Station having jurisdiction to do so."

(2010) 46 OCR (SC)-457

K.G.BALAKRISHNA, CJI, R.V. RAVEENDRAN AND J.M. PANCHAL, JJ

Smt. Selvi & Ors. ... Appellants

v.

State of Karnataka ... Respondent

Point of Law :- Involuntary administration of scientific techniques such as Narcoanalysis, Polygraph and Brain Electrical Activation Profile (BEAP) violates the right against self incrimination in Article 20 (3) of the Constitution of India.

"In our considered opinion, the compulsory administration of scientific technique such as narcoanalysis, polygraph examination and Brain Electrical Activation Profile (BEAP) test violates the 'right against selfincrimination. This is because the underlying rationale of the said right is to ensure the reliability as well as voluntariness of statement that are admitted as evidence. This Court has recognized that the protective scope of Article20 (3) extends to investigative stage in criminal cases and when read with Section 16 (2) of the Code of Criminal Procedure, 1973 it protects accused persons, suspects as well as witnesses who are examined during an investigation. The test result cannot be admitted in evidence if they have been obtained through the use of compulsion. Article 20(3) protects an individuals choice between speaking and remaining silent, irrespective of whether the subsequent testimony proves to be inculpatory or exculpatory. Article 20(3) aims to prevent the forcible conveyance of personal knowledge that is relevant to the facts in issue. The results obtained from each of the impugned tests are a testimonial character and thy cannot be categorized as material evidence.

The test of these guidelines has been reproduced below :

(i) No Lie Detector Test should be administered except on the basis on consent of the accused. An option should be given to the accused whether he wishes to avail such test.

(ii) If the accused volunteers for a Lie Detector Test, he should be given access to lawyer and the physical, emotional and legal implication of such a test should be explained to him by the police and his lawyer.

(iii) The consent should be recorded before a Judicial Magistrate.

(iv) During the hearing before the Magistrate, the person alleged to have agreed should be duly represented by a lawyer.

(v) At the hearing, the person in question should also be told in clear terms tha the statement that is made shall not be a confessional statement to the Magistrate but will have the status of a statement made to police.

(vi) The Magistrate shall consider all factors relating to the detention including the length of detention and nature of interrogation.

(vii) The actual recording of the Lie Detector Test shall be done by an independent agency (such as a hospital) and conducted in the presence of lawyer.

A full medical and factual narration of the manner of the information received must be taken on record."

AIR 2010 SUPREME COURT 1974
(From: Karnataka)

K.G. BALAKRISHNAN, C.J.I., R.V. RAVEENDRAN AND J. M. PANCHAL, JJ.

Smt. Selvi & Ors.
V.
State of Karnataka.

Point of Law:- DNA profiling of the accused is expressly permitted by Sec. - 53 and 54 of the Cr.P.C. Bar under Article 20(3) of Constitution of India does not apply since it is not a testimonial act.

In the present case, written submissions made on behalf of the respondents have tried to liken the compulsory administration of he impugned techniques with the DNA profiling technique. In light of this attempted analogy, we must stress that the DNA profiling technique has been expressly included among the various forms of medical examination in the amended explanation to Sections 53,53-a and 54 of the Cr.P.C. It must also be clarified that a 'DNA profile' is different from a DNA sample which can be obtained from bodily substances. A DNA profile is a record created on the basis of DNA samples made available to forensic experts. Creating and maintaining DNA profiles of offenders and suspects are useful practices since newly obtained DNA samples can be readily matched with existing profiles that are already in the possession of law-enforcement agencies. The matching of DNA samples is emerging as a vital tool for linking suspects to specific criminal acts. It may also be recalled that the as per he majority decision in *Kathi Kalu Oghad*, (AIR 1961 SC 1808) (supra) the use of material samples such as fingerprints for the purpose of comparison and identification does not amount to a testimonial act for the purpose of article 20(3). Hence, the taking and retention of DNA samples which are in the nature of physical evidence does not face constitutional hurdles in the Indian context. However, if the DNA profiling technique is further developed and used for testimonial purposes, then such uses in the future could face challenges in the judicial domain.

(2010)45 OCR (SC)-363

Criminal Appeal No. 505 of 2006 Decided on 11th February 2009

Dr. ARIJIT PASAYAT AND Dr. M.K.SHARMA, JJ

M.Gopalkrishna ... Appellant

V

State by Addl. S.P. CBI, B.S & F.C Bangalore ... Respondent

Point of Law :- Matter of sanction u/s 197 Cr.P.C

Dr. ARIJIT PASAYAT, J – Leave granted in special leave petitions.

"For the purpose of sanction under Section 197 of the Code the accused will be such public servant who cannot be removed from his office except by or with sanction of the Government. Further, the accused will not only be a public servant of above description but the offence challenged to have been committed by such officer must have been committed while such public servant had been acting or purporting to act in the discharge of his official duties.

The Banking Regulation Act, 1949 shall prevail over the Scheme which was formulated under Section 9 of the Banking Companies (Acquisition and transfer of Undertaking) Act, 1970. This Scheme cannot have the overriding effect against the Banking Regulation Act. In this view the appellant cannot claim that he is a public servant coming within the meaning of a 'public servant' not removable from his office, save by or with the sanction of the Government. In view of the specific provisions available for the removal of the Chairman under the Banking Regulation Act it is prima facie clear that the appellant will not come within the scope of Section 197 of the Code."

