

Landmark IPC cases:

- 1) Joseph Shine vs. Union Of India (Section 497)
- 2) Navtej Singh Johar v. Union of India
- 3) Nirbhaya case
- 4) Pedophilia case (2011)
- 5) Vishaka case
- 6) Naz Foundation v. Govt. of NCT of Delhi
- 7) Sarla Mudgal, & others. v. Union of India
- 8) Om Prakash v. State of Uttar Pradesh
- 9) Suhas Katti v. Tamil Nadu
- 10) Kathua rape case and the Unnao rape case
- 11) KM Nanavati v. State of Maharashtra
- 12) Dr. Suresh Gupta v. State of NCT
- 13) R. v. Ahluwalia
- 14) Muthu v. State
- 15) Varadarajan v. state of Madras
- 16) Cherubin Gregory v. State of Bihar
- 17) Emperor v. Mt. Dhirajia
- 18) Amjad Khan v. State
- 19) Tukaram v. State of Maharashtra
- 20) Mahmood Farooqui v State (Govt of NCT of Delhi)
- 21) Suresh Kumar Koushal & Anr vs Naz Foundation
- 22) Deelip Singh @ Dilip Kumar vs State of Bihar
- 23) Independent Thought vs Union of India
- 24) Rahul Mookerji vs. State (NCT) of Delhi
- 25) Aveek Sarkar v. State of West Bengal
- 26) Priya Patel v. State of M.P
- 27) K.N Mehra vs State of Rajasthan
- 28) Priyadarshini Matoo case
- 29) Nagalingam v. Sivagami
- 30) State v. Sanjeev Nanda
- 31) Jisha murder case
- 32) Nithari Case
- 33) Jessica Lal Murder Case
- 34) Sheena Bora case
- 35) Aarushi Talwar Murder Case
- 36) Sunanda Pushkar Case
- 37) Gauri Lankesh Murder Case
- 38) Nithari Case
- 39) State of Maharashtra v Mhd. Yakub

# **LANDMARK IPC CASES**

## **Independent Thought v Union of India and Ors. (2017)**

### **Facts:**

The Petitioner, a registered society, working in the area of child rights, filed a petition under Article 32 of the Constitution, in public interest with a view to draw attention to the violation of the rights of married girls, between the ages of 15 and 18 years.

The Petitioner contends that almost every statute in India recognizes a girl below 18 years of age as a child and thus the law penalizes sexual intercourse with a girl below 18 years of age. Consequently, Section 375 of the Indian Penal Code, 1860 (IPC) prescribes the age of consent for sexual intercourse as 18 years. Therefore, having sexual intercourse with a girl child below 18 years of age would be statutory rape, even if the sexual activity was with her consent- as willingness or consent of a woman below the age of 18 years for having sexual intercourse is irrelevant as she is considered incapable of giving consent. However, by virtue of Exception 2 to Section 375 of the IPC, if a girl child between 15 and 18 years of age is married, her husband can have non-consensual sexual intercourse with her, without being penalized under the IPC, for the sole reason that she is married to him. Hence, the present petition.

### **Issues:**

1. Whether sexual intercourse between a man and his wife being a girl between 15 and 18 years of age is rape.
2. Whether Exception 2 to Section 375 of the IPC, in so far as it relates to girls aged 15 to 18 years, was unconstitutional under Articles 14, 15 and 21 of the Constitution of India and liable to be struck down.

## **Application:**

### **Issue 1:**

According to Exception 2 to Section 375 of the IPC, sexual intercourse between a man and his wife (being a girl between 15 and 18 years of age) is not rape. However, here the Court regards sexual intercourse with a girl below 18 years of age as rape regardless of whether she is married or not as the Exception creates an unnecessary and artificial distinction between a married girl child and an unmarried girl child and has no rational nexus with any unclear objective sought to be achieved.

Further, the Court opines that there is no real distinction between the offence of penetrative sexual assault or aggravated penetrative sexual assault, under the Protection of Children from Sexual Offences Act, 2012 (POCSO) and the rape of a married girl child under the IPC. Thus, the opinion of the Court was that marital rape of a girl child was effectively nothing but aggravated penetrative sexual assault and there was no rationale for the arbitrary and discriminatory distinction.

### **Issue 2:**

Article 21 of the Constitution gives the fundamental right to a girl child to live a life of dignity. Child marriage in a sense takes away from this and subjects the girl child to sexual abuse. The right to maintain her bodily integrity is compromised under Exception 2 of Section 375 of the IPC- effectively giving the husband full control over her body by giving him the power to subject her to sexual intercourse without her consent or without her willingness since such an activity would not be rape.

Exception 2 to Section 375 Indian Penal Code is held to be discriminatory and violative of Article 14 of the Constitution of India, in so far as it deals with the girl child. The said law discriminates between a girl child aged less than 18 years, who may be educated and has sexual intercourse with her consent and a girl child who may be married even before the age of 15 years, but her marriage has been consummated after 15 years even against her consent. This artificial distinction is contrary to the philosophy and ethos of Articles 15(3) and 21 of the Constitution, is inconsistent with other statutes and also goes against India's commitments in international conventions.

### **Conclusion:**

In its judgement, the Supreme Court held that the Exception 2 to Section 375 of the IPC (in so far as it relates to a girl child below 18 years) was liable to be struck down on the following grounds:

- (i) It was violative of Article 14, 15 and 21 of the Constitution of India as it was arbitrary and not fair, just and reasonable towards the rights of the girl child;
- (ii) it was inconsistent with the provisions of POCSO, which must prevail.

The Court felt the need to harmonize the provisions of various statutes and also harmonize different provisions of the Indian Penal Code inter-se. Thus, the Supreme Court held that Exception 2 to Section 375 of the IPC is to be meaningfully read as: "Sexual intercourse or sexual acts by a man with his own wife, the wife not being under eighteen years of age, is not rape."

## **Lily Thomas Vs Union of India**

Can a Hindu man (who is prohibited to practice bigamy) convert to Islam and marry a second time? Can he face any legal repercussions?

### Facts:

- Sushmita Ghosh married Shri G. C. Ghosh in accordance with the Hindu rites on 10th May in 1984. However, on 1st April 1992, G.C Ghosh asked Sushmita Ghosh to agree to a divorce by mutual consent.
- He informed her that he had converted to Islam in order to marry Ms. Vanita Gupta and that if she did not agree to the divorce she would have to put up with being the second wife.
- Petitioner then asserted her rights guaranteed under Article 15(1) of the Indian Constitution and claimed that she had been discriminated against by Muslim Personal Law.

### Issues:

1. Where a non-Muslim gets converted to the Muslim faith without any real change in belief and merely with a view to avoid an earlier marriage or to enter into a second marriage, whether the marriage entered into by him after conversion would be void and whether the husband would be guilty of the offence of Section 494 of the Indian Penal Code?
2. Whether there is a violation of Article 25 of the Indian Constitution due to the law laid down in the Sarla Mugdal judgement?
3. Whether the prosecution of a person for charges of bigamy under section 494 of the Indian Penal Code violates Article 21 of the Indian constitution?

### Application:

- Mere conversion does not end the marital ties unless a divorce is obtained from court. Any other marriage during the subsistence of the first marriage would be void and would constitute as an offence under Section 494 of the Indian Penal Code read with section 17 of the Hindu Marriage Act.
- There is no violation of Article 25 as apart from guaranteeing a right to freedom of religion, it also does not allow such freedom to encroach upon the religious right and personal freedom of other persons.
- Article 21 guarantees that no person shall be deprived of personal law and liberty except according to the procedure established by law. It has been factually conceded that none of the petitioners have been deprived of this right. The court held it would be too premature at this stage to foresee that the petitioners would be deprived of this right without following procedure. This procedure mentioned in Article 21 implies the law laid down by the Legislature. The Sarla Mugdal judgement has neither changed the procedure nor created any law for the people being prosecuted under section of 494 IPC. The judgement merely interpreted an already existing law.

### Conclusion:

A Hindu man cannot convert to Islam to simply contract to a second marriage, without any real change of belief or to simply avoid his first marriage. If he does so, his second marriage would be held void and he would be prosecuted under section 494 IPC read with section 17 of the Hindu Marriage Act.

## **State Tr.P.S. Lodhi Colony, New Delhi vs Sanjeev Nanda:** **1999 Delhi hit-and-run case**

Having sufficient knowledge that their action was likely to cause death, the act/case would fall under Section 304(II) of the Indian Penal Code.

Citation - State v. Sanjeev Nanda, (2012) 8 SCC 450

Bench: Deepak Verma, K.S. Radhakrishnan

### **Facts:**

In the said case which is popularly known as the BMW hit and run case, Sanjeev Nanda had allegedly lost control of his BMW near Lodhi road and ran over six people including three cops. The case attracted media attention, and India Today even quoted it as "a test of the judicial system's ability to take on the powerful."

### **Procedural History:**

The trial court found respondent guilty of commission of offence under Section 304 Part II of the IPC and awarded him a jail sentence of five years.

The High Court held that though the act of accused amounted to rashness and negligence endangering the lives of others, since there was no intention or knowledge of causing death, no case for conviction of accused under section 304 Part II was made out. And thereafter found the accused Sanjeev Nanda guilty of commission of offence under Section 304 A of the IPC and reduced the sentence to two years.

### **Issue:**

Would the act of killing 6 persons in a drunken state fall under 304 (a) or 304 Part II?

