JUDICIAL ACADEMY JHARKHAND

SNIPPETS

OF

SUPREME COURT JUDGMENTS

(August 05-August 07, 2019)

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1. *Kathi David Raju v. State of Andhra Pradesh and Another, (2019 SCC OnLine SC 966)*

Decided on : -05.08.2019

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2. Hon'ble Mr. Justice Navin Sinha

(DNA test should not be conducted without carrying out any substantial investigation by the police.)

Facts

Respondent No. 2 filed First Information Report dated 06.01.2016 under Sections 465, 468, 471 and 420 IPC against the appellant. The substance of the allegation in the FIR was that the appellant has obtained a fake Scheduled Caste certificate of caste 'Yanadi' whereas he belonged to 'Telanga' caste. It was further alleged that the appellant on the basis of caste certificate obtained employment and working as Additional Assistant Engineer in V.T.P.S. Electricity Generation Corporation.. The appellant has changed his name. It is further pleaded that two children of the appellant had also obtained fake caste certificate of 'Yanadi' caste. On the basis of FIR, the appellant was arrested on 11.01.2016 and sent for judicial remand. On 13.01.2016, an application was filed before the Additional Junior Civil Judge, Bapatla requesting that the Court may direct conducting of DNA test of the appellant, the mother of the appellant and the two brothers of the appellant. The Additional Junior Civil Judge by order dated 22.01.2016 directed for conducting DNA test at the request made by the Station House Officer (SHO), Bapatla Town Police Station.

Aggrieved by the order dated 22.01.2016 passed by the Additional Junior Civil Judge, an application under Section 482, Cr.P.C. has been filed by the appellant in the High Court praying for quashing of order dated 22.01.2016 which has been dismissed by the High Court by the impugned judgment. The present appeal has been filed against the judgment.

Observations and Decision

The Apex Court observed that there can be no dispute to the right of police authorities seeking permission of the Court for conducting DNA test in an appropriate case. In the present case, FIR alleges obtaining false caste certificate by the appellant by changing his name and parentage. The order impugned itself notices that investigation is not yet

completed and material evidence are yet to be collected. The police authorities without being satisfied on material collected or conducting substantial investigation have requested for DNA test which is nothing but a step towards roving and fishing enquiry on a person, his mother and brothers. It is a serious matter which should not be resorted to without there being appropriate satisfaction for requirement of such test.

Section 53 Cr.P.C empowers the police authorities to request a medical practitioner to conduct examination of a person. There cannot be any dispute to the provision empowering police authorities to make such a request. However, in the present case, the police authorities had jumped on the conclusion that DNA test should be conducted without carrying out any substantial investigation. It was too early to request for conducting DNA test without carrying out substantial investigation by the police authorities. The Additional Junior Civil Judge also failed to notice that in the investigation conducted by the Investigating Authority no such materials have been brought on the basis of which it could have been opined that conducting DNA test is necessary for the appellant on his mother and two brothers.

The Apex Court allowed the appeal and set aside the impugned judgment and order passed by the High Court as well as the order of the Additional Junior Civil Judge dated 22.01.2016.

2. *Jagdish and Another v. State of Haryana , (2019 SCC OnLine SC 973)*

Decided on : -06.08.2019

Bench :- 1. Hon'ble Mr. Justice Ashok Bhushan
2. Hon'ble Mr. Justice Navin Sinha

(Can the evidence of a solitary doubtful eye witness be sufficient for conviction?)

Facts

The two appellants have been convicted under Sections 302, 149 and 148 of the Indian Penal Code. Originally there were 13 accused. Only six were charge-sheeted. Two of them were tried by the juvenile court. Seven were summoned under Section 319. The Trial Court convicted three persons. One of them, Ishwar has been acquitted by the High Court.

Observations and Decision

The Apex Court noted that although in the F.I.R. PW-1 made generalized allegations of assault by all the 13 accused who are stated to have surrounded the deceased, but in her court statement she was more specific with regard to the nature of assault made by each of the accused. A total of 11 injuries were found on the person of the deceased. The two appellants were armed with lathis by which an incised wound could not have been caused. In any event, the number of injuries on the deceased points out that it was the result of a mob assault and not an assault by the two appellants alone.