(2010) 46 OCR - 614

Rohit Kumar That --- Petitioner

V.

State of Orissa & Anr. --- Opp. Parties

Point of Law: - Petitioner, a Police officer while investigating in to a case conducted search in the house of the complainant to trace the accused. Allegations of committing acts which exceeds his official duty. Sanction u/s 197 Cr.P.C is essential for prosecution of the police officer.

In the case of state of **Bihar v. Kamal Prasad Singh & Ors.**, AIR 1998 SC2379, there was an allegation that on 30-3-1982, the police party headed by the accused raided the house of the complainant without a search warrant and respondent Nos. 2 to 4 in the said case assaulted her wife and abused her and other inmates. The Supreme Court held that in the facts of the case, no cognizance could be taken without a proper sanction from the Government.

In the case of **Abdul Wahab Ansari v. State of Bihar & Anr.,** AIR 2000 SC 3187, which was a case under Section 302 and other sections of the Indian Penal Code, where allegation was made that during the course of magisterial duty, the accused gave orders of firing without authority and in the said process one person died and two were seriously injured, the Supreme Court held that the Legislative mandate engrafted in

Sub-section (1) of Section 197 debars a Court from taking cognizance of an offence except with a previous sanction where the acts complained of are alleged to have been committed by a police servant in discharge of his official duty or purporting to be in the discharge of his official duty and such public servant is not removable from his office save by or with the sanction of the Government. The question of applicability of section 197 Cr.P.C. and the consequential ouster of jurisdiction of the Court to take cognizance without a valid sanction is genetically different from prima facie constitution of offence alleged.

In Rizwan Ahmed Javed Shaikh & Ors. V. Jammal Patel & Ors., AIR 2001 SC 2198, the supreme Court reiterated the position with regard to the test to be applied to attract the applicability of Section 197(3) Cr.P.C. The facts of the case in the decision rendered in the case of **Sri Satyabadi Padhi v. Nepal Chandra Kar & Ors**., 2001 (1) OLR 238 are also similar to the facts of the present case, where the Court relied upon various earlier decisions of this Court, more specifically, on the decision of **Kremjit Mohananda v. Mohanpani Karua & Anr.,** 1995 (II) OLR 284 in which it was held that a middle line which is adopted to find out whether the protection under Section 197 Cr.P.C. would be available to the accused or not is that it is not every offence committed by a public servant in course of performance of his official duty entitles him to the protection under Section 197 Cr.P.C. but what comes under the protective umbrella is an act constituting an offence which directly or reasonably connects with his official duty. Protection of Section 197 Cr.P.C. does not extend to acts done purely in a private capacity by a public servant and the allegation so made might be in excess of performance of official duty, but cannot be said to be totally unconnected with the official duty or cannot be held to be inn non-performance of his official duty.

(2010) 46 OCR (SC)-437

P.SATHASIVAM AD DEPPAK VERMA, JJ
General Insurance Council & Ors ... Petitioners
V.
State of Andhra Pradesha of Ors. ... Respondent

Point of Law :- Allegations that the police, investigating agency and the prosecuting agency are not taking appropriate and adequate steps for

compliance of directions issued by this Apex Court – A need has arisen for giving further directions so as to clear the clouds and iron out the creases – Court issue further direction with regards to seize vehicles.

(A) In sunderbhai Ambalal Desai case (2003) 24 OCR(SC) 444 this Court held,

1. Owner of the article would not suffer because of its remaining unused or by its misappropriation :

2. Court or the police would not be required to keep the article in safe custody;

3. if the proper panchnama before handing over possession of the article is prepared, that can be used in evidence instead of its production before the Court during the trial. If necessary, evidence could also be recorded describing the nature of the property in detail; and

4. this jurisdiction of the Court to record evidence should e exercise promptly so that there may not be further chance of tampering with articles.

5. For this purpose, if material on recor indicates that such articles belong to the complaint at whose house theft, robbery or dacoity has taken place, then seized articles be handed over to the complaint after :

(i) preparing detailed proper panchnama of such artcles;

(ii) taking photographs of such articles and a bond that such articles would be produced if required at the time of trial: and

(iii) after taking proper security.:”

6. In our view, whatever be situation, it is of no use to keep such seized vehicles at the police stations for a long period. It is for the Magistrate to pass appropriate orders immediately by taking appropriate bond and guarantee as well as security for return of the said vehicles.

7. In case where the vehicle is not claimed by the accused, owner or the insurance company or by a third person, then such vehicle may be ordered to be auctioned by the Court. If the said vehicle is insured with the insurance company then the insurance company be informed by the court to take possession of the vehicle which is not claimed by the owner or a third person. If the insurance company fails to take possession, the vehicles may be sold as per the direction of the Court. The Court would pass such order within a period of six months from the date of production of the said vehicle before the

Court. In any case, before handing over possession of such vehicles, appropriate photographs of the said vehicle should be taken and detailed panchnama should be prepared.