### **Holding:**

The accused had sufficient knowledge that his action was likely to cause death and such an action would, in the facts and circumstances of this case fall under Section 304(II) of the IPC and the trial court has rightly held so and the High Court has committed an error in converting the offence to Section 304A of the IPC.

The Supreme Court held that on default, the accused will have to undergo simple imprisonment for one year. Accused has to pay an amount of Rs.50 lakh to the Union of India within six months. In the case the accused was acquitted by the Supreme Court after a big discussion on 304 (a) and 304 (b) on the basis that he will provide community service which will be better for the society rather than him being in jail.

## **Rajesh Talwar vs C.B.I & Or:** **Aarushi Talwar Murder Case**

The guilt of an accused should be proved beyond reasonable doubt by the prosecution.

Citation - Nupur Talwar v. CBI, 2017 SCC OnLine All 2222

Bench: Bala Krishna Narayana, Arvind Kumar Mishra-I

### **Facts:**

Popularly known as the Noida double murder case refers to the unsolved murders of 13-year-old girl Aarushi Talwar and 45-year-old Hemraj Banjade, a male live-in domestic worker employed by her family. The two were killed on the night of 15–16 May 2008 at Aarushi's home in Noida, India. The case aroused public interest as a whodunit story, and received heavy media coverage.

### **Procedural History:**

The police had botched the investigation and the case was transferred to the CBI. The CBI conducted narco interrogation on the three people they thought were guilty but were then accused of using dubious methods to extract a confession, and all the three men were released after it could not find any solid evidence against them. In 2009, the CBI handed over the investigation to a new team, which recommended closing the case due to critical gaps in the evidence. Still a special CBI court rejected this claim and ordered proceedings against the Talwar's. In November 2013, the parents were convicted and sentenced to life imprisonment, but many critics argued that the judgment was based on weak evidence. The Talwar's challenged the decision in the Allahabad High Court.

### **Issue:**

Does the common law principle that the guilt of an accused should be proved beyond reasonable doubt by the prosecution apply in India?

### **Holding:**

On 12 October 2017, the court acquitted them after 4 long years, calling the evidence against them unsatisfactory also stating that guilt of an accused should be proved beyond reasonable doubt by the prosecution. The court also severely criticised the police, CBI and the media for not having investigated the murder properly. On 8 March 2018 the CBI has challenged the acquittal in Supreme Court. The case remains unsolved.



## **Manu Sharma v. State (NCT of Delhi)**

### **Jessica Lal Murder Case**

The guilt of an accused should be proved beyond reasonable doubt by the prosecution.

Citation - Manu Sharma v. State (NCT of Delhi), (2010) 6 SCC 1

Bench: P. Sathasivam, Swatanter Kumar

#### **Facts:**

Jessica Lal, a bartender was shot by Manu Sharma on April 29, 1999 in Delhi after she refused to serve him a drink after the closing hours.

#### **Procedural History:**

In the ensuing trial, Manu Sharma and a number of others were acquitted on 21 February 2006. Following intense media and public pressure, the prosecution appealed and the Delhi High Court conducted proceedings on a fast track with daily hearings conducted over 25 days. The trial court judgment was overturned, and Manu Sharma was found guilty of having murdered Lal. He was sentenced to life imprisonment on 20 December 2007.

#### **Appellants Contention:**

- a) The appellant Manu Sharma has been denied his fundamental right to free and fair trial which is guaranteed under Article 21 of the Constitution of India.
- b) The finding of the High Court that Manu Sharma took out his pistol and first fired at the ceiling and then at Jessica Lal is based on no evidence.

#### **Contention on behalf of the State:**

The party submitted that the Trial Judge had committed an error in acquitting the accused and the High Court being an Appellate Court is fully justified in re-analysing the evidence and convicting the appellants and awarding appropriate sentence.

#### **Issue:**

Whether the impugned order of the High Court imposing punishment when the trial Court acquitted all the accused in respect of the charges levelled against them is sustainable?

#### **Holding:**

In the light of the above discussion, on 19 April 2010 the court held that the prosecution has established its case beyond doubt against the appellants and were in agreement with the conclusion arrived at by the High Court.

**S. Nagalingam v. Sivagam**  
**(2001) 7 SCC 487**

**For any offence to be punishable under Section 498 (Bigamy), it has to fulfil some necessary ingredients.**

**Facts** - The appellant, S. Nagalingam married respondent Sivagami on 6<sup>th</sup> September 1970. Three children were born from that wedlock. The respondent alleged that the appellant and his mother started ill-treating her and on many occasions she was physically tortured. As a result of which she left her marital home and started staying with her parents. While so, the respondent came to know that the appellant had entered into a marriage with another woman Kasturi on 18<sup>th</sup> June 1984, and that the marriage was performed in a Marriage Hall at Thiruthani(Tamil Nadu). The respondent then filed a criminal complaint before the Metropolitan Magistrate against the appellant and six others where Nagalingam was acquitted, so now the respondent preferred a criminal appeal before the High Court of Madras.

**Issue** - Whether the second marriage entered into by appellant with the second accused Kasturi, was a valid marriage under Hindu Law so as to constitute an offence under section 494 of the Indian Penal Code.

**Application** – The essential ingredients of the offence under section 494 IPC are-

- the accused must have contracted the first marriage
- whilst the first marriage was subsisting, the accused must have contracted a second marriage; and
- both the marriages must be valid in the sense that necessary ceremonies governing the parties must have been performed.

In the instant case, the parties to the second marriage, Nagalingam, and his alleged second wife, Kasturi, are residents of the State of Tamil Nadu and their marriage was performed at Thiruthani Temple within the State of Tamil Nadu. In the Hindu Marriage Act, 1955, there is a State Amendment by the State of Tamil Nadu, which has been inserted as Section 7a. The main thrust of this provision is that the presence of a priest is not necessary for the performance of a valid marriage. Parties can enter into a marriage in the presence of relatives or friends or other persons and each party to the marriage should declare in the language understood by the parties that each takes other to be his wife or, as the case may be, her husband, and the marriage would be completed by a simple ceremony requiring the parties to the marriage to garland each other or put a ring upon any finger of the other or tie a thali. Any of these ceremonies, would be sufficient to complete a valid marriage which in this case was tying a thali. Sub-section 2(a) of Section 7-A specifically says that notwithstanding anything contained in Section 7, all marriages to which this provision applies and solemnized after the

commencement of the Hindu Marriage (Madras Amendment) Act, 1987 shall be good and valid in law.

**Judgement** - The evidence in this case clearly shows that there was a valid marriage in accordance with the provisions of Section 7a of the Hindu Marriage Act as it has been deposed that the marriage was performed in accordance with the customs applicable to the parties. Therefore, it was proved that the appellant had committed the offence of bigamy as he contracted his 2<sup>nd</sup> marriage while his 1<sup>st</sup> marriage was still subsisting. Reversing the order of acquittal passed by the Metropolitan Magistrate, Madras, the learned Single Judge found the appellant guilty of the offence under Section 494 IPC after satisfying all the provision of section 494.

### **Cherubin Gregory Vs The State Of Bihar**

[About Section 304A was incorporated in IPC by an amendment act 1870 which deals with death caused by rash or negligent act.]

**Citation:** AIR 1964 SC 205

**Bench:** Hon'ble Chief Justice Mr B.P. Sinha; Hon'ble Mr Justice J.C. Shah; Hon'ble M. Justice N. Rajgopala Ayyangar

**Petitioners:** Cherubin Gregory

**Respondents:** State of Bihar

**Facts of the case:** Pursuant to section 304A of the Indian penal code, the appellant was charged with causing the death of a lady Mst Madilen for using his later, even though she was not allowed to use it. She behaved as a trespasser, and met this kind of fate. It was 16 July 1959 when the incident took place a week before that, when the wall of the deceased fell down and was revealed to the public. Appellant house was adjacent to the deceased house which resulted in the passerby including the deceased using his latrine frequently. The appellant was not satisfied with all of the consequences and he gave several warnings not to use his laterin without permission but his warning remains futile. At last he tried another way when oral warning had no effect by building a live copper wire trap around his latrine so that no one could reach his premises without his permission. The mounted wire was live and uncoated, making them

extremely dangerous adding to it that he did not put up any signs or alerts about the live wire. The deceased entered the latrine like any other day and she managed to go inside but touched the live wire after returning her hand and she got a shock which resulted in her death. Since this incident could only be prevented by a warning sign and such act resulted in gross negligence on the part of the appellant liable under section 304A of the Indian Penal Code.