The question that arose was regarding PW-1 as the sole eye-witness to the mob assault by 13 persons who had surrounded the deceased at night. The Apex Court noted that even if light was burning, some of them undoubtedly must have had their back to PW-1 making identification improbable if not impossible. The witness has been severely doubted both by the trail court and the High Court to grant acquittal to the other accused. Therefore, can the evidence of a solitary doubtful eye witness be sufficient for conviction?

The Apex Court stated that conviction on basis of a solitary eye witness is undoubtedly sustainable if there is reliable evidence cogent and convincing in nature along with surrounding circumstances. The evidence of a solitary witness will therefore call for heightened scrutiny.

Therefore, in the entirety of the facts and circumstances of the case, the relationship between PW-1 and the deceased, the existence of previous animosity, false implication cannot be ruled out. On this point the Apex Court referred to ***State of Rajasthan v. Bhola Singh***.[1]

The Apex Court then referred to ***Lallu Manjhi v. State of Jharkhand***,[2] wherein it was observed that if ten persons were stated to have dealt blows with their respective weapons on the body of the deceased, and that if each one of them assaulted then there would have been minimum of ten injuries on the person of the deceased. However, there were 11 injuries on the person of the deceased. Giving the benefit of doubt granting acquittal, it was observed as follows:

> *"13..... The version of the incident given by the sole eyewitness who is also an interested witness on account of his relationship with the deceased and being inimically disposed against the accused persons is highly exaggerated and not fully corroborated by medical evidence. The version of the incident as given in the Court is substantially in departure from the earlier version as contained and available in the first information report. We cannot, therefore, place reliance on the sole testimony of Mannu (PW 9) for the purpose of recording the conviction of all the accused persons."*

The appellants were acquitted.

[1] AIR 1994 SC 542
[2] (2003) 2 SCC 401

3. *Dev Karan alias Lambu v. State of Haryana, (2019 SCC OnLine SC 972)*

Decided on : -06.08.2019

Bench :- 1. Hon'ble Mr. Justice Sanjay Kishan Kaul
2. Hon'ble Mr. Justice K. M. Joseph

(Section 141 of the IPC only defines what is an unlawful assembly and in what manner the unlawful assembly conducts itself, and in what cases the common object would make the assembly unlawful is specified in the Sections thereafter, inviting the consequences of the appropriate punishment in the context of Section 149 of the IPC.)

Facts

A group of friends - Surender (PW-7), the deceased, Ajay Bhan (PW-8), Surender , Sandeep and Narender were sitting and consuming liquor in one of the rooms of the under construction house of the deceased. The liquor fell short, as the deceased asked Sandeep to bring half a bottle of liquor. After some time, the remaining friends who were in the room heard raised voices of Sandeep. In order to enquire as to what was transpiring, Surender (PW-7/complainant), the deceased and Narender went towards the liquor shop. In the proximity of the liquor shop, near the tea shop of Naresh Kumar, these three persons saw accused Krishan and Vidhya Rattan (original accused No. 3/appellant) abusing and quarrelling with Sandeep. Heated words were exchanged and threats were held out. The deceased asked Krishan and Vidhya Rattan to come during the day to discuss the matter with the complainant and his friends. The complainant, the deceased, Narendar and Sandeep thereafter came back to the under-construction, residential house.

It is the case of the complainant that just as these friends were, once again, in the process of resuming their drink, seven persons (all arrayed as accused before the trial court) entered the under-construction house of the deceased, armed with deadly weapons like wooden rafter, *lathis* and sword. Rajesh Yadav (accused No. 1), who has since passed away, was armed with a *bahi* (a rectangular wooden rafter, which is used in making cots), and proclaimed that the deceased, referred to as the 'leader', be killed, and then he hit the deceased on the head with the wooden rafter. A *lathi* blow was given by Krishan on the head of the deceased. The consequence of these blows was that the deceased fell to the ground.

The assault continued when Suresh (original accused No. 5/appellant) also gave a wooden rafter blow on the left leg of the deceased. Rajesh Yadav (accused No. 1), since deceased, raised a *lalkara* that Jaibir (the deceased) be killed altogether. All the accused thereafter started hitting the deceased indiscriminately with their respective weapons. A variety of weapons were used to carry out the assault, with Rajesh Yadav and Suresh being armed with *bahis*, while Rajesh Jogi (original accused No. 4/appellant) being armed with *kirpan* (sword) and the remaining four accused carrying *lathis*.

All the accused persons are stated to have run away from the place of occurrence of the event, once the remaining companions of deceased herein raised an alarm. The deceased succumbed to his injuries.