8. In case where the vehicle is not claimed by the accused, owner, or the insurance company or by a third person, then such vehicle may be ordered to be auctioned by the Court. If the said vehicle is insured with the insurance company then the insurance company be informed by the Court to take possession of the vehicle which is not claimed by the owner or a third person. If Insurance company fails to take possession, the vehicles may be sold as pe the direction of the Court. The Court would pass such order within a period of six months from the date of production of the said vehicle before the Court. In any case, before handing over possession of such vehicles appropriate photographs of the said vehicle should be taken and detailed panchnama should be prepared.

9. For articles such as seized liquor also prompt action should be taken in disposing it of after preparing necessary panchanama. If samples is required to be taken , sample may be kept property after sending it to the chemical analyzer, if required. But in no case, large quantity of liquor should be stored at the police station. No purpose id served by such storing.

10. Similarly, for the narcotic drugs also for its identification, procedure under Section 451 Cr.P.C. should be followed for recording evidence and disposal. Its identity could be on the basis of evidence recorded by the Magistrate. Samples also should be sent immediately to the chemical Analyser so that subsequently, a contention may not be raised that the article which was seized was not the same."

2010 (II) OLR- 237

B.K. PATEL, J.

Sk. Faiyaz .... Appellant

Versus

State of Orissa .... Respondent

Point of Law: - NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ACT, 1985-Secs. 52, 55 and 57 – Conviction under Section 20 (b) (ii) (C) of the Act – Appeal – No evidence on record that the brass seal alleged to have been used by PW-1 at the spot was not available with PW-1 during the period when the allegedly seized articles and sample packets were in his custody – Section 52 and 55 of the Act provide for safe custody of the seized articles in the police station – No explanation for non-compliance of said provisions. PW-1 has also not whispered a word regarding compliance of provision u/s. 57 of the Act relating to submission of report regarding particulars of arrest and seizure made under the Act within 48 hours to his immediate superior officer – Held, no basis to sustain the charge against appellants – Appellants entitled to acquittal.

Thus, there is no evidence on record that the brass seat alleged to have been used by P.W. 1 at the spot was not available with P.W.1 during the period when the allegedly seized articles and sample packets were in his custody., though specific direction was made by the Court to produce the articles in Court on 2.4.2002, P.W.1 appears to have dealt with the sample packets on his own toll 4.4.2002. sections 52 and 55 of the N.D.P.S Act provide for safe custody of the seized articles in the Police Station. There is no explanation for non- compliance of said provisions. P.W. 1 has also not whispered a word regarding compliance of provision under Section 57 of the N.D.P.S. Act relating to submission of report regarding particulars of arrest and seizure made under the Act within 48 hours to his immediate superior officer.

In **Rama Chandra Mohanty v. State of Orissa:** 2007 (I) OLR 522 in view of lack of evidence regarding keeping the brass seal used for sealing in the custody of the independent witness as well as non-production of the brass seal in Court, it was held that possibility of tampering with the seal put on the sample packet could not be ruled out. It was further held that non-compliance of the provision under Section 52 of the N.D.P.S. Act in not depositing the seized articles with the Officer- in-charge of the nearest Police Station also creates suspicion. In **Kanduri Charan Mohanty v. State of Orissa :** CLT 2003 (Supp.) (CRl.) 210 it was held by this Court that non-production of the seized articles before the Officer-in-Charge of the nearest Police Station in contravention of Section 52 (3) of the N.D.P.S. Act, non –production of the seal for comparison during trial and failure the report regarding detection the superior authority without any explanation created doubt relating to detection and genuineness of the case in **Kanduri Sahoo v. State of Orissa:** 83 (1997) C.L.T. 126 it was held by this Court that in absence of material to establish that the seized articles were kept in safe custody, it is difficult to hold that the article seized from the possession of the accused was the very same article which was sent for chemical examination. In **Siba Bahadur Thapa v. State of Orissa :** 1997 CRI L.J. 3487 it was held that non-compliance of the provisions under Section 57 of the N.D.P.S. Act to send a full report with 48 hours to the immediate official superior by the officer effecting the search and seizure affects the veracity of such officer adversely.

In view of the above, prosecution has failed to establish proper sealing and safe custody of the seized articles so as to establish beyond reasonable doubt that articles recovered from the appellants were subject matter of chemical examination under examination reports Ext. 3 to Ext.3/3. also veracity of P.W.1, as a reliable witness, has been materially corroded due to non-compliance of procedure provided under the Act under Sections 52, 55 and 57 of the N.D.P.S. Act. Therefore, there is no basis to sustain the charge against the appellants. They are entitled to be acquitted.

2010 CRI. L. J. 2867
(SUPREME COURT)
B. SUDERSHAN REDDY AND AFTAB ALAM, JJ.
Utpal Das & Anr.
V.
State of West Bengal.

Point of Law: - Victim is a married grown up woman blessed with two children. Absence of injuries on her private part can not be a ground to hold that she had consent for the sexual intercourse.