**Judgment:** The case was based on the accused's reckless and careless act while the court took English law comparison, they did not address various important issues so that the distinction could be made between careless act and a well-executed act. As in this case, the installation of live electrical wire merely justified the accused's malice intention, as no reasonable man should disregard the implications of installing such dangerous material so that it wasn't justified to put liability under section 304A. Hon'ble Supreme Court of India observed as- The appellant was charged with an offence under S. 304A of the Indian Penal Code for causing the death of one Mst. Madilen by contact with an electrically charged naked copper wire which he had fixed up at the back of his house with a view to prevent the entry of intruders into his latrine, an electric light was burning some distance away. But it was obvious that neither of these could constitute warning as the conditions of the wire being charged with electric current could not obviously be detected merely by the place being properly lit. The right of private defence of property which is set out in s. 97 of the Indian Penal Code is, as that section itself provides, subject to the provisions of s. 99 of the Code. It was clear that the sort of injury incurred by the accused's trap cannot be placed within the limits of s. 99 and none of course s. 103 By the Mark. The point was that the deceased was a transgressor and there was no obligation owed by a certain occupier like the accused towards the trespasser and therefore the latter would have had no cause of action for damages for the injury inflicted and that if the act of the accused was not a tort, it could not also be a crime. There was thus no substance in this line of argument. In the first place, where we have a Code like the Indian Penal Code which defines with particularity the ingredients of a crime and the defences open to an accused charged with any of the offences there set out we consider that it would not be proper or justifiable to permit the invocation of some 'Common Law principle' outside that Code for the purpose of treating what on the words of the statute is a crime into a permissible or other than unlawful act. But that apart, learned Counsel is also not right in his submission that the act of the accused as a result of which the deceased suffered injuries resulting in her death was not an actionable wrong. A trespasser is not an outlaw, *a Caput lupinem*. The mere fact that the person entering a land is a trespasser does not entitle the owner or occupier to

inflict on him personal injury by direct violence and the same principle would govern the infliction of injury by indirectly doing something on the land the effect of which he must know was likely to cause serious injury to the trespasser.

## **Dr. Suresh Gupta vs Govt. Of N.C.T. Of Delhi & Anr**

Section 304, IPC: Causing death by negligence.

**Bench:** Hon'ble Mr. Justice Y.K. Sabharwal, Hon'ble Mr. Justice D.M. Dharmadhikari

**Appellant:** Ashok H. Desai, Alok Kumar Sengupta, Ms. Sushma Sharma, Meghalee Barthakur, Mrinal Kanti Mandal, Ms. Anindita Sengupta, Rajan Narain and Suraj Prakash

**Respondent:** Harish Chandra, S. Wasim A. Qadri, Vineet Malhotra, Mrs. Anil Katiyar and Nikilesh Ramachandran.

**Facts of the case:** The patient in this case was a young man with no history of any heart ailment. An operation had to be performed for nasal deformity which was by no standard complicated or serious, so much so that even his wife did not accompany him to the hospital for this operation. The patient however died due to post operational complications. The cause of death according to the medical opinion was stated to be 'not introducing a cuffed endotracheal tube of proper size as to prevent aspiration of blood from the wound in the respiratory passage'.

The appellant who was a Doctor (Plastic Surgeon) was accused over the charge under Section 304 A of the Indian Penal Code for causing death of the aforementioned patient. The patient was operated by him for removing his nasal deformity. It was mentioned at the outset, that the Anaesthetist who was assisting the surgeon in the operation was also made co-accused but it was reported that he died while the trial was pending. The proceedings, therefore, stood abated against him. The appellant urged before the Magistrate that the medical evidence produced by the prosecution, did not make out any case against him to proceed with the trial. The learned magistrate however decided to proceed with the trial. It was clear from the records that patient had actually died at the clinic of the accused and therefore, I am of the opinion that there are sufficient grounds on record to make out a prima facie case against both the accused for commission of offence under Section 304A IPC. As the Magistrate decided to proceed with the trial, the doctor approached the High Court by petition under Section 482 of the Code of Criminal Procedure. The High Court refused to quash the criminal proceedings and upheld the order of the Magistrate, although it recorded that the Metropolitan Magistrate was obviously wrong, in the absence of any medical opinion, in coming to a conclusion that the surgeon had given a cut at wrong place of the body of the patient at the time of operation leading to blood seeping into the respiratory passage and blocking it resulting in his death. The High Court, however, declined to quash the proceedings against the doctor for the alleged criminal liability.

**Judgement:** The Supreme Court in the final appellate judgement stated that; "Blame is a powerful weapon. When used appropriately and according to morally defensible criteria, it has an indispensable role in human affairs. Its inappropriate use, however, distorts tolerant and

constructive relations between people. Some of life's misfortunes are accidents for which nobody is morally responsible. Others are wrongs for which responsibility is diffuse. Yet others are instances of culpable conduct, and constitute grounds for compensation and at times, for punishment. Distinguishing between these various categories requires careful, morally sensitive and scientifically informed analysis."

Therefore it was opined that after examining all the medical papers accompanying the complaint, it was found that no case of recklessness or gross negligence had been made out against the doctor to compel him to face the trial for offence under section 304A of the IPC. As a result of the discussion aforesaid on the factual and legal aspect, the court allowed this appeal and by setting aside the impugned orders of the Magistrate and of the High Court, quashed the criminal proceedings pending against the present doctor who was accused and appellate before the hon'ble court.

## **Emperor v Mt Dhirajia**

Attempt to commit suicide [Section 309 IPC]

**Citations:** AIR 1940 All 486

**Bench:** Braund, J., [Allahabad High Court]

**Appellant:** Mt Dhirajia

**Facts of the case:** A woman of age 20 years was tried for sec 302 and 309 of the Indian Penal Code. She wanted to go to her parental home, because her husband gave a beating to her. Therefore, she left matrimonial house in the night. While running, she turned around in panic, ran a little distance with her baby girl in her arms and then either jumped or fell into an open well which was at some little distance from the path. The result was, to put it briefly, that the little child died while the woman was eventually rescued and suffered little or no injury

**Judgment:** It is important to remember that she **clearly did so in fear**, as we have the clearest evidence that she looked behind her and immediately ran away from her husband. We think there has to be some degree of awareness applied to any sane person. The degree of knowledge that any individual person can be presumed to possess would naturally vary. For example, we can't apply the same degree of knowledge to an uneducated individual as we do to an educated person. But we think the knowledge has to be applied to everyone who is sane to some degree. No matter how weak a man or woman may be, and however terrified he or she may be, knowledge of the probable effect of such **imminently dangerous act** must have **stayed with him or her in the fourth case of guilty homicide**. We have already found that Mt. Dhirajia

must be taken to realize that what she has done will in all probability trigger her baby's death. However this is justified by the additional condition that "such an act" must be "without any reason to incur the risk of causing death ...." **Section 300's construction of this specific section is well decided.** This is well decided that it is not pure murder to cause death by doing an act with the understanding that it is so imminently dangerous that it will cause death in all probability. In order for an act done with such knowledge to constitute murder it is appropriate to commit it without any reason to incur the risk of causing death or injury to the body. An act that is committed realizing its implications is not prima facie murder. Only when it can be confirmed confidently that there was no reason is it is murder. In order for an act done with such knowledge to constitute murder it is appropriate to commit it without any reason to incur the risk of causing death or injury to the body. An act that is committed realizing its implications is not **prima facie murder**. Only when it can be confirmed confidently that there was no reason is it is murder. The section's criteria aren't fulfilled by one of gross recklessness being the act of homicide. Besides, it must be completely inexcusable. **When a risk is incurred** — even a risk of the most serious possible nature that would usually result in death — taking the risk is not murder because it is inexcusable to take it. This, as we understand it, in this case is the sense of this passage from **Section 300, I.P.C.** Now looking at the facts of this case, which we do not need to repeat again, we do not think it is appropriate to conclude this Mt. Dhirajia did so without reason in jumping into this well. **She did so in an effort to escape from her husband.** The taking of her own life was not, we think, for one moment present to her mind. For that reason we think that Mt. Dhirajia was **rightly acquitted under Section 309, I.P.C.** the court therefore decided that Mt Dhirajia shall be punished only for 6 month under **section 304 of the Indian Penal Code.**

## **Mahmood Farooqui vs State (Govt Of Nct Of Delhi)**

**Citation:** CRL.A.944/2016

**Bench:** Hon'ble Mr Justice Ashutosh Kumar

**Petitioners:** Mahmood Farooqui

**Respondents:** State (Govt Of Nct Of Delhi)

**Facts of the case:** The plaintiff in the Farooqui case was an American PhD student who, as part of her study, had met with media star Farooqui many times. The incident happened at his home after the complainant had been invited to accompany him and his wife to a local wedding. The accused was drunk when the defendant entered, and the wife was not in the house. He performed oral sex on her, forcefully. She claimed she didn't want to indulge in oral sex and that she kept pulling it up because "the defendant attempted to take down her panties." She refused, but was held down violently because soon as it was done she wanted to leave the room. The complainant, in her email to the accused, is quoted as having said ***"I told you many times I didn't want to. But you did become forceful. I went along, because I did not want things to escalate... I was just afraid that something bad would happen if I didn't, it was because of pressure and your own force physically on me."***

**Judgements:** The first two rape conditions were met: oral sex was against her will, and without her consent. The plaintiff said no, attempted to hold the accused off her clothes and tried to drive him further. Her relinquishing resistance in fear is a consent gained by fear of harm.

Instead of enforcing the consent law as it was adopted in 2013, the court added an extra requirement for "intellectually / academically qualified" women "with letters." The court ruled that a well educated women needed to make clear to the accused her "unwillingness." The court held that the accused failed to understand the 'no' repeatedly issued, and the resistance. It further held that in cases where ***"physical contacts"*** have existed between the parties in the past ***"it would be really difficult to decipher whether little or no resistance and a feeble 'no', was actually a denial of consent."*** The use of the term "feeble" is concerning as at no point in any of the complaint's cross-examination or evidence given was this suggested. Further to place an additional burden upon the complainant -ensuring the perpetrator understands her lack of consent- goes against the legal provisions in force for prosecuting rape, and undermines the definition of sexual consent. The Delhi High Court, for crimes related to sexual harassment, including the current consent clause, did not follow the values and the enforcement of the law



as adopted in 2013. Rather, the court was more confident applying section 90 of the Indian Penal Code, the 'consent considered to be given under fear or suspicion' clause for all criminal offences.