On completion of investigation, a chargesheet was filed on 15.11.1994, and charges were framed under Sections 148, 302, 307, 325 read with Section 149 of the Indian Penal Code, 1860 and Section 449 of the IPC. Rajesh Yadav died during trial. The remaining arrested accused were found guilty and convicted under Sections 148, 302, 307, 325 read with Section 149 of the IPC and Section 449 of the IPC. All the accused were sentenced for life, with fine of Rs. 500 each under Section 302 of the IPC. They were also sentenced to undergo rigorous imprisonment for seven years each along with a fine of Rs. 500 each under Section 307 of the IPC with similar sentence under Section 149 of the IPC. The accused were also directed to undergo RI for three years each with a fine of Rs. 200 each under Section 325 of the IPC, and under Section 148 of the IPC, they were sentenced to RI for 2 years each with fine of Rs. 200 each. The sentences were directed to run concurrently. All the accused were held guilty under Section 149 of the IPC as they constituted an unlawful assembly, as a result of which, it was opined that specific attribution of injuries caused by each individual was not required to be considered.

Observations and Decision

The Apex Court referred to ***Mahadev Sharma* v. *State of Bihar***[3] in order to appreciate the significance of specifically invoking Section 141 of the IPC wherein this Court opined that for

[3] (1966) 1 SCR 18

application of Section 149 of the IPC, there must be an unlawful assembly. The scheme of the provisions was explained as under:

> *"9. The fallacy in the cases which hold that a charge under Section 147 is compulsory arises because they overlook that the ingredients of Section 143 are implied in Section 147 and the ingredients of Section 147 are implied when a charge under Section 149 is included. An examination of Section 141 shows that the common object which renders an assembly unlawful may involve the use of criminal force or show of criminal force, the commission of mischief or criminal trespass or other offence, or resistance to the execution of any law or of any legal process. Offences under Sections 143 and 147 must always be present when the charge is laid for an offence like murder with the aid of Section 149, but the other two charges need not be framed separately unless it is sought to secure a conviction under them. It is thus that Section 143 is not used when the charge is under Section 147 or Section 148, and Section 147 is not used when the charge is under Section 148. Section 147 may be dispensed with when the charge is under Section 149 read with an offence under the Indian Penal Code."*

Thereafter, it has been opined that if charges framed against the appellant contain all the necessary ingredients to bring home to each of the member of the unlawful assembly, the offence, with aid of Section 149 of the IPC, and the prosecution proves the existence of an unlawful assembly with a common object, which is the offence, as also the membership of each appellant, nothing more is necessary. *The effect of these observations is that Section 141 of the IPC only defines what is an unlawful assembly and in what manner the unlawful assembly conducts itself, and in what cases the common object would make the assembly unlawful is specified in the Sections thereafter, inviting the consequences of the appropriate punishment in the context of Section 149 of the IPC.*

The Apex Court then referred to ***Kuldip Yadav* v. *State of Bihar***,[4] to emphasise that what is required is that the essential ingredients of Section 141 of the IPC must be established.

Therefore, on examination of the aforesaid aspect, the Apex Court was unable to come to a conclusion that there was any fatal flaw in the *non-inclusion of Section 141 of the IPC while framing charges, as would render the complete trial illegal, or that it can result in a finding that there would be no occasion to invoke Section 149 of the IPC.*

[4] (2011) 5 SCC 324

As long as the necessary ingredients of an unlawful assembly are set out and proved, as enunciated in Section 141 of the IPC, it would suffice. The actions of an unlawful assembly and the punishment thereafter are set out in the subsequent provisions, after Section 141 of the IPC, and as long as those ingredients are met, Section 149 of the IPC can be invoked.

In the factual context of the present case, it is observed that whatever be the altercation or argument between Sandeep and the seven accused, it resulted in the seven accused armed with deadly weapons coming to the site of the incident and all of them inflicting blows on the deceased. This is not a case where the common assembly proceeded to the site and subsequently decided to inflict the blows. It is not as if anyone incidentally joined the group, but all of them came together with a clear intent and acted upon that intent. It was not as if any of the accused ran away from the site, or ceased to have the intent to inflict blows, which resulted in the death of the deceased. The common object is, thus, writ large on its face. There were, at least, 24 injuries inflicted on the deceased, and both the courts below have found that the version given by PW-7 and PW-8 evoke confidence, who were themselves injured in the incident.