One more aspect that requires our consideration is as to whether the medical evidence does not support the prosecution's case? The High Court rightly expressed its indignation as to the manner in which the trial court completely misread the vital medical evidence. Dr. A. Chakraborty, (PW-8) examined the victim on 29-4-1984. On examination he opined that the victim is habituated to sexual intercourse and, therefore could not express his firm opinion in his report about the commission of rape at the time of medical examination. But in the evidence he clearly stated after considering the repot of FSL regarding stains on victim's clothing, that here is sufficient proof of recent sexual intercourse. The vaginal swab and smear were sent to Chemical Examiner. Based on the FSL report and the report of Serologist (Ex. 7) he found that the semen was present in the vaginal swab of the victim. We fail to appreciate as to how and in what manner the medical evidence supports the case of the defence.

The leaned counsel for the appellants however, submitted that the medical examination report of the victim shows that no injuries were found on her private parts or on any part of her body. We are required to note that victim Sita Rani Jha is a married grown up lady and blessed with two children and in such circumstances the absence of injuries of her private part is not of much significance. The mere fact that no injuries were found on private parts of her body cannot be the ground to hold that she was not subjected to any sexual assault. The entire prosecution story cannot be disbelieved based of that singular assertion of the learned counsel. In this regard another submission was made by the learned counsel for the appellants that the sexual intercourse, if any, was with the consent of the victim. According to him it was consensual sexual intercourse. This proposition canvassed for the first time across the bar is absolutely untenable and unsustainable. There is not even a suggestion made to the victim that she has consented to sexual intercourse. The sequence of events clearly apparent from the evidence of PW-1, PW-6, and PW-14, leading to the sexual assault completely rules out the possibility of consensual sex. We have no hesitation to reject the submission.

2010 CRI.L.J. 2828
(SUPEREME COURT)
K. G. BALAKRISHNAN C.J.I.,
DEEPAK VERMA AND Dr. B. S. CHAUHAN, JJ.
S. Khushboo
V.
Kanniammal & Anr.

Point of Law: - Adults willingly engaging themselves in sexual relations outside marital settings with exception to adultery u/s 497 of the I.P.C. is not an offence.

"Offence" means 'an act or instance of offending'; 'commit an illegal act' and illegal means, 'contrary to or forbidden by law'.

"Offence" has to be read and understood in the context as it has been prescribed under the provisions of Sections 40, 41 and 42 IPC which cover the offences punishable under I.P.C. or under special of local law or as defined under Section 2(n) Cr.P.C or Section 3(38) of the General Clauses Act, 1897 (vide Proprietary Articles Trade Association v. Attorney General for Canada AIR 1931 PC94; Thomas Dana v. State of Punjab AIR 1959 SC375; Jawala Ram &Ors. V. The State of Pepsu (now Punjab) &ors. AIR 1962 SC 1246; and Standard Chartered Bank & Ors. v. Directorate of Enforcement & Ors. AIR 2006 SC 1301.

While it is true that the mainstream view in our society is that sexual contact should take place only between marital partners, there is no statutory offence that takes place when adults willingly engage in sexual relations outside the marital setting, with the exception of 'adultery' as defined under Section 497 IPC. At this juncture, we may refer to the decision giver by this Court in Lata Singh v. State of U.P & Anr., AIR 2006 SC 2522, wherein it was observed that a live-in relationship between two consenting adults of heterogenic sex does not amount to any offence (with the obvious exception of 'adultery'), even though it may be perceived as immoral. A major girl is free to marry anyone she likes or "live with anyone she likes". In that case, the petitioner was a woman who had married a man belonging to another caste and had begun cohabitation with him. The petitioner's brother had filed a criminal complaint accusing her husband of offences under Sections 366 and 368 IPC, thereby leading to the commencement of trial proceedings. This Court had entertained a writ petition and granted relief by quashing the criminal trail. Furthermore, the Court had noted that 'no offence was committed by any of the accused and the whole criminal case in question is an abuse of the process of the Court'.

(2010) 46 OCR—662

INDRAJIT MAHANTY, J.

In the matter of an application under Section 482 Cr.P.C.

Harischandra Patel	---	Petitioner
	V.	
State of Orissa	---	Opp. Party

Point of Law: - In order to substantiate the operation of section 34 I.P.C., the prosecution has to establish that there was a plan or meeting of minds of all the accused persons to commit offence.

In terms of the law laid down by the Supreme Court, it is clear that Section 34 has been enacted on the "principle of joint liability" in the commission of a criminal act. While the section is only a rule of evidence, the same does not create a substantive offence. It is laid down in the aforesaid judgments that the distinctive feature of the Section 34 is the element of participation in action. The liability of one person for an offence committed by another in the course of criminal act perpetrated by several persons arises with in Section 34, if such criminal act is done in furtherance of a common intention of the persons who join in committing the crime. Direct proof of such common intention is seldom available and, therefore, such intention can only be "inferred from the circumstances" appearing from the proved facts of the case and the proved circumstances. In order to bring home the charge of "common intention", the prosecution has to establish by evidence whether direct or circumstantial, that there was a plan or meeting of minds of all the accused persons to commit the offence for which they are charged with the aid of Section 34, be it pre-arrange or on the spur of the moment; but it must necessarily be before the commission of the crime.