### **S. Varadarajan v State of Madras**

Conviction of the appellant under section 363 of the Indian Penal Code [Take out of keeping of the lawful guardian]

**Citation:** 1965 AIR 942, 1965 SCR (1) 243

**Bench:** **Mudholkar, J.R., Hon'ble Justice K. Subba Rao and Hon'ble Justice M. Hidayatullah**

**Petitioners:** S. Varadarajan

**Respondents:** State of Madras

**Facts of the case:** Where a minor child, claimed to have been abducted by the accused person, had left her father's protection knowing and having the capacity to know the full import of what she was doing and joined the accused willingly, the court opined that it could not be said that the accused had taken her away from keeping of her lawful guardian in the sense of s. 361 of the Indian Penal Code (1860 Act XLV). In such a situation, something more had to be done, and such as an inducement kept by the accused person or an active participation by him in forming the plan, either immediately before the minor left the safety of her father or at some earlier point. The court stated that if the facts failed to prove either of these things, the accused should not be guilty of the crime merely because, after she had actually left the house of her guardian or a house where she had been held by her guardian, she joined the accused willingly, and the accused helped her not to return to the house of her guardian by moving her from place to place with him.

**Judgement:** The hon'ble Supreme Court said that, "The question whether a minor can abandon the guardianship of his or her own guardian and if so the further question whether Savitri could, in acting as she did, be said to have abandoned her father's guardianship may perhaps not be

very easy to answer. Fortunately, however, it is not necessary for us to answer either of them upon the view which we take on the other question raised before us and that is that "taking" of Savitri out of the keeping of her father has not been established. The offence of "kidnapping from lawful guardianship" is defined thus in the first paragraph of s. 361 of the Indian Penal Code - ***"Whoever takes or entices any minor under sixteen years of age if a male, or under eighteen years of age if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such minor or person from lawful guardianship."***

The court stated that after pointing out that there was an essential distinction between the words "taking" and "enticing" it was no doubt observed that the mental attitude of the minor was not of relevance in the case of taking and that the word "take" meant to cause to go, to escort or to get into possession. But these observations had to be understood in the context of the facts found in this case. For, it had been found that the minor girl whom the accused was charged with having kidnapped had been persuaded by the accused when she had gone out of her house for answering the call of nature, to go along with him and was taken by him to another village and kept in his uncle's house until she was restored back to her father by the uncle later. Thus, here there was an element of persuasion by the accused person which brought about the willingness of the girl and this made all the difference. In the opinion of the bench, therefore, neither of these decisions were of assistance to the State.

The court was satisfied, upon the material on record, that no offence under S. 363 had been established against the appellant and that he is, therefore, entitled to acquittal. Accordingly they allowed the appeal and set aside the conviction and sentence passed upon him.

## **Surendra Koli & Anr. v State of Uttar Pradesh**

[Nithari Killings]

**Citation:** Criminal Appeal No(S). 2227 Of 2010

**Bench:** Hon'ble Mr Justice Markandey Katju, Hon'ble Mrs Justice Gyan Sudha Misra

**Appellant:** Surendra Koli & Maninder Singh Pandher

**Respondent:** State of Uttar Pradesh

**Facts of the case:** Two Nithari residents claimed in December 2006 that they knew where the remains of children who had gone missing in the previous two years were located: the municipal water tank behind the building. Both had missing daughters and they suspected Surinder Koli, the disappearances included domestic aid. The residents claimed to have been consistently ignored by local authorities; thus, they sought the assistance of former president S C Mishra of the Resident Welfare Association (RWA). Mishra and the two residents checked out the tank drain that morning. One of the residents reported a decomposed hand was found, after which they contacted police. Over the last two years worried parents of missing children rushed with photographs to Nithari. Koli later admitted to killing six children and a 20-year-old woman named "Payal" after sexually assaulting them, under the alias Satish.

The missing children's families have accused police of incompetence. Some police officers, including Noida SP city, initially denied any criminal angle and claimed that the families had received false details about the age of the missing; that they were not minors but adults who left home after fighting with their parents. The residents also claimed the police were corrupt and paid to cover up the evidence. Demands for an impartial enquiry were made. One of the residents said that when it was the residents who dug them up, police took credit for finding the corpses. The police denied discovering fifteen bodies, reiterating that they had found pieces of the skulls, bones and other body parts and that they could not provide a figure for the number of victims. The names and number of the victims could be determined only with DNA tests. Police then sealed the house and refused to allow news media near to the site. The Central Government sought to determine the truth behind the discovery of the remains of the skeleton and whether it had "inter-state ramifications. " Law and order are state affairs, but the Home Ministry asked for clarification on the extent of the crime.

In connection with the disappearance of "Payal," police took Koli's boss, Moninder Singh Pandher and Koli into custody on 26 and 27 December respectively. The police started digging up the surrounding land area after Koli's confession, and found the bodies of the twins. On 31 December two policemen were suspended for failing to take action despite being told of a number of missing children, as angry residents accused towards the house of the angry mastermind. The situation at Nithari escalated as a angry mob of villagers clashed with police, both pelting stones at each other, just outside the accused's residence. Pandher's maid Maya was also detained by police on suspicion that she attracted women to the building. As more body parts were dug up near the premises, hundreds of local residents descended on the spot alleging an organ trafficking connection with the grisly killing of young children.[3] A doctor living near the Pandher home, Navin Choudhary, had been under police suspicion in connection with an alleged kidney racket at his hospital a few years earlier. Searches were carried out in his estate, and the investigators found no evidence to support the claim.

**Judgment:** The bench verbatim pronounced that, 'In the statement before the Magistrate appellant Surendra Koli **has admitted in great detail how he used to kill the girls after luring them inside the House no. D-5, Sector 31, Noida by strangulating them and he would then chop up and eat up their body parts after cooking them.** Some body parts, clothes and slippers were thrown in the enclosed gallery behind the house at D-5, Sector 31, Noida. He volunteered to lead the police team to the specific spot where he had kept the articles/body parts hidden. The police party reached that spot along with the appellant. On his pointing out, 15 skulls and bones were recovered, and also a knife was recovered from a water tank of a bath room in D-5, Sector 31. On 31.12.2006 during the scooping of the drain in front of D-5, bones and chappals were recovered. He has given graphic description about the several murders he has committed. Surendra Koli was the servant of co-accused Maninder Singh Pandher as has been admitted by him. The confession under **Section 164 of the Criminal Procedure Code** has been corroborated in material particulars. The body parts of the killed girls have been found in the gallery behind the house and in the Nala beside the house.

Two girls namely Pratibha and Purnima have stated before the trial Court that they were also attempted to be lured inside the House D-5 by Surendra Koli but they refused to enter the house. This was their sheer good luck, for if they would have entered the house then they might have met the same fate. **Their evidence indicates the modus operandi of the appellant.**

The killings by the appellant Surendra Koli are **horrifying and barbaric**. He used a definite methodology in committing these murders. He would see small girls passing by the house, and taking advantage of their weakness lures them inside the house no. D-5, Sector 31, Nithari Village, Noida and there he would strangle them and after killing them he tried to have sex with the body and would then cut off their body parts and eat them. Some parts of the body were disposed off by throwing them in the passage gallery and drain (nala) beside the house. House no. D-5, Sector 31 had become a **virtual slaughter house, where innocent children were regularly butchered**.

In the opinion of the jury thus, this case clearly fell within the category of **rarest of rare case** and the bench opined that no mercy could be shown to the appellant Surendra Koli.

### **Vishakha & Ors. v. State of Rajasthan [AIR 1997 SC 3011]**

The Supreme Court specifically underlined the definition of Sexual Harassment

**The bench:** J.S. Verma C.J.I., Mrs. Sujata V. Manohar and B.N. Kirpal. JJ.

**The Petitioners:** Vishakha & Ors

**The Respondents:** State of Rajasthan & Ors.

**Issue:** Sexual Harassment at workplace.

**Facts of the case:** Bhanwari Devi who was a social activist / worker in one village in Rajasthan. She was employed under a rural social development program which worked to stop child marriage in the village and this social program was administered / initiated by the state government of Rajasthan. Bhanwari Devi dedicated herself to preventing the marriage of the daughter of Ramkaran Gujjars (thakur), who was just under one year of age, i.e. she was just an infant.

As part of her obligation, Bhanwari Devi tried to end that infant child's marriage. Although it happened from her vain-full attempts to stop the marriage, but Bhanwari Devi was however, taken to be at fault by the people of the village. She was subjected to collective retribution [Social punishment] or boycott, and was put forward. In September 1992, she was raped in

front of her husband by Ramkaran Gujjar and his five associates. The male doctor at the normal primary health center refused to investigate her and the doctor at Jaipur only reported her age without any suggestion in her medical report that she was raped. She was constantly taunted at the police station by the countable women during the midnight. The policeman had, the previous night told her to leave her lehenga as evidence of the incident and go back to her home. Before that, she was left only with her husband's blood-stained dhoti to protect her body, because of which they had to spend the whole night in that police station only. The Trial Court discharged the convicted persons for not being guilty. In the appellate judgment, the High Court decreed that "it was a gang rape case that was conducted out of revengeful circumstances". All these comments and decisions had caused women and NGOs to send petitions (PIL) in the Supreme Court of India under the name 'Vishakha'.