The appeal was dismissed.

4. *Anand Ramachandra Chougule v. Sidarai Laxman Chougala and Others, (2019 SCC OnLine SC 974)*

Decided on : - 06.08.2019

Bench :- 1. Hon'ble Mr. Justice Ashok Bhushan
2. Hon'ble Mr. Justice Navin Sinha

(-The weakness in the defence taken cannot become the strength of the prosecution,

- A defective investigation shall be completely different from no investigation at all coupled with suppression of the injury report arising out of another F.I.R with regard to the same occurrence.)

Facts

The complainant and the accused are related to each other. There was a land dispute between them. A civil suit is also stated to have been pending. On 07.06.2002, the deceased along with others were returning to their village. When they reached near the house of one Yeellappa Patil, the accused persons are alleged to have assaulted them leading to homicidal death. The trial court convicted all the four accused. The High Court in appeal concluded from the materials on record that the assault was made on the spur of the moment without premeditation and that both sides having suffered injuries the conviction ought to be altered under Section 304 Part I, IPC. Two of the accused were acquitted as their presence was found to be doubtful.

The present two appeals have been preferred by the complainant and the State respectively. The challenge is to the orders of the High Court, by which the respondents nos. 3 and 4 have been acquitted, and the conviction of the respondents nos. 1 and 2 to life imprisonment under Section 302/34 of the Indian Penal Code, 1860 has been altered to one under Section 304 Part I/34 sentencing them to seven years.

Observations and Decision

The Apex Court noted that the burden lies on the prosecution to prove the allegations beyond all reasonable doubt. In contradistinction to the same, the accused has only to create

a doubt about the prosecution case and the probability of its defence. An accused is not required to establish or prove his defence beyond all reasonable doubt, unlike the prosecution. If the accused takes a defence, which is not improbable and appears likely, there is material in support of such defence, the accused is not required to prove anything further. The benefit of doubt must follow unless the prosecution is able to prove its case beyond all reasonable doubt.

The fact that a defence may not have been taken by an accused under Section 313, Cr.P.C. again cannot absolve the prosecution from proving its case beyond all reasonable doubt. If there are materials which the prosecution is unable to answer, *the weakness in the defence taken cannot become the strength of the prosecution* to claim that in the circumstances it was not required to prove anything. In ***Sunil Kundu* v. *State of Jharkhand***[5] it was observed:

> *"28...When the prosecution is not able to prove its case beyond reasonable doubt it cannot take advantage of the fact that the accused have not been able to probabilise their defence. It is well settled that the prosecution must stand or fall on its own feet. It cannot draw support from the weakness of the case of the accused, if it has not proved its case beyond reasonable doubt."*

The Apex Court opined that the failure of the prosecution to act fairly and place all relevant materials with regard to the occurrence before the court enabling it to take just and fair decision has caused serious prejudice to them. *A fair criminal trial encompasses a fair investigation at the pre-trial stage, a fair trial where the prosecution does not conceal anything from the court and discharges its obligations in accordance with law impartially to facilitate a just and proper decision by the court in the larger interest of justice concluding with a fairness in sentencing also*. On this point the Apex Court referred to ***Dayal Singh* v. *State of Uttaranchal***[6] and found it to be distinguishable on its own facts as it did not relate to suppression of materials with regard to the accused during the trial in addition to the failure to investigate. *A defective investigation shall be completely different from no investigation at all coupled with suppression of the injury report arising out of another F.I.R with regard to the same occurrence.*

The benefit of doubt given to the accused no. 3 and 4 by the High Court was not found fault with.

[5] (2013) 4 SCC 422
[6] (2012) 8 SCC 263

5. *Ravinder Kaur Grewal and Others v. Manjit Kaur and Others, (2019 SCC OnLine SC 975)*

Decided on : - 07.08.2019

Bench :- 1. Hon'ble Mr. Justice Arun Mishra
2. Hon'ble Mr. Justice S. Abdul Nazeer
3. Hon'ble Mr. Justice M. R. Shah

(Once the right, title or interest is acquired it can be used as a sword by the plaintiff as well as a shield by the defendant within ken of Article 65 of the Act and any person who has perfected title by way of adverse possession, can file a suit for restoration of possession in case of dispossession.)