2010 (II) OLR (SC) -430

P. SATHASIVAM AND Dr. B.S. CHAUHAN, JJ.

Satpal Singh	.....	Appellant
	V.	
State of Haryana	.....	Respondent

Point of Law: - PENAL CODE, 1860 – Sec.90 – 'Consent' – A consent given under fear / coercion or misconception / mistake of fact is not a consent at all – Consent is different from submission.

It can be held that a woman has given consent only if she has freely agreed to submit herself, while in free and unconstrained possession of her physical and moral power to act in a manner she wanted. Consent implies the exercise of a free and untrammeled right to forbid or withhold what is being consented to, it always is a voluntary and conscious acceptance of what is proposed to be done by another and concurred in by the former. An act of helplessness on the face of inevitable compulsions is not consent in law. More so, it is not necessary that there should be actual use of force. A threat or use of force is sufficient.

The concept of 'Consent' in the context of Section 375 IPC has to be understood differently, keeping in mind the provision of Section 90 IPC, according to which a consent given under fear / coercion or misconception / mistake of fact is not a consent at all. Scheme of Section 90 IPC is couched in negative terminology. Consent is different from submission. [Vide **Uday Vs. State of Karnataka** AIR 2003 SC 1639; **Deelip Singh @**

Dilip Kumar Vs. State of Bihar[1]

AIR 2005 sc 203; And

Yedia Srinivasa Rao Vs. State of A.P. (2006) 11

SCC 615]

[1]2005 (I) OLR (SC) 181

2010 (II) OLR-220

B. K. PATEL, J.

CRLMC No. 2136 of 2008

This is an application under Section 482 of the Code of Criminal Procedure.

Benu Kumar Ghose ..... Petitioner

Versus

Harekrushna Mahasuara .... Opp. Party

Point of Law: -PENAL CODE, 1860-Secs. 406 and 420- Cognizance of offences under – Quashing of – Neither the complaint petition nor any of the circumstances indicate existence of the dishonest intention of the part of the petitioner either at the time of execution of agreement or thereafter- Dispute between the parties relates to allegation of breach of contractual obligation under the agreement to sale- Existence of dishonest intention of one of the essential ingredients of offence of cheating punishable under Sec. 420 IPC as well as misappropriation of cheating punishable under Sec. 406, IPC – No offence under Sec. 420 IPC can be said to have been made out- Proceeding quashed.

Neither the complaint petition nor any of the circumstances narrated above indicate existence of the dishonest intention on the part of the petitioner either at the time of execution of agreement or thereafter. There is absolutely no doubt that the dispute between the parties relates to allegation of breach of contractual obligation under the agreement to sale dated 19.4.2004. Existence of dishonest intention is one of the essential ingredients of offence of cheating punishable under Section 420 I.P.C. as well as misappropriation punishable under Section 406, IPC. It has been reiterated in V.Y. Jose & Anr. (Supra) that for the purpose of constituting an offence of cheating, the complainant is required to show that the accused had fraudulent or dishonest intentional at the time of making promise or representation. Even in a case where allegations are made in regard to failure on the part of the accused to keep his promise, in absence of culpable intention at the timed of making initial promise being absent, no offence under Section 420 of the IPC can be said to have been made out.

It is well settled that where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prime facie constitute any offence or made out a case against the accused. High Court can exercise inherent power under Section 482, Cr.P.C. in order to prevent abuse of the process of Court or otherwise to secure the ends of justice for quashing the criminal proceeding. A matter which essentially involves dispute of a civil nature should not be allowed to be the subject matter of criminal offence, the latter being not a shortcut of executing a decree which is non-existent. The superior Court with a view to maintain purity in the administration of justice, should not allow abuse of the process of Court. They have a duty in terms of Section 483 of the Cr.P.C. to supervise the functioning of the Trial Courts. Placing reliance upon the decision in **Mahindra & Mahindra Financial Services Ltd. and another v. Rajiv Dubey,** 2006 (Supp.I) OLR 240 this Court has pointed out in Lilasons Breweries Limited & another (Suppa) that in the absence of any material on record or even any allegation to the effect that the accused persons fraudulently or dishonestly deceived or dishonestly misappropriated or converted to their own use or used, or disposed of any amount, the order of taking cognizance was found to have passed without application of mind. Continuance of the proceeding on the basis of such order was, therefore, held to be an abuse of process of Court.

AIR 2010 SUPREME COURT 2352

P. SATHASIVAM AND SWATANTER KUMAR, JJ.

Sidhartha Vashisht @ Manu Sharma.

V.

State (N.C.T. of Delhi).

Point of Law: - In case of circumstantial evidence, phone calls made by various accused persons to one another is an important piece of evidence.

The details of the phone numbers subscribed to Piccadily group are Ex. PW 45/C and the bill printouts are 45/C were received by the police vide Ex. PW 45/D. PW-66, Maj. AR. Satish has deposed that Mobile No. 9811100237,which was in the name of Amardeep Singh Gill and the printout of the same is exhibited PW-66/B. he also deposed the Mobile No. 9811096893 was being purchased against a cash card. The printout of the calls for the month of April, 1999 are in Ex. PW-66/D. He further proved that Mobile No. 9811068169 stood in the name of Alok Khanna and its printout is Ex. PW 66/C.