Judgement: Chief Justice J.S Verma, as a representative of Justice Sujata Manihar and Justice B.N Kripal, expressed the judgment of Vishakha's case on account of a writ petition filed by the name –Vishakha, as the victim of this case. The court had noted herein that, ***“the fundamental rights under Article 14[2], 19[3](1)(g) and 21[4]of Constitution of India that, every profession, trade or occupation should provide safe working environment to the employees. It hampered the right to life and the right to live a dignified life. The basic requirement was that there should be the availability of safe working environment at workplace.”*** It also said that women have a constitutional right to freedom from workplace sexual abuse. It also put forward various important recommendations for workers to follow them, and to prevent women's sexual harassment at the workplace. The court also recommended providing appropriate procedures to address situations where sexual assault happens at the workplace. The Supreme Court's main objective was to ensure equality between men and women and also to ensure that there should be no discrimination against women in the workplace.

## **Muthu v State (2007)**

**COURT** – Supreme Court of India

**JUDGES** – Justice A.K. Mathur, Markandey Katju

**CITATION** – Appeal (crl.) 1511 of 2007

**PARTIES** – Muthu (Petitioner/Appellant)

State by the Inspector of Police, Tamil Nadu (Respondent)

What constitutes **grave and sudden provocation** under Section 300 of the IPC for a crime under committed under Section 302 (Murder) /Section 304 (Culpable Homicide not amounting to Murder)?

**CONTENTIONS** –

Petitioner – It was argued that the actions of the Defendant, of **throwing rubbish** into the shop of the former constitutes **grave and sudden provocation** under Section 300 and hence cannot be liable under Section 304 or Section 302. It was further contented that the Appellant did not **possess the knife** nor did he have the **intention** to commit murder.

Defendant – The State argued that since the Appellant himself **picked up the knife** during the scuffle, it becomes a charge under Section 304 and not Section 302. As the knife was picked up later there is no charge under Section 302 but there was **intention to cause harm** on a vital part of the body. Therefore making him liable for, Culpable Homicide not amounting to Murder under Section 304.

**JUDGEMENT** – The Court held that there is a definite distinction between **pre-mediated intention and anger**. Therefore, the current case falls under the purview of Section 300 exception 4 (sudden fight) read with the **second half of Section 304 of the IPC**, which deals with culpable homicide not amounting to murder. Based on these, the defendant was made liable for a term of **5years** of simple imprisonment.

## **OM PRAKASH v. STATE OF UTTAR PRADESH (2006)**

**The need for corroboratory evidence and rape under Section 376(2) (e)**

***The Bench*** – Justice Arijit Pasayat, Justice S.H. Kapadia

***The Defendant/ Appellant*** – Om Prakash (***Accused***)

***The Plaintiff/ Respondent*** – The State of UP

***Issue*** – Whether the Police officer is liable to be punished under **Section 376(2)(e)** of the Indian Penal Code for the offence of rape of a pregnant woman or not?

***The Contentions***

***Defendant*** – The accused held that, he did not commit the act of rape but was being implicated due to the **enmity** amongst the victim's husband and the accused due to **money matters**. In the appeal, it was further stated that as the accused went to the help the victim's husband, he could not have committed the offence of rape in **broad day light**. Finally, it was also contested that the requirements of **Section 376(2)(e)** have not been fulfilled.

***Plaintiff*** – The victim, who was **six months pregnant** at the time, was **raped** in broad sunlight in the court where the victim's husband was called in for the payment of challan. The brother of the victim as well as the husband witnessed the rape when the victim shouted for help, and the accused was immediately arrested with the **framing of charges** based on the same. Considering the evidence as given by the medical examiner, the witness of the prosecutrix and the other witnesses, **Om Prakash is liable**.

***Final Judgment*** –

The evidence provided by the victim in a sexual assault case is in itself, is enough for the conviction and does not necessarily need the **corroboratory evidence** of the medical examiner. The Court believed in the statement of the victim and therefore convicted the accused. However, with regard to the punishment, the accused was punished under **Section 376(1)** and not **Section 376(2)(e)** as there was no sufficient evidence brought forward regarding the positive knowledge of the accused regarding the **pregnancy of the victim**. The appeal was dismissed with a reduced sentence of 7 years.



## **PRIYA PATEL v. STATE OF MADHYA PRADESH (2006)**

**Can a woman commit the act of rape or gang rape?**

***The Bench*** – Justice Arijit Pasayat and Justice S.H. Kapadia

***The Defendant/ Appellant*** - Priya Patel (accused)

***The Plaintiff/ Respondent*** – State of Madhya Pradesh and Another

***Issue*** – Whether a **woman** can be held liable for gang-rape under **Section 376(2) (g)** of IPC?

***The Contentions***

***Defendant*** – The appellant argued that a woman cannot be held liable for the act of gang rape as she **cannot commit** rape and hence the same charge has no relevance. As the defendant in the case is a woman, who allegedly aided in the act of rape could not have committed the act herself, she **cannot be held liable** for the same.

***Plaintiff*** – The plaintiff agreed with the decisions of the trial court and the high court of **convicting the woman** and stated that even she could not have committed the offence of rape; she did commit the offence of **abetting rape**, which is punishable under **Section 323**.

***Final Judgment***

The Court held that the offence of rape can only be committed by **a man** taking into account the bare reading of the penal provisions regarding the same. The Section in no way makes a **woman liable** for rape or gang rape as it is **inconceivable**. As intention is an important aspect of a crime and in case of gang-rape, “**common- intention**” and a woman cannot have the intention to commit rape and is therefore **not liable** for the offence. The question regarding the abetment of rape was not dealt with by the Court.

# **RAHUL MOOKERJI VS. STATE (NCT) OF DELHI**

## **Kissing in the Public by a Married Couple and the Police.**

***The Bench*** – Justice Muralidhar

***Date of Judgment*** - 25<sup>th</sup> May 2009

***Court*** –High Court of Delhi

***Citation*** - 2009 AD DEL 5 649

***Parties*** - Rahul Mookerji and another (A&B) (Petitioner)

State through NCT of Delhi (Defendant)

Whether the Act of kissing near a Metro Station amounts to obscene behavior causing annoyance under Section 294 read with 34 IPC and the same can attract an FIR/Punishment?

### ***Contentions –***

***Petitioner*** – The couple apprehended and bailed, seek for the quashing of the FIR that was lodged against them with reference to the kissing in a public area as well as necessary action to be taken against the lawyer, associate and the police officials who were involved in the same and extracted money out of the couple.

***Defendant*** – The lawyers and the police officials filed that the money that was given to them was in light of the fees for the charges and bail respectively. Further, it was contested that there was a female officer present at the time of arrest and that the arrest was made consciously by the Police officers as the scene was causing annoyance to the public in the area.

***Judgment*** – Due to the lack of evidence showing the annoyance of the public due to the act that was committed as well as the lack of a responsible enquiry by the Police, the Judge declared that there is no value in the FIR. The Court allowed the petition against the State and provided the couple with damages stating that it is inconceivable how expression of love in the manner as in the FIR would attract the offence of obscenity and trigger the process of law.

## **SUHAS KATTI v. TAMIL NADU (2004)**

### **The first instance of arrest under Section 67 of the IT Act**

***The Bench*** – Justice Thiru. D. Arulraj

***Defendant*** - Suhas Katti (Accused)

***Plaintiff*** – ACP, Cyber Crime Cell, Central Crime Branch (Complainant)

***Issue*** – Whether Mr. Suhas Katti is liable for the charges framed against him under Section 469, 509 IPC and **Section 67 of the IT Act of 2000** for the posting of obscene, defamatory messages regarding a divorced woman on a yahoo message group?

***Contentions*** –

***Defendant*** – The defense had the argument that the mails that have been exchanges, have been sent by the **ex-husband** of the woman or the woman herself so as to **frame the accused** for the crime as he turned down her offer for marriage. It was further contended, that the evidence was not sustainable as under **Section 65-B** of the Indian Evidence Act.

***Plaintiff*** – The victim made her complaint to the Police who then tracked down the accused, who intended to marry her from before her **first marriage**, which ended in a divorce. The accused took to the internet and message boards on yahoo where **obscene and defamatory** information was being posted on the pretext of it being done by the victim, who due to the same received various **phone calls** which seemed annoying. The accused also made **false email accounts** in the name of the victim and forwarded these emails to her from these said accounts.

***Final Decision*** – In a landmark judgment, the first conviction under **Section 67** (obscene material in electric form) of the IT Act, Mr.Suhas Katti was held **liable** to all the crimes and was sentenced to punishment for **2 years** of rigorous imprisonment with a fine of Rs. 500 and one year of simple imprisonment with a fine of Rs.500 for the offence under Section 509 IPC (insulting the modesty of a woman). For the offence under the IT Act, he was made liable for to undergo rigorous imprisonment for a period of **2 years** with a fine of Rs. 4000 keeping in mind the witnesses of the **Cyber Café owners** and other key witnesses produced by the Cyber Crime Cell of Chennai.