Issue

Whether a person claiming the title by virtue of adverse possession can maintain a suit under Article 65 of Limitation Act, 1963 (for short, "the Act") for declaration of title and for a permanent injunction seeking the protection of his possession thereby restraining the defendant from interfering in the possession or for restoration of possession in case of illegal dispossession by a defendant whose title has been extinguished by virtue of the plaintiff remaining in the adverse possession or in case of dispossession by some other person?

In other words, whether Article 65 of the Act only enables a person to set up a plea of adverse possession as a shield as a defendant and such a plea cannot be used as a sword by a plaintiff to protect the possession of immovable property or to recover it in case of dispossession. Whether he is remediless in such a case? In case a person has perfected his title based on adverse possession and property is sold by the owner after the extinguishment of his title, what is the remedy of a person to avoid sale and interference in possession or for its restoration in case of dispossession?

Observations and Decision

The relevant paragraphs of the decision are as follows:

"56*.....Law of limitation does not define the concept of adverse possession nor anywhere contains a provision that the plaintiff cannot sue based on adverse possession. It only deals with limitation to sue and extinguishment of rights. There may be a case where a person who has perfected his title by virtue of adverse possession is sought to be ousted or has been dispossessed by a forceful entry by the owner or by some other person, his right to obtain possession can be resisted only when the person who is seeking to protect his possession, is able to show that he has also perfected his title by adverse possession for requisite period against such a plaintiff.*

57. *Under Article 64 also suit can be filed based on the possessory title. Law never intends a person who has perfected title to be deprived of filing suit under Article 65 to recover possession and to render him remediless. In case of infringement of any other right attracting any other Article such as in case the land is sold away by the owner after the extinguishment of his title, the suit can be filed by a person who has perfected his title by adverse possession to question alienation and attempt of dispossession.*

58. *Law of adverse possession does not qualify only a defendant for the acquisition of title by way of adverse possession, it may be perfected by a person who is filing a suit. It only restricts a right of the owner to recover possession before the period of limitation fixed for the extinction of his rights expires. Once right is extinguished another person acquires prescriptive right which cannot be defeated by re-entry by the owner or subsequent acknowledgment of his rights. In such a case suit can be filed by a person whose right is sought to be defeated.*

59. *In India, the law respect possession, persons are not permitted to take law in their hands and dispossess a person in possession by force as observed in Late Yashwant Singh* ***(Lallu Yashwant Singh (dead) by his legal representative v. Rao Jagdish Singh)***[7] *, by this Court. The suit can be filed only based on the possessory title for appropriate relief under the Specific Relief Act by a person in possession. Articles 64 and 65 both are attracted in such cases as held by this Court in* ***Desh Raj v. Bhagat Ram.***[8] *In Nair Service Society* ***(Nair Service Society Ltd. v. K.C. Alexander***[9]*) held that if rightful owner does not commence an action to take possession within the period of limitation, his rights are lost and person in possession acquires an absolute title.*

* * *

61. *There is the acquisition of title in favour of plaintiff though it is negative conferral of right on extinguishment of the right of an owner of the property. The right ripened by prescription by his adverse possession is absolute and on dispossession, he can sue based on 'title' as envisaged in the opening part under Article 65 of Act. Under Article 65, the suit can be filed based on the title for recovery of possession within 12 years of the start of adverse possession, if any, set up by the defendant. Otherwise right to recover possession based on the title is absolute irrespective of limitation in the absence of adverse possession by the defendant for 12 years. The possession as trespasser is not adverse nor long possession is synonym with adverse possession.*

62. *In Article 65 in the opening part a suit "for possession of immovable property or any interest therein based on title" has been used. Expression "title" would include the title acquired by the plaintiff by way of adverse possession. The title is perfected by adverse possession has been held in a catena of decisions.*

63. *We are not inclined to accept the submission that there is no conferral of right by adverse possession. Section 27 of Limitation Act, 1963 provides for extinguishment of right on the lapse of limitation fixed to institute a suit for possession of any property, the right to such property shall stand extinguished. The concept of adverse possession as evolved goes beyond it on completion of period and extinguishment of right confers the same right on the possessor, which has been extinguished and not more than that. For a person to sue for possession would indicate that right has accrued to him in presenti to obtain it, not in futuro. Any property in Section 27 would include corporeal or incorporeal property. Article 65 deals with immovable property.*