PW -32, Ved Prakash Madan proved that Tel. No. 521491 was installed at PCO, Ambala and its printout is Ex. PW-32/B. PW-33, PV. Mathew has corroborated the version of PW-32 and has proved that the calls were made to USA. PW-15, Sumitabh Bhatnagar stated that Tata Sierra No.HR26N4348 and Tata Sierra MP-04-2634 were allotted to Amardeep Singh Gill and Alok Khanna respectively. Similarly Mobile Nos. 981110237and 9811068169 were also allotted to Amardeep Singh Gill and Alok Khanna respectively. PW-51, Sh. Rajiv Talwar has stated that Tel. No. 660500 was installed in the office of Harvinder Chopra. PW-39, Mansvi Mittal STD/PCO Booth Inderlok- Mittal Communication Tel. No. 5157498 is installed at this booth. Calls made remain in memory for a period of one month. Police has seized record of 04.05.1999 and 05.05.1999 in respect of Tel. No. 0017184768403 to which calls were made. Figure 00 is international access code and 171 is the code call to be made to USA. 001 is also code call for America. Printout dated 04.05.1999 is Ex.PW-39/1 and dated 05.05.1999 is Ex. PW-39/2 to 7, seizure Memo dated 27.05.1999 is Ex. 39/A where entries Ex. PW -39/3-7 were made was present. PW-40, Ayub Khan, PCO/STD/ISD Booth Okhla Phase II tel. No. 6924575 was installed on 10.05.1999. He also furnished similar details. Printout slips were seized vide ex. PW-40. A and print out is Ex. PW-40/1-3 respectively. The testimony of PW-85, SI Pankaj Malik also corroborates the version of the aforesaid witnesses.

The above phone call details show that the accused were in touch with each other which resulted in destruction of evidence and harboring. Thus the finding of the trial Court that in the absence of what they stated to each other is of no help to the prosecution is an incorrect appreciation of evidence on record. A close association is a very important piece of evidence on the case of circumstantial evidence. The evidence of phone calls is a very relevant and admissible piece of evidence. The details of the calls made by the various accused to one another are available in Ex. PW-66/B. PW-66/D and PW-66/C.

Effect of leading question by Public Prosecutor:

(2010) 47 OCR (SC) – 289

Criminal Appeal No. 854 of 2004 with Criminal Appeal No. 1411 of 2010 (Arising out of SLP (Crl.) No. 4389 of 2004), Decided on 3rd August, 2010.

R.M.LODHA AND A.K. PATNAIK, JJ.

Amar Singh	.....	Appellant
	V.	
State of Rajasthan	.....	Respondent

Penal code, 1860-Section 498-A, 304-B- A prosecution witness who merely uses the word "harassed" or "tortured" and does not describe exact conduct of the accused which, according to him , amounted to harassment or torture may not be believed by the Court in cases under Section 498-A and 304-BI.P.C. –Overacts attributed to persons other than the husband are required to be proved beyond reasonable doubt and by mere conjectures and implications such relations can not be held guilty for the offence relating to dowry deaths.

Pw -2 (father of the deceased) has not stated in his evidence before the Court that Jagdish and Gordhani, in any way, subjected the deceased to any harassment or cruelty. PW-4 (mother of the deceased), however, has stated that the deceased used to complain about the demand of a Scooter by Girdhari and harassment by her mother-in-law Gordhani, but PW-4 has not stated what was the exact act of Gordhani by which the deceased felt harassed. The evidence of PW-5 (brother of the deceased) is that whenever the deceased used to come home she used to complain that her in-laws have been teasing her and they were demanding a Scooter or Rs.25,000/- for a shop and that when the deceased came home one month prior to her death, she complained that her mother-in-laws and all other in-laws used to torture her and taunt her that she did not bring anything, but PW-5 has not described the exact conduct of the mother-in-law and other in-laws on account of which the deceased felt tortured and taunted. On the other hand, the evidence of PW-4 is clear that Amar Singh used to taunt her that she has come from a hungry house. Thus, there was evidence in the case of Amar Singh about his exact conduct which caused harassment to the deceased but there was no such evidence in the case of Jagdish and Gordhani. A prosecution witness who merely uses the word "harassed" or "tortured" and does not describe the exact conduct of the accused which, according to him, amounted to harassment or torture may not be believed by the Court in cases under Section 498-A and 304-B I.P.C. For this reason, the High Court has taken a view that the charges against Jagdish and Gordhani have not been established beyond reasonable doubt and that their case is distinguishable from that of Amar Singh.

2010CRI.L.J.3880

(SUPREME COURT)

(From : Calcutta)

P. SATHASIVAM AND

Dr. B. S. CHAUHAN, JJ.

Criminal Appeal No.1247 of 2008, D/- 26-7-2010

Bipin Kumar Mondal v. State of West Bengal.

Point of Law :- Penal Code (45 of 1860), S. 300-Evidence act (1 of 1872), S. 8-Murder – Motive-Proof-Not essential when direct evidence establishes crime-However, in cases based on circumstantial evidence, motive does assume great importance-But even in those cases to dislodge entire prosecution story would be Giving motive undue importance.