## **K. N. MEHRA vs. THE STATE OF RAJASTHAN**

**IPC [S.378] - Dishonest intention and unlawful means in an offence of theft**

**Bench:** B Jagannadhadas, J.

**Court:** Supreme Court

**Appellant:** K. N. Mehra

**Respondents:** The State Of Rajasthan

**Citation:** 1957 AIR 369

**Issue:** How can dishonest intention and unlawful means be determined u/s 378 of IPC?

### ***Facts:***

- The appellant Mehra and M.Z Philips were training cadets in Indian Air Force Academy, Jodhpur. On May 13 1952, the latter was discharged from Academy on grounds of misconduct. Mehra was supposed to fly a Dakota with an Om Prakash, a cadet on the next day. Contrary to this, Mehra and Philips took off in a Harvard HT 822 on May 14 before the authorized time, without following the requisite procedures. In addition, they admitted that they had to force-land the flight 100 miles away from Indo-Pak border around forenoon on the same day. Consequently, they sought help of a military adviser in Karachi and he arranged for them to come back to Jodhpur, where they were arrested on May 17.

### ***Respondent's contentions:***

- Mehra and Philips stole the aircraft with dishonest intention.
- The flight to Pakistan was intentional.

### ***Appellant's contentions:***

- Mehra and Philip took off the aircraft and flew for some time. There is no question of the act being an offence under the IPC since it is merely a young student's "thoughtless prank". The act was just an accidental, unauthorized cross-country flight by a training student who was entitled to do it.
- However, they were faced with bad weather and turned back towards Jodhpur. When the fuel was exhausted, they force landed the flight in Pakistan territory without knowledge as they lost their way.
- It is not uncommon that aircrafts take off from the academy without following the formalities. They did not receive the radio signals nor were there any maps, compass or watch in the aircraft. Had they intended to steal away the aircraft to Pakistan, they would not ask the military adviser to help bring them back to India.
- The appellant had already been an under-trial prisoner for 11 months and had gone through almost a year of imprisonment as part of his sentence.

### ***Final Decision and Principles established:***

After considering the evidences and conclusions in previous trials, the Court could not establish that the Trial Courts or the High Court were wrong in holding the case against the appellant. Implied consent for the trainer to fly an aircraft do not apply here, as there were telephonic signals sent to the aircraft, to bring it back. Wrongful gain can be mere unlawful acquisition of a property, creating 'temporary' loss to the Government. The circumstances conclude both the essential ingredients of theft – absence of consent and unlawfulness of means. From the factual analysis, the Court concludes that the wrongful gain and loss were intentional. However, considering that the appellant has already undergone imprisonment, his sentence was modified to the period already undergone. The appeal was dismissed while maintaining the conviction.

## **Santosh Kumar Singh vs. State through CBI**

### **IPC [S.302] – Mitigating factors and Death sentence**

***Bench:*** Harjit Singh Bedi, J.

***Court:*** Supreme Court

***Appellant:*** Santosh Kumar Singh

***Respondents:*** State through CBI

***Citation:*** (2010) 9 SCC 747

***Issue:*** Are the mitigating factors in favour of the appellant a sufficient reason to reduce the death sentence? Is life imprisonment inadequate in this scenario?

### ***Facts:***

- The appellant Santhosh Kumar Singh was convicted by High Court for rape and murder of Priyadarshini Mattoo based on multiple forensic evidence, documents and witness statements. He had harassed, stalked and intimidated the deceased often and complaints were lodged at several police stations in this regard. A Police constable was appointed for the personal protection of the deceased, who found her strangled to death in her bedroom while all her family members were away. Medical evidences and forensic report on the deceased's body and her post-mortem report revealed conduct of rape by the appellant. Broken glass pieces found near her body matched with the broken visor in the appellant's helmet. He was reported to have been seen by some of the witnesses around the place of crime a few minutes before her body was found. There was a fresh fracture in the appellant's right hand. However, the trial court ruled the decision in favour of the appellant, acquitting him of all the offences charged against him. The reasons cited were that the CBI concealed evidences and fabricated them before the Court. It also came down heavily upon the Delhi Police for aiding the accused through trial and investigation owing to the fact that the appellant was the son of a high-ranking police official. This "benefit of

doubt” was removed by the Delhi High Court, which held the appellant guilty of the offences he has committed. Hence, this Criminal Appeal.

***Appellant’s contentions:***

- The injury and fracture on his right hand do not bring liability on him as the counsel provided many medical statements to prove that the injury occurred 10 days prior to the occurrence of the crime.
- Pointed out that the forensic report cannot be relied on to decide the case as there was serious tampering of the same. There was reduction in the amount of samples from the blood vials taken for examination.
- All the investigation officers and medical team were under a conspiracy to harm the appellant.
- Motive alone could not form the basis for conviction as in a case of circumstantial evidence the chain envisaged was to be complete from the beginning to the end and the resultant hypothesis should only point at the accused alone as being guilty of the crime.
- The present case did not fall under the category of “rarest of the rare cases”.
- The appellant was “led astray by the vagaries of youth”. However, now he was a family man with a wife and a girl child.

***Respondent’s contentions:***

- The fracture was fresh on the day of crime, as reported by medical professionals.
- There was no evidence of tampering with the samples collected by the forensic team and hence, the conclusion was right.
- There was enough references to prove the motive of the accused, as she was not giving in to his approaches despite his relentless attempts.

***Court’s observations and decisions:***

The Apex Court recognized that the motive alone cannot be a convincing reason but in this case, it forges the long chain of the surrounding circumstances when read together. It upheld the decision of the High Court in interfering with the matter and setting aside the erroneous decision of the Trial Court that favored the appellant, despite the obvious evidences against him.

The Court identified that when a decision with regard to sentencing is to be chosen between death sentence and life imprisonment, the philosophy underlying “rarest of the rare” principle only demands the imposition of a lesser punishment. The Bench gave emphasis to the change in appellant’s family status, death of his father, predicament he has faced for fifteen years etc. as certain mitigating factors, among other aggravating factors, to reduce the death sentence to a life imprisonment u/s 302 of IPC.

## **Suresh Kumar Koushal & Anr. v. NAZ Foundation & Ors**

**Allowed the appeal and overturned Delhi HC previous decision, finding its declaration to be “legally unsustainable**

**Bench:** Justice G.S. Singhvi, Sudhansu Jyoti Mukhopadhaya

**Appellant :** Suresh Kumar Koushal & Anr.

**Respondent :** NAZ Foundation & Ors.

**Citation :** Civil Appeal No. 10972 of 2013

**Issue :**

- Constitutionality of section 377 of the Indian Penal Code

**Facts:**

- NAZ Foundation working in the field of HIV/AIDS intervention and prevention, filed a writ petition before the Delhi High Court seeking a declaration that Section 377, to the extent that it penalised sexual acts in private between consenting adults.

**Appellant's contentions:**

- Denied 377 was unconstitutional.
- The statistics incorporated was insufficient for finding that Section 377 adversely affected the control of HIV AIDS and that decriminalisation would reduce the number of such cases.
- It was also contended that Section 377 is entirely gender neutral and covers voluntary acts of carnal intercourse irrespective of the gender of persons committing the act and hence it does not violate Article 14.
- If the provision is held unconstitutional then India's social structure and the institution of marriage would be affected.

- Section 377 does not violate the right to privacy and dignity under Article 21 and the right to privacy does not include the right to commit any offence as defined under Section 377 or any other section.

***Respondent's contentions :***

- Section 377 criminalizes personal characteristic such as sexual orientation. Sexual rights and sexuality are human rights guaranteed under Article 21. Section 377 therefore deprives LGBT of their full moral citizenship.
- This threatens human dignity.
- The Court should take account of changing values and the temporal reasonableness of Section 377. It is vague.
- Goes against Article 14 as there is no reasonable classification.
- The difference between obscene acts in private and public is recognised in Section 294. Of IPC.
- Increases stigma and discrimination.

***Final Decision:***

The bench consisting of two SC judges allowed the appeal and overturned the High Court's previous decision, finding its declaration to be "legally unsustainable". The Supreme Court ultimately found that Section 377 IPC does not violate the Constitution and dismissed the writ petition filed by the Respondents.



## **R vs Ahluwalia**

(Appeal was allowed, and the court agreed to accept defense in the appeal stage)

**Bench:** Lord Taylor of Gosforth, CJ

**Appellant :** Kiran Ahluwalia

**Respondent :** Regina

**Citation :** [1992] 4 All ER 889, [1993] 96 Cr App R 133, [1992] EWCA Crim 1, [1993] Crim LR 63

**Issue :**

- Is the defense of diminished responsibility which was not considered at trial available on appeal?

**Facts:**

- Appellant had claimed that she had suffered years of abuse at the hand of her husband.
- After one such violent episode, the appellant poured petrol into a bucket, lit a candle, went to her husband's bedroom and set it on fire.
- Her husband succumbed to his injuries and died some six days later.
- Ahluwalia had pleaded manslaughter on the grounds that she did not intend to kill her husband but only intended to inflict pain.
- Also pleaded the defense of provocation on grounds of her treatment during the marriage.
- Ahluwalia was convicted of murder and appealed the decision.
- Appeal was allowed and retrial was ordered on the ground that her previous lawyers had not represented her and evidence properly.

**Appellant's contentions:**

- Expert evidence and psychiatric reports had not been presented at the original trial.
- She had suffered years of abuse, which was physical, sexual and emotional.
- It was also contended that her original lawyers were not interested in listening her to her issues and hence she did not even know what defense she was supposed to take, hence insufficient counsel. Ahluwalia was not even aware that she could plead guilty to manslaughter on the grounds of diminished responsibility.
- Court heard new evidence of her long-term depression due to years of violence and abuse.

***Respondent's contentions :***

- Since some time had been passed between abuse by her husband and her actions of pouring liquid on him. This showed that she had “cooled down” and not “boiling over” and hence no sudden and grave provocation.
- It was claimed that Ahluwalia’s prior knowledge to mix caustic soda with petrol to create napalm was not common knowledge and was proof that she had planned her husband's murder.