64. *Possession is the root of title and is right like the property. As ownership is also of different kinds of viz. sole ownership, contingent ownership, corporeal ownership, and legal equitable ownership. Limited ownership or limited right to property may be enjoyed by a holder. What can be prescribable against is limited to the rights of the holder. Possession confers enforceable right under Section 6 of the Specific Relief Act. It has to be looked into what kind of possession is enjoyed viz. de facto i.e., actual, 'de jure possession', constructive possession, concurrent possession over a small*

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[7] AIR 1968 SC 620
[8] (2007) 9 SCC 641
[9] AIR 1968 SC 1165

portion of the property. In case the owner is in symbolic possession, there is no dispossession, there can be formal, exclusive or joint possession. The joint possessor/co-owner possession is not presumed to be adverse. Personal law also plays a role to construe nature of possession.

65. *The adverse possession requires all the three classic requirements to co-exist at the same time, namely, nec-vi i.e. adequate in continuity, nec-clam i.e., adequate in publicity and nec-precario i.e. adverse to a competitor, in denial of title and his knowledge. Visible, notorious and peaceful so that if the owner does not take care to know notorious facts, knowledge is attributed to him on the basis that but for due diligence he would have known it. Adverse possession cannot be decreed on a title which is not pleaded. Animus possidendi under hostile colour of title is required. Trespasser's long possession is not synonym with adverse possession. Trespasser's possession is construed to be on behalf of the owner, the casual user does not constitute adverse possession. The owner can take possession from a trespasser at any point in time. Possessor looks after the property, protects it and in case of agricultural property by and the large concept is that actual tiller should own the land who works by dint of his hard labour and makes the land cultivable. The legislature in various States confers rights based on possession.*

66. *Adverse possession is heritable and there can be taking of adverse possession by two or more persons as the right is transmissible one. In our opinion, it confers a perfected right which cannot be defeated on reentry except as provided in Article 65 itself. Tacking is based on the fulfillment of certain conditions, tacking maybe by possession by the purchaser, legatee or assignee, etc. so as to constitute continuity of possession, that person must be claiming through whom it is sought to be tacked, and would depend on the identity of the same property under the same right. Two distinct trespassers cannot tack their possession to constitute conferral of right by adverse possession for the prescribed period.*

67. *We hold that a person in possession cannot be ousted by another person except by due procedure of law and once 12 years' period of adverse possession is over, even owner's right to eject him is lost and the possessory owner acquires right, title and interest possessed by the outgoing person/owner as the case may be against whom he has prescribed. In our opinion, consequence is that once the right, title or interest is acquired it can be used as a sword by the plaintiff as well as a shield by the defendant within ken of Article 65 of the Act and any person who has perfected title by way of adverse possession, can file a suit for restoration of possession in case of dispossession. In case of dispossession by another person by taking law in his hand a possessory suit can be maintained under Article 64, even before the ripening of title by way of adverse possession. By perfection of title on extinguishment of the owner's title, a person cannot be remediless. In case he has been dispossessed by the owner after having lost the right by adverse possession, he can be evicted by the plaintiff by taking the plea of adverse possession. Similarly, any other person who might have dispossessed the plaintiff having perfected title by way of adverse possession can also be evicted until and unless such other person has perfected title against such a plaintiff by adverse possession. Similarly, under other Articles also in case of infringement of any of his rights, a plaintiff who has perfected the title by adverse possession, can sue and maintain a suit.*

68. *When we consider the law of adverse possession as has developed vis-à-vis to property dedicated to public use, courts have been loath to confer the right by adverse possession. There are instances when such properties are encroached upon and then a plea of adverse possession is raised. In such cases, on the land reserved for public utility, it is desirable that rights should not accrue. The law of adverse possession may cause harsh consequences, hence, we are constrained to observe that it would be advisable that concerning such properties dedicated to public cause, it is made clear in the statute of limitation that no rights can accrue by adverse possession.*

69. *Resultantly, we hold that decisions of* ***Gurudwara Sahab v. Gram Panchayat Village Sirthala*** [10] *and decision relying on it in* ***State of Uttarakhand v. Mandir Shri Lakshmi Siddh Maharaj*** [11] *and* ***Dharampal (dead) through LRs v. Punjab Wakf Board*** [12] *cannot be said to be laying down the law correctly, thus they are hereby overruled. We hold that plea of acquisition of title by adverse possession can be taken by plaintiff under Article 65 of the Limitation Act and there is no bar under the Limitation Act, 1963 to sue on aforesaid basis in case of infringement of any rights of a plaintiff."*