It is settled legal proposition that even if the absence of motive as alleged is accepted that is of no consequence and pales into insignificance when direct evidence establishes the crime. Therefore, incase there is direct trustworthy evidence of witnesses as to commission of an offence; the motive part loses its significance. Therefore, if the genesis of the motive of the occurrence is not proved, the ocular testimony of the witnesses as to the occurrence could not be discarded only by the reason of the absence of motive, if otherwise the evidence is worthy of reliance. (Vide Hari Shankar V. State of U.P., (1996)9 SCC 40; Bikau Pandey & Ors. V. State of Bihar, (2003) 12 SCC 616 : (AIR 2004 SC 997 : 2003 AIR SCW 6624); and Abu Thakir & Ors. V. State of Tamil Nadu, (2010) 5 SCC 91 : (AIR 2010 SC 2119 : 2010 AIR SCW 2799).

In a case relating to circumstantial evidence, motive does assume great importance, but to say that the absence of motive would dislodge the entire prosecution story is giving this one factor an importance which is not due. Motive is in the mind of the accused and can seldom be fathomed with any degree of accuracy. (Vide Ujagar Singh v. State of Punjab, (2007) 13 SCC 90: (AIR 2008 SC (Supp) 190: 2008 AIR SCW 33).

2010CRI.L.J. 3841

(SUPREME COURT)

V. S. SIRPURKAR AND

CYRIAC JOSEPH, JJ.

Criminal Appeal Nos. 1182-1184 of 2010 (arising out of S.L.P. (Cri.) Nos. 6091-6093 of 2009), D/- 8-7-2010.

Vijeta Gajra v. State of NCT of Delhi.

Point of Law :- Penal Code (45 of 1860), Ss. 498 A, 406-Constitution of India, Art. 134-Cruelty to wife – Relative of husband-FIR lodged by wife against foster sister of husband alleging cruelty for non-fulfillment of demand of dowry and criminal breach of trust-accused who was foster sister was not a 'relative; of husband by blood, marriage or adoption-She cannot there fore be tried for offence U/S. 498 A- IPC.

Relying heavily in this, Shri Lalit contended that there is no question of any trial of the appellant for the offence under Section 498 A, IPC. The argument is undoubtedly correct, though opposed by the Learned Counsel appearing for the State. We are of the opinion that there will be no question of her prosecution under Section 498 A, IPC. Learned Senior Counsel appearing on behalf of the complainant, Shri Soli J. Sorabjee, also did not seriously dispute this proposition. Therefore, we hold that the FIR in sofar as it concerned Section 498 A, IPC, would be of no consequence and the appellant shall not be tried for the offence under Section 498A, IPC.

AIR 2010 SUPREME COURT 3274

(From : Punjab and Haryana)

B.SUDERSHAN REDDY AND

SURINDER SINGH NIJJAR, JJ.

Criminal Appeal No. 2079 of 2008, D/- 1-9-2010.

Santokh Singh & Anr. v. State of Punjab.

Point of Law :- Plea that accused was schizophrenia patient and committed suicide-Medical evidence-absence of tattooing and blackening of skin surrounding wound-Rule out case of suicide as shot was not fired from point blank range.

We may notice the scenarios which emerge from the proven facts, in record:- The deceased and the accused were working in the same organization. They were office bearers of the same Union. Two days before the incident, the deceased had left that Union and become the President of the rival Union, they, therefore, resented the action of the deceased. They formed a common intention to eliminate the deceased. They went to the house of the deceased and invited him to accompany them to resolve the Union disputes. They took him to the Hotel Genesis where they consumed liquor; they were also served food by the hotel staff. At some point of time the pistol of the deceased was taken by one of the appellants. It is wholly irrelevant whether it was voluntarily given by the deceased or taken by the assailant. Thereafter, one of the accused persons shot the deceased in the head with his own pistol. They then wiped the fingerprints on the pistol and threw the pistol down next to the body of the deceased. They tried to escape. This would tend to indicate towards the guilt rather the innocence of the appellants. Two of them were captured just outside the hotel, the other two managed to escape. The injury on the deceased does not indicate that he had shot himself. The injuries show that the shot has not been fired at point blank range. There is no tattooing or blackening of the skin surrounding the entire wound the consumption of liquor cannot be doubted in view of the evidence given by the waiter, who served the food. This waiter had clearly stated that the visitors had brought the liquor with them. They were only given the glasses and the buckets of ice. They had also ordered chicken curry, which was duly given to them. To ensure that the waiter does not become an eye witness to the murder, he was conveniently removed from the dining hall. They told him to go and get two more chapattis. He, therefore, went into the kitchen of the hotel. While, he was coming out of the kitchen, he heard the sound of gunfire. A1though, this witness was declared hostile, it is consistent with the prosecution version. Even otherwise, the carton of Bag Pipers whiskey is quite visible in one of the photographs.

AIR 2010 SUPREME COURT 3630

(From : Madhya Pradesh)*

HARJIT SINGH BEDI AND C. K. PRASAD, JJ.

Criminal Appeal No. 898 of 2007, D/- 3-8-2010

Hari Singh v. State of M.P.

Point of Law :- Penal Code (45 of 1860), S. 300-Murder-Weapon used-Nature-Proof- Eyewitnesses alleging that muzzle loading shot gun was used from close range-Post-mortem report indicating presence of several wounds of entry spread across chest and upper arm with blackening and burning around some of them-Prove use of primitive weapon by accused.

Two courts have accepted the presence of the two eye-witnesses. We see no reason to differ with the findings recorded. It is also true that in the case of evidence recorded after a long period of time some discrepancies are bound to occur. It is significant that the present incident happened in May, 1989 and the Additional Sessions Judge recorded the conviction in July, 1997 meaning thereby that the evidence had gone on for eight or nine years. We also find that the eye-witness account is fully corroborated by the medical evidence. It is the case of the prosecution that the shot had been fired from about 2 metres. The post-mortem report indicates that this is the correct position. We see that there are several wounds of entry spread across the chest and left upper arm with blackening and burning around some of them. The dispersal of pellets and the uneven blackening and burning over the bullet holes suggests that a primitive weapon, (a "topidar" shot gun, a muzzle loading weapon, which is often a primitive weapon, and when used with gun powder and shot of uncertain quality and quantity, is likely to give uneven and uncertain pellet patterns) could have been used. The doctor also opined that the shot had been fired from about 2 metres from a shot gun. This duly corresponds with the injuries on the dead body. We also observe that the very promptitude with which the FIR had been registered at the police station supports the veracity of the prosecution story. The place of incident was 7 kms. away from police station, Kanhar. The FIR had been lodged within 2 ½ hours after the incident by the brother of the deceased, and as a close relative of the family had been murdered an hour or so would have been taken at the place of incident before Ramesh Chander had left for the police station. We, therefore, find that the promptitude of the FIR supports the prosecution story.

2010 CRI.L.J.1433

(SUPREME COURT)

S.B.SINHA AND CYRIAC JOSEPH, JJ

Criminal Appeal No. 1373 of 2009 (arising out of S.L.P (Cri) No.2585 of 2006), D/-31-7-2009.

Guria, Swayami Seva Sansthan v.State of U.P. & Ors.

S.B.SINHA, J.: - Leave granted.

Point of Law :- Distinction ought to be drawn between girls rescued from Brothel and persons organizing brothel.

"Ms Aparna Bhat. Learned counsel appearing on behalf of the appellant, would contend that the girls who were victims had wrongly been made accused and in that view of the matter as also otherwise the High Court committed a serious error in granting bail inter alia on the premises that they had been identified.

The Act was enacted in pursuance of the International Convention signed at New York of the 9 the day of May 1950 for the prevention of immoral traffic. It is unfortunate that the Investigating Officers and the Courts ordinarily fail to bear in mind a distinction between the rescued children including girls , on the one hand and the persons who have been aiding and abetting the commission of offences there under. The Legislature as also the Executive have also failed to draw a well – thought out plan for rehabilitation of the rescued children in the society by bringing in suitable legislations or schemes. The victims of immoral trafficking, most of whom are minor or young girls are let off on bail. They again in most of the cases are forced to go back to the brothels from where they have been recovered and subjected to prostitution again at the instance of the same persons. Bails are also granted to other accused who are arrested from brothel without bearing any distinction in mind as to whether they work from behind or may be held to be guilty of offence of higher magnitude."

(2010)CRI L.J. 2043 (SUPREME COURT)
(From Rajasthan)
HARJIT SINGH BEDI AND A.K.PATNAIK, JJ.
Jabar Singh Vrs. Dinesh and Anr.

Point of law :- Date of birth recorded in school Register is not sufficient to hold a person Juvenile. Claim of Juvenility not raised during investigation and in earlier criminal cases. Seeing his physical appearance court held that accused was not less than 18 years old at the time of commission of offence. Held, proper.

"We are of the considered opinion that the High Court was not at all right in reversing the findings of the trial court in exercise of its revisional jurisdiction. The entry of date of birth of Respondent No.1 in the admission form, the school records and transfer certificates did not satisfy the conditions laid down in Section 35 of the

Evidence Act in as much as the entry was not in any public or official register and was not made either by a public servant in the discharge of his official duty or by any person in performance of a duty specially enjoined by the law of the country and, therefore the entry was not relevant under Section 35 of the Evidence Act for the purpose of determining the age of Respondent No.1 at the time of commission of the alleged offence. As has been held by this Court in Ravinder Singh Gorkhi(AIR 2006 SC2157 : 2006 AIR SCW 2648) and Jyoti Prakash (AIR 2008 SC 1696 : 2008 AIR SCW 1985) (Supra) the age of Respondent No 1 was a question of fact, which was to be decided on the evidence brought on record before the court and it was for the trial court to appreciate the evidence and determine the age of Respondent No.1 at the time of commission of the alleged offence and in this case, the trial court has arrived at the finding that the claim of Respondent No.1 that he was less than 18 years at the time of commission of the alleged offence, was not believable. While arriving at this finding of fact, the trial court had not only considered the evidence produced by Respondent No.1 but also considered the fact that either in the earlier case or during the investigation of the preset case, the respondent No1 had not raised this plea. While arriving at this finding of fact, the trial court had also considered the physical appearance of Respondent No.1. Such determination on a question of fact made the trial court on the basis of the evidence or material before it and other relevant factors could not be disturbed by the High Court in exercise of its revision powers".