***Final Decision:***

The court held that appeal would be allowed on grounds of diminished responsibility. At the time of original trial there were reports that the appellant was suffering from depression due to decades of abuse and it was overlooked and the appellant was not consulted. The court ordered a retrial also.

**Tuka Ram & Anr. v. State of Maharashtra**

***Bench :*** Koshal, A.D.

***Appellant :*** Tuka Ram & Anr.

***Respondent :*** State of Maharashtra

***Citation :*** 1979 AIR 185, 1979 SCR (1) 810

***Issue :***

- Whether the Apex Court should overturn the Bombay HC’s order to convict the accused?

***Facts:***

- A man by the name of Gama had reported in the police station that his sister “Mathura” (an orphaned, tribal woman) was kidnapped by her husband and three other men.
- The police eventually found her and brought her to the station where they took everyone’s statement. At around 10:30 they asked everyone to leave but asked Mathura to go in the police station.
- Thereafter, both one defendant took her to the washroom and raped her.
- The second defendant fondled her private parts and then tried raping her. But was extremely intoxicated and hence didn’t succeed.

- The District Judge acquitted the two men on the grounds that since Mathura was “Habitual to sex” and might have invited to satisfy her sexual needs and thus her consent was voluntary.
- The Bombay overturned this decision on the grounds of “passive submission” by Mathura. But the court also stated that Mathura didn’t know these men and hence that is why, “it is extremely unlikely that she’d approach them to satisfy her sexual needs.”
- The defendants appealed to the Apex Court to reverse the Bombay HC judgement.

***Respondent’s contentions :***

- The Respondents had argued that since it had been medically proven that Mathura was a young girl of age 14-16, any form of sexual activity would amount to rape, whether it is consensual or not.
- “Passive Submission”

***Appellant’s contentions:***

- She did not leave and stayed back after everyone left.
- Her testimonies are riddled with falsehood and improbabilities.
- She was habituated to sexual activities.
- The fact that semen was found neither on the public hair nor on the vaginal smears taken from her person.
- No direct evidence being available about the nature of the consent of the girl to the alleged act of sexual intercourse, the same had to be inferred from the available circumstances and that from those circumstances it could not be deduced that the girl had been subjected to or was under any fear or compulsion such as would justify an inference of any "passive submission".

***Final Decision:***

Supreme Court overturned HC’s decision of convicting the men on the grounds that the HC had erred in accepting the argument of “passive submission” as there was no fear or apparent threat. Supreme Court further added that since “no marks of injury” were found on Mathura’s body there was “no resistance” on her part and since she did not “raise an alarm” for help she “consented to sex.” The Apex Court acquitted both the accused stating that this alleged intercourse was a “peaceful affair”.

**SUNNAVAR V STATE OF UP (UNNNAO RAPE CASE)**  
**MOHD. AKHTAR V STATE OF JAMMU AND KASHMIR**  
**(KATHUA RAPE CASE)**

**Rape cases that shook India**

**Unnao rape case:**

**The bench** – Anil Kumar Srivastava-II

**The Defendant/ Appellant** – Sunnavar, Lala, Kallo and Faridi (accused)

**The Plaintiff/ Respondent** – State of Uttar Pradesh

**Issue** – Whether Sunnavar is liable for the charges framed against him under Section 363, 366 and 367 of the Indian Penal code for kidnapping and raping a woman, Lala for kidnapping under Section 368 and; Kallo and Faridi under Section 363 and 366 of IPC.

**The contentions:**

**Defendant-** All the four accused denied all the charges against them and requested for a trial in a statement given by them under Section 313 of CrPC. Lala also submitted that there is no such evidence against him to be framed under Sec 368 of IPC.

**Plaintiff-** The accused Sunnavar, neice Kallo and brother Faridi kidnapped the victim when she went out at 4 AM to attend natures call. The victim's statement said that they kidnapped her and kept her at Lala's house where she was brutally raped by Sunnavar. The police recovered the victim along with Sunnavar and Lala by Lucknow bypass.

**Final Judgement-**

The court acquitted the accused Kallo and Faridi as there was no sufficient evidence to prove them guilty under the charges. The court held Sunnavar guilty of kidnapping and rape under Section 363, 366 and 367. Also, Lala was held guilty under Sction 368 by the court. The trial courts ruling were overturned and both Sunnavar and Lala were acquitted of all the charges as there was no evidence of rape or kidnapping and the court found sufficient evidence to support that the victim ran away with him by consent.

**Kathua rape case:**

**The bench** – The Chief Justice, Justice D Y Chandrachud, Justice Indu Malhotra

**The Defendant/ Appellant** – Sanji Ram, Deepak Khajuria(nephew), Parvesh Kumar, Special officer Surinder Kumar, Head constable Tilak Raj, Sub-inspector Anand Dutta and Vishal Jangotra (Sanji Ram's son)

**The Plaintiff/ Respondent** – State of Jammu and Kashmir

**Issue** – Whether Sanji Ram, Deepak Khajuria and Parvesh Kumar can be held liable for rape and murder of an 8 year old girl? Also, Surinder Kumar, Tilak Raj and Anand Dutta are guilty for destructing and manipulating essential evidences or not?

**The contentions-**

**Defendant-** The accused deny all the charges against them and submitted a request for a fair and free trial. The primary accused, Sanji Ram also appealed for clearing all the charges against his son Vishal, as he was present in Meerut at the time of incident.

**Plaintiff-** On direction of Sanji Ram (local leader of district Kathua), nephew Deepak Khajuria along with his friend Parvesh Kumar (Mannu) kidnapped and abducted an 8 year girl of Bakkarwal community for settling the grudge between the communities. The girl was grazing her horses in the field where Deepak and Mannu kidnapped her and held her in a cowshed of Devasthan (Temple in Kathua) where she was raped several times. Vishal, Sanji Ram's son also came to Kathua and raped her several times. SI Anand Dutta, Head-constable Tilak Raj and SO Surinder Kumar accepted a bribery of 3 lakhs for destroying evidence and tampering investigation. On the fourth day, Parvesh and Deepak killed her by hitting stones at her head twice.

**Final Judgement-**

The court held Sanji Ram, Parvesh Kumar and Deepak Khajuria guilty for rape and abduction of an 8 year old girl under Section 120B, 376 and 302 of the Indian Penal Code and sentenced a lifetime imprisonment for all the 3 accused. Deepak Khajuria was held liable for causing grievous hurt and confinement without will under Section 363, 343 and 201 of IPC also. SI Anand Dutta, Head-constable Tilak Raj and SO Surinder Kumar were also held liable for disappearance of evidence under Section 201 and punished for 5 years in jail. Whereas, Vishal was acquitted from all the charges against him.

# **KM NANAVATI V STATE OF MAHARASHTRA**

## **Abolition of jury trials in India**

**The bench** - Subbarao K (Head); Das, S.K ; Dayal, Raghubar

**The Defendant/ Appellant** – Kawas Manekshaw Nanavati (Accused)

**The Plaintiff/ Respondent** – State of Maharashtra

**Citation** - 1962 AIR 605 1962 SCR Supl. (1) 567

**Issue** – Whether Mr. K M Nanavati is liable for the charges framed against him under Section 302 and 304A of the Indian Penal Code for murder of his wife's paramour?

### **The contentions-**

**Defendant-** The accused held that, the two shots causing death of his wife's paramour, Mr. Prem Ahuja were fired accidentally in the course of a struggle between them. The semi-automatic pistol was taken from the ship with the intention of taking his own life. The officer's wife didn't tell him whether Ahuja would marry her and take care of his children which is why he went to see Ahuja himself.

**Plaintiff-** The accused, K M Nanavati brutally killed his wife's lover Ahuja in cold blood by firing two bullets. On the day of murder, the officer's wife Sylvia confessed to him about the illegitimate relationship with Ahuja which is why the officer took a semi-automatic pistol and cartridges from the ship and went to Ahuja's office to murder him. Later, he went to his flat, entered his bedroom and shot him dead.

### **Final Judgement-**

The appellant was charged under section **302 and 304A** of the **Indian Penal Code**. The case was tried in the Greater Bombay, session court where jury found K M Nanavati 'not guilty' by a ratio of 8:1 under both sections. Later, the session judge filled an appeal in the High Court where the learned judges overturned the jury's verdict and found the accused guilty of murder and sentenced him a lifetime of rigorous imprisonment under **Sec 302 of IPC**. The accused also challenged the High Court's verdict in the Supreme Court and approached the governor of the state for a mercy petition under **Article 161 of the Constitution**.

# **MUKESH ANR. V STATE FOR NCT OF DELHI**

## **NIRBHAYA RAPE CASE**

**The bench** – Deepak Mishra, R. Banumathi and Ashok Bhushan

**The Defendant/ Appellant** – Ram Singh, Mukesh Singh, Vinay Sharma, Akshay Thakur, Pawan Gupta and Mohd. Afroz (juvenile).

**The Plaintiff/ Respondent** – State for NCT of Delhi and others.

**Issue** – Whether Ram Singh, Mukesh Singh, Vinay Sharma, Akshay Thakur and Pawan Gupta liable for the charges framed against them for rape, murder, unnatural offences of a 23-year-old girl in Delhi. All the accused were also charged for destruction of evidence and attempting to murder the girl's male companion.

### **The contentions:**

**Defendant-** All the four accused denied all the charges that were brought up against them and claimed that their confession was a result of torture and coercion by the police. The defending lawyer also mentioned that the victims were responsible for assaulting as an unmarried couple should not be on street at night and also the male companion was wholly responsible for the incident.

**Plaintiff-** After watching a movie at PVR Saket Select City Mall, the victim and the male companion boarded a white-coloured bus from Munirka bus stop at 8.30 pm. There were 6 people already present in the bus, 4 of them in driver's cabin and rest 2 on the back of the bus. The bus driver and conductor didn't allow any other passengers to board in the bus. Ram Singh, Akshay and the young boy started a fight with the victim's companion and injured him with help of an iron rod. The three also took the victim to the rear part of the bus where they raped her one after the other. Vinay, Pawan and driver Mukesh also raped the victim and she was also subjected to unnatural sex by them. Later, both the companion and the victim were thrown out of the moving bus at NH 8 without any clothes on their body.

### **Final Judgement-**

The court held Mukesh Singh, Vinay Sharma, Akshay Thakur and Pawan Gupta guilty for rape, murder, destroying evidences and unnatural offence of the girl based on the testimony of the male companion and medical reports of the victim. Ram Singh, the primary accused committed suicide in Tihar Jail while in police custody. The juvenile, Mohd. Afroz was tried under The Juvenile Justice laws for rape and murder of girl and a maximum sentence of 3 years was given to him. All the four adult convicts were given a death sentence and were executed on 20<sup>th</sup> March, 2020.

# **Muhammed Ameerul Islam v State of Kerala**

## **Jisha's murder case**

**The bench** – Judge N Anil Kumar

**The Defendant/ Appellant** – Muhammed Ameerul Islam (accused)

**The Plaintiff/ Respondent** – State of Kerala

**Issue** – Whether Muhammed Ameerul Islam is liable for the charges framed against him under Section 302, 376, 376A and 201 of the Indian Penal Code for rape and murder of Jisha, a 30-year-old law student in Kerala?

### **The contentions:**

**Defendant-** Ameerul claimed that the commission of crime by him was a result of instigation by another migrant Anarul Islam.

**Plaintiff-** Ameerul barged into Jisha's house when she was alone and attempted to rape her. After facing resistance from Jisha, Ameerul stabbed her over 30 times on different body parts causing her death. The DNA results proved presence of Ameerul at Jisha's house that evening which was also confirmed by one of Jisha's neighbour.

### **Final Judgement-**

The court held Ameerul guilty of rape and murder under **Section 302,376 and 376A of the Indian Penal Code**. The neighbor's testimony, mobile location of Ameerul at the time of murder, DNA reports and blood samples played an essential role in the investigation. Also, Anarul Islam left Perumbavoor few months before the commission of crime so there were no charges of instigation put against him. However, Ameerul was not found guilty under section 201 of IPC for destroying evidence. Considering it a rare or rarest case, Ernakulam session court gave him **a death sentence**.



## **State of Maharashtra v Mohd. Yakub**

### **Acquittal of smuggling charges accused**

**The bench** – Sarkaria, Ranjit Singh

**The Defendant/ Appellant** – Mohd. Yakub, Shaik Jamadar Mithubhai and Isaak Hasanali Shaikh (accused)

**The Plaintiff/ Respondent** – State of Maharashtra

**Issue** – Whether Mohd. Yakub, Shaik Jamadar and Isaak Hasanali are liable for the charges framed against them under Section 135 of Customs Act, 1962 and Sections 12(1), 23 and 23(1) of Foreign Regulations Act, 1947 for attempting to smuggle 8 Lakh rupees worth silver ingots?

#### **The contentions:**

**Defendant-** The accused pleaded not guilty and denied all the charges against them. They stated that they were unaware of the silver ingots and were just employed for the task of carrying the jeep and truck to another destination. They also alleged the police for driving them to the creek.

**Plaintiff-** The prosecution alleged that the three accused were carrying silver ingots in a jeep under a shawl and few concealed under saw-dust bag in a truck for smuggling them out of India. When the officials caught them, few of the ingots were unloaded on the creek and engine sound of a mechanised sea-craft could be heard which indicated their attempt of smuggling the ingots out of the country.

#### **Final Judgement-**

The trial court held all the three accused guilty of smuggling 8 lakhs worth silver ingots out of the country. Whereas, the session court reversed the trial court's verdict and acquitted all the accused on the grounds that no action was taken in furtherance of the intention and said it was a mere 'preparation'. The Bombay High court also dismissed the state's appeal and upheld the acquittal of all the accused by the session court. The accused were not held liable for any charges framed against them for smuggling.

## **Aveek Sarkar and Anr. vs. State of West Bengal and Ors**

**IPC [S.292] – Test of determining obscenity**

**Bench:** K. S. Radhakrishnan, J.

**Court:** Supreme Court

**Citation:** MANU/SC/0081/2014

**Issue:** What are the tests involved in determining obscenity u/s 292 of IPC?

### ***Facts:***

- A German Magazine featured an interview of world-renowned Tennis player Boris Becker and his nude pictures with his girlfriend was published as a message against apartheid and “love over hatred.” Two publications in India – a newspaper and a sports magazine reproduced the article with different headlines and the same pictures.
- A complaint was filed against the editors of these two endeavours accusing them of Section 292 of IPC. The publications were allegedly obscene that would degrade the young minds and values of the society. The accused stated that the German magazine was never banned in India and hence, they claimed defence u/s 79 IPC. However, the Courts went on to state that the accused persons are to be examined u/s 251 CrPC and alternatively u/s 4 of the Indecent Representation of Women (Prohibition) Act 1986.
- A criminal revision petition was filed by the appellants at the Calcutta HC to quash proceedings u/s 482 CrPC, which was declined. Hence, this appeal.

### ***Appellant’s contentions:***

- Obscenity has to be decided in the backdrop of contemporary social and moral attitude of the community and the existing norms of acceptability of the community.
- No objections were raised by state officials and a private complaint should not have been entertained.

### ***Respondent’s contentions:***

- The question whether the publication of the photograph is justified or not and was made in good faith or not has to be proved by the Appellants since good faith and public good are questions of fact and matters for evidence.

### ***Court's observations and decisions:***

The Apex Court upheld the Ranjit D Udeshi case's reasoning that obscenity would change with the passage of time and what might have been "obscene" at a point of time would not be considered the same later. Judgments are to be made according to contemporary standards and not according to the standards of a sensitive few. Hicklin Test was also discussed by the Court as not the right kind of test that this situation requires. Only content that tends to excite lustful thoughts can be covered under "obscene", a mere picture of a nude/semi-nude woman cannot be. After appraising several cases, the Community Standards test was adopted and the Court appreciated the picture, article and the message that it conveyed against racism and apartheid. The Appeal was allowed and it was declared that no offence was committed u/s 292 of IPC or u/s 4 of Indecent Representation of Women (Prohibition) Act, 1986.

## **SHEENA BORA MURDER CASE**

**Facts** – On 24<sup>th</sup> April 2012, Sheena Bora took a 'leave of absence' and resignation as well as a text ending a relationship with her then Boyfriend. Upon looking into the case, the Police found nothing which was doubtful and the mother of the deceased as well as the accused stated that she had left the country for higher studies and is not missing. In 2015, after 3 years of the occurrence of the incident, the driver of Indrani was caught in possession of illegal weapons. During the investigation he revealed the details of the murder of Sheena Bora and turned into an approver.

Post this, an investigation was launched into the murder of Sheena Bora based on the allegations by Rai, the driver. The alleged story was that on 24<sup>th</sup> April, the mother and daughter met in a hotel in Worli with Mr. Sanjeev Khanna. It is alleged that Khanna, strangled the deceased in a by-lane in Bandra and the body was stuffed into the trunk of the car. Post this, the car was set ablaze in an isolated spot away from the city.

**Allegations and Contentions** – The CBI cited Financial Disputes as well as disagreements based on the engagement between Rahul Mukerjea and Sheena Bora (Stepsiblings) was cited as one of the biggest motives for the murder of Sheena Bora by her mother, stepfathers. It was further linked that due to the property issues that would arise once the marriage was finalised, the parents of one Viddhie, who is Indrani's daughter with Sanjeev Khaana, the parents of the child decided to kill Sheena Bora.

It was also contested by the Additional Solicitor General that Peter was in continuous conversation with Indrani during the entire murder of Sheena Bora and was hence

apprehended in this regard as he would benefit from the death of Sheena bora, the fiancé of his son, Rahul. Another allegation that was brought forward was that of Indrani giving Sheena sedatives that are otherwise meant for mental illness.

**Arrest and Judgements** – In light of the above, and the surveillance of the police, on 25<sup>th</sup> August 2015, Indrani Mukerjea was arrested for the murder of her daughter, Sheena Bora with charges filed under Sections 302, 201, 363 and 34 of the Indian Penal Code. Mr. Sanjeev Khanna was also arrested on the same day and was charged under Section 302, 201, 120-B in the same case. Sanjeev confessed to the crimes committed by him. Peter Mukherjee was also apprehended in this manner but was released from jail after four years as there was no prima facie evidence of his involvement in the case. In the case of Indrani, though she filed for bail petitions and there was numerous allegations she made, there was nothing concrete in them as per the Court and was therefore, convicted with Sajay Khanna, who confessed to his crime and the driver who turned in to an approver for the Police/CBI.