[10] (2014) 1 SCC 669
[11] (2017) 9 SCC 579
[12] (2018) 11 SCC 449

6. *Bhagwan v. State of Maharasahtra Through Secretary Home, Mumbai, Maharashtra, (2019 SCC OnLine SC 978)*

Decided on : - 07.08.2019

Bench :- 1. Hon'ble Mr. Justice Sanjay Kishan Kaul
2. Hon'ble Mr. Justice K.M. Joseph

(Mere fact that the patient suffered 92% burn injuries would not stand in the way of patient giving a dying declaration)

Facts

On 19.4.1999 at about 12 o'clock in the night the appellant came to the house in a drunken position and beat his wife and thereafter he poured kerosene oil and set her on fire. The deceased was shifted to the Hospital at Arni on 21.4.1999 at about 2.00 a.m. along with two sons who also suffered burn injuries. The appellant also sustained burn injuries. On 22.4.1999 Ram Audare recorded the dying declaration of the deceased. In the dying declaration the appellant was implicated as having, being drunk, pore kerosene on her and set her on fire. The deceased succumbed to burn injuries on 23.4.1999. The appellant came to be arrested on 5.6.1999. After investigation, a charge sheet came to be filed for offences under Section 302 and 326 of the IPC. A charge under Section 326 for voluntarily causing burn injuries to his sons was framed and the trial Court as already noticed found the appellant guilty under Section 302 IPC. In regard to charge under Section 326 IPC, the appellant was acquitted. The High Court dismissed the appeal and confirmed the conviction and sentence imposed by the Additional Sessions Judge. The present appeal has been maintained by the Special Leave against the judgment of the High Court.

Observations and Decision

The Apex Court noted that the post mortem report revealed that death was caused due to septicaemia shock due to extensive burns. The deceased suffered 92% burn injuries.

The Apex Court referred to Constitution Bench decision in ***Laxman* v. *State of Maharashtra***[13] and stated that the question as to whether a dying declaration which otherwise inspires confidence of the court should meet with disapproval for the reason that all that is certified is that the patient was conscious and that it is further not certified that she was physically and mentally fit is no longer res integra as in that case it was held that:

"It is indeed a hypertechnical view that the certification of the doctor was to the effect that the patient is conscious and there was no certification that the patient was in a fit state of mind especially when the Magistrate categorically stated in his evidence indicating the questions he had put to the patient and from the answers elicited was satisfied that the patient was in a fit state of mind whereafter he recorded the dying declaration."

The Apex Court then referred to ***Vijay Pal* v. *State (Government of NCT of Delhi)***,[14] and observed that the question whether a person who has suffered 92% burn injuries is in a condition to give a dying declaration, is no longer res integra and held that the *mere fact that the patient suffered 92% burn injuries as in this case would not stand in the way of patient giving a dying declaration* which otherwise inspires the confidence of the Court and is free from tutoring, and can be found reliable.

The appeal was dismissed.

[13] (2002) 6 SCC 710
[14] (2015) 4 SCC 749

7. *Amir Hamza Shaikh and Others v. State of Maharashtra and Another, (2019 SCC OnLine SC 976)*

Decided on : - 07.08.2019

Bench :- 1. Hon'ble Mr. Justice L. Nageswara Rao
2. Hon'ble Mr. Justice Hemant Gupta

(Magistrate is not bound to grant permission at the mere asking but the victim has a right to assist the Court in a trial before the Magistrate)

Facts

The respondent No. 2 had sought permission to conduct prosecution in terms of Section 302 of the Code of Criminal Procedure, 1973 for offences punishable under Sections 498A, 406 read with Section 34 of Indian Penal Code, 1860. The Magistrate declined permission without giving any reason but the High Court considered the judgments on the subject and granted permission to conduct prosecution only for the reason that the application has been made by an aggrieved party. The present appeal challenged the order of the High Court.

Decision and Observations

The Apex Court mentioned Section 302[15] of the Code and section 301 and noticed that under Section 301 of the Code, the Public Prosecutor may appear and plead without any authority before any Court in which that case is under inquiry, trial or appeal and any person may instruct a pleader who shall act under the directions of the Public Prosecutor and may with the permission of the Court submit written submissions. The Apex Court then referred to ***Babu* v. *State of Kerala***[16] wherein it was held:

> *"3. ...In Subhash Chandran v. State of Kerala, 1981 KLT Case No. 125 a learned Jude of this Court held:*

[15] "**Permission to conduct prosecution. -** (1) Any Magistrate inquiring into or trying a case may permit the prosecution to be conducted by any person other than police officer below the rank of Inspector; but no person, other than the Advocate-General or Government Advocate or a Public Prosecutor or Assistant Public Prosecutor, shall be entitled to do so without such permission:

Provided that no police officer shall be permitted to conduct the prosecution if he has taken part in the investigation into the offence with respect to which the accused is being prosecuted.

(2) Any person conducting the prosecution may do so personally or by a pleader."

[16] 1984 CriLJ 499

Whether permission should be granted or not is a matter left to the discretion of the Court, the discretion being used in a judicial manner. It is true that the petitioner as the son of the deceased and as a person who has a right to make out that there was rashness and negligence on the part of the accused and claim damages from him may be interested in the prosecution. But that fact is not by itself a ground for permitting him to conduct the prosecution in the place of the Assistant Public Prosecutor who is in charge of the case. It is settled law that where a cognisable offence is committed and a prosecution is launched by the State it is for the Public Prosecutor to attend to the prosecution. The object of a criminal prosecution is not to vindicate the grievances of a private person.

4. Under Section 301, a Pleader engaged by a private person can assist the Public Prosecutor or the Assistant Public Prosecutor as the case may be in the conduct of the prosecution while under Section 302 the Magistrate may permit the prosecution itself to be conducted by any person or by a pleader instructed by him. The distinction is when permission under Section 302 is given the Public Prosecutor or the Assistant Public Prosecutor as the case may be disappears from the scene and the pleader engaged by the person who will invariably be the de facto complainant will be in full charge of the prosecution.....This does not mean that permission cannot at all be granted under Section 302. Under very exceptional circumstances permission can be granted under Section 302. Otherwise, there is no reason why the provision is there in the Code. But that is to be done only in cases where the circumstances are such that a denial of permission under Section 302 will stand in the way of meeting out, justice in the case. A mere apprehension of a party that the Public Prosecutor will not be serious in conducting the prosecution simply because a conviction or an acquittal in the case will affect another case pending will not by itself be enough. At the same time, if the apprehension of the party is going to materialise the court can pending the trial, grant permission under Section 302 even if a request for permission was rejected at the outset."

The Apex Court then referred to ***Shiv Kumar* v. *Hukam Chand***[17] wherein the distinction between the scope of Section 301 and 302 of the Code has been examined. It has been held that Section 302 of the Code is applicable in respect of the offences triable by Magistrate. It enables the Magistrate to permit any person to conduct the prosecution whereas in terms of Section 301 of the Code, any private person may instruct a pleader to act under the directions of the Public Prosecutor or Assistant Public Prosecutor in any trial before any court and to submit written arguments after the close of the evidence.

[17] (1999) 7 SCC 467

The Apex Court then referred to a three Judge Bench decision of the Apex Court in ***J.K. International* v. *State (Govt. of NCT of Delhi)***[18] wherein the provisions of sub-section (2) of Section 301 and Section 302 was considered and it has been held that if the cause of justice would be better served by granting such permission, the Magistrate's court would generally grant such permission. An aggrieved private person is not altogether eclipsed from the scenario when the criminal court take cognizance of the offences based on the report submitted by the police. The Apex Court then mentioned ***Mallikarjun Kodagali (Dead) represented through LRs* v. *State of Karnataka,***[19] wherein the Apex Court considered the victim's right to file an appeal in terms of proviso to Section 372 inserted by Central Act No. 5 of 2009 w.e.f. December 31, 2009.

The Apex Court concluded:

"... though the Magistrate is not bound to grant permission at the mere asking but the victim has a right to assist the Court in a trial before the Magistrate. The Magistrate may consider as to whether the victim is in a position to assist the Court and as to whether the trial does not involve such complexities which cannot be handled by the victim. On satisfaction of such facts, the Magistrate would be within its jurisdiction to grant of permission to the victim to take over the inquiry of the pendency before the Magistrate."

The matter was remitted to the Magistrate to consider as to whether the complainant should be granted permission to prosecute the offences under Sections 498-A, 406 read with Section 34 IPC.

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[18] (2001) 3 SCC 462
[19] (2019) 2 SCC